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COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

MEMORANDUM

TO: Robert M. Graber, Clerk, Erie County Legislature
FROM: Michelle M. Parker, First Assistant County Attorney
DATE: September 25, 2012
RE: Transmittal of New Claims Against Erie County

Mr. Graber:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find thirteen (13) new claims brought against the County of Erie. The claims are as follows:

Claim Name

Peter DiLauro v. Erie County Sheriff's Department, et al.
John Szczerba v. County of Erie
F. Michael Kohlhagen v. County of Erie
Estate of Jacqueline Wisniewski v. County of Erie, et al.
Carmen Geter v. County of Erie, et al.
William P. Melski v. County of Erie, et al.
Mark Kubicki v. County of Erie, et al.
Justin H. Gerstein v. Erie County Board of Elections, et al.
Reginald Paige v. County of Erie, et al.
Denise B. Taylor v. County of Erie, et al.
Eugene Clabeaux v. County of Erie, et al.
Rita Hairston v. Erie County Sheriff's Office, et al.
Timothy M. Kennedy v. Erie County Board of Elections, et al.

MMP/dld
Attachments
cc: Michael A. Siragusa, County Attorney



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 5, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>DiLauro, Peter v. Erie County Sheriff's Department, Deputy Lee Richard, Deputy Brandon Stott and Sheriff Timothy Howard</i>
Document Received:	Notice of Claim
Name of Claimant:	Peter T. DiLauro 541 Creekside Drive Alden, New York 14004
Claimant's attorney:	Claimant is <i>pro se</i> .

Should you have any questions, please call.

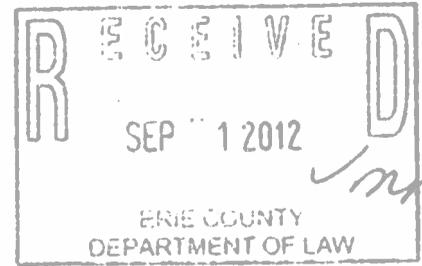
Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle Parker*
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**



**In the Matter of the Claim of:
PETER DILAURO
541 Creekside Drive
Alden, New York 14004**

Claimant

NOTICE OF CLAIM

vs.

**ERIE COUNTY SHERIFF DEPUTY LEE M. RICHARD
ERIE COUNTY SHERIFF DEPUTY BRANDON J. STOTT
ERIE COUNTY SHERIFF'S DEPARTMENT
ERIE COUNTY SHERIFF TIMOTHY HOWARD
10 Delaware Avenue
Buffalo, New York 14202**

**ERIE COUNTY ATTORNEY
95 Franklin Street
Buffalo, New York 14202**

Respondents

TO: ERIE COUNTY DEPUTY SHERIFF LEE M. RICHARD; ERIE COUNTY SHERIFF DEPUTY BRANDON J. STOTT, ERIE COUNTY SHERIFF'S DEPARTMENT; ERIE COUNTY SHERIFF TIMOTHY HOWARD AND THE ERIE COUNTY ATTORNEY SIRS:

PLEASE TAKE NOTICE, that the undersigned, PETER T. DILAURO, hereby claims and demands from the Erie County Sheriff Deputy Lee M. Richard, Erie County Sheriff Deputy Brandon J. Stott, the Erie County Sheriff's Department and the Erie County Attorney, damages for personal injuries sustained by him by reason of the wrongful, reckless, negligent and careless acts and omissions of the ERIE COUNTY SHERIFF'S DEPARTMENT and the ERIE COUNTY ATTORNEY'S OFFICE, their agents, servants and/or employees, and in support thereof sets forth the following:

- 1. Claimant, Peter T. DiLauro, resides at 541 Creekside Drive, Alden, New York 14004.**
- 2. The date of the happening of the incident in which physical and mental injuries were sustained was on or about the 6th day of June, 2012 at approximately 8.50 p. m.**
- 3. The place of said incident was the Claimant's address of 541 Creekside Drive, Alden, New York 14001**

4. The Claim of said Claimant, PETER T. DILAURO, arose in the following manner: that on or about the 6th day of June 2012, PETER T. DILAURO, at approximately 8:50 p. m. was assaulted, falsely imprisoned and falsely arrested. The two Erie County Deputy Sheriffs, Lee Richards and Brandon Stott, used excessive force, harassed, verbally abused and ridiculed the Claimant after they unlawfully detained the Claimant shortly after a serious injury occurred to the Claimant's grandson wherein the child suffered severe lacerations and amputated toes and was bleeding profusely which was life threatening, as the result of a garden tractor that ran over the child's foot. The Claimant, PETER T. DILAURO, immediately provided first aid to the child to stop the heavy flow of blood. Upon coming on to the scene, the two Deputy Sheriffs would not let the Claimant, PETER T. DILAURO, leave his property and continued to ask him questions to a point where the Claimant, PETER T. DILAURO, asked of the Deputies how much longer he had to wait and asked the Deputies if he was under arrest. They continuously made him wait but did not place him under arrest at that time. The Claimant, PETER T. DILAURO, got into his car and was preparing to leave and go to Women & Children's Hospital to check on the status of his grandson. At which point, one of the Deputies advised him to stop what he was doing. Mr. DiLauro stopped and focused on badge and responded with "How much longer do I have to wait?" The Deputy responded: "About ten more minutes." At which point, the Claimant, PETER T. DILAURO, looked at his clock and said he would wait ten more minutes. At this point, it prompted the Deputy Sheriff to grab the Claimant and started to pull him out of the motor vehicle, sprayed him in the eyes with mace, yanked and physically manhandled the Claimant through the vehicle as it was in drive, got him out of the vehicle through the door of the motor vehicle, slammed him to the ground, yanked his arms behind his back, put the handcuffs on too tightly with the intent to cause an injury to the wrist and stepped on his back.

5. Deputies Stott and Richard falsely arrested him, falsely imprisoned him, assaulted him, used excessive force, harassed, verbally abused and ridiculed him and then arrested him for obstruction of governmental administration, resisting arrest, reckless endangerment and disorderly conduct.

6. The Claimant, Peter T. DiLauro, sustained the following physical injuries: neck injury, back injury, injury to his arms, torn muscles, carpal tunnel surgery to the left wrist as the result of a crush injury, pain and suffering, anxiety, depression, temporary blindness and burning of the eyes, face and throat as the result of the use of mace, as the result of the incident described in paragraph four (4).

7. As the result of their investigation, he was further damaged to have to pay for the Erie County Sheriff's Department to move his lawn mower to be investigated or examined on two separate occasions, causing him damage to pay a bill for the moving of the tractor in the sum of \$300.00.

8. The Erie County Sheriff, Timothy Howard, was negligent in the hiring, training and supervising Deputies Stott and Richard.

DATED: Akron, New York
August 31, 2012

Yours, etc.


Peter T. DiLauro, Pro Se

state of new york)
COUNTY OF ERIE) ss:

PETER T. DILAURO, being duly sworn deposes and says that he is the Claimant in the foregoing claim, that he has read the foregoing NOTICE OF CLAIM and knows the contents thereof; that the same is true to his knowledge except as to those matters alleged to be upon information and belief, and as to those matters, he believes them to be true.

Peter T. Dilauro
PETER T. DILAURO

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

On the 31st day of August in the year 2012, before me, the undersigned, personally appeared PETER T. DILAURO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the same.

Sharyl L. Hummel
Notary Public

SHARYL L. HUMMEL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 12/15/13



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 7, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Szczerba, John v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	John Szczerba 63 Rondelay Drive Cheektowaga, New York 14225
Claimant's attorney:	J. Michael Hayes, Esq. 69 Delaware Avenue Suite 1111 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle Parker*
Michelle Parker
First Assistant County Attorney

MMP:dld
Enclosure

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

JOHN SZCZERBA

Claimant,

NOTICE OF CLAIM

-vs-

ERIE COUNTY

Respondent.

This paper received at the
Erie County Attorney's Office
from DANES WELLS
the 13th day of August, 2012
at 12:42 a.m./p.m.
Dub B. Torga
Assistant County Attorney

To: ERIE COUNTY

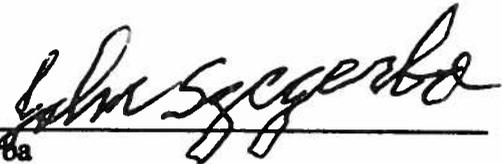
PLEASE TAKE NOTICE, JOHN SZCZERBA, hereby make his claim against ERIE COUNTY and in support of said claim states as follows:

1. The Post Office address of the claimant is 63 Rondelay Drive, Cheektowaga New York.
2. The attorney for the claimant is J. Michael Hayes, 69 Delaware Avenue, Suite 1111, Buffalo New York 14202, (716) 852-1111.
3. The nature of the claim is in tort, negligence and gross negligence and willful wonton and reckless behavior by ERIE COUNTY, its agents, servants and/or employees including Abdul-Latif Muhammad in his operation of a 2009 GMC street sweeper New York license plate number M61782.
4. The claim arose on or about the 16th day of July on French Road approximately 40 feet east of its intersection with Brentwood Drive, in the Town of Cheektowaga, County of Erie and State of New York. Upon information and belief, the aforementioned street sweeper owned by the County of Erie and operated by its employee, Abdul-Latif Muhammad, was operated in a careless, negligent and reckless manner on the wrong side of the road and into traffic and said street sweeper came into contact with a motor vehicle operated by claimant John Szczerba.
5. Upon information and belief, claimant John Szczerba sustained severe and serious personal injuries including a "serious" injury and excess basic economic loss as

defined by Article 51 of the New York Insurance Law including a concussion and multiple rib fractures, bruises and contusions, pain and suffering.

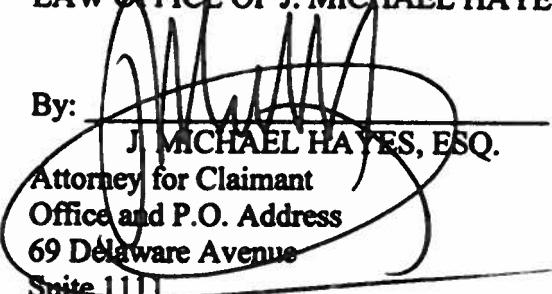
WHEREFORE, claimant requests that Erie County honor and pay the claim on behalf of John Szczerba together with such other and relief as may be just, proper and equitable.

Dated: Buffalo, New York
July 31, 2012



John Szczerba

LAW OFFICE OF J. MICHAEL HAYES

By: 

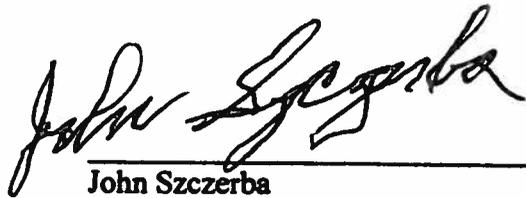
J. MICHAEL HAYES, ESQ.

Attorney for Claimant
Office and P.O. Address
69 Delaware Avenue
Suite 1111

Buffalo, NY 14202
(716) 852-1111

STATE OF NEW YORK)
COUNTY OF ERIE)SS.:

John Szczerba being duly sworn deposes and says that he is the claimant above named; and makes this claim on behalf of himself; that he has read the foregoing claim and knows the contents thereof; that the same is true to the knowledge of the claimant except as to those matters therein alleged upon information and belief, and that as to those matters he believes it to be true.



John Szczerba

Sworn before me this
8 day of August, 2012



Notary Public

DONNA M BARTH
Notary Public, State of New York
No. 015A6175239
Qualified in Erie County
Commission Expires Oct 9, 2015



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH

SECOND ASSISTANT COUNTY ATTORNEY

September 7, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Kohlhagen, F. Michael v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	F. Michael Kohlhagen 44 Sunnyside Drive West Seneca, NY 14224
Claimant's attorney:	Sean Schoenborn, Esq. DeMarie & Schoenborn, P.C. 403 Main Street, Suite 615 Buffalo, New York 14202-3174

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE
In the Matter of the Claim of

F. MICHAEL KOHLHAGEN,
Claimant,

NOTICE OF CLAIM

against
COUNTY OF ERIE,
Respondent.

PLEASE TAKE NOTICE that the above named Claimant claims and demands from the COUNTY OF ERIE compensation for property damage sustained by Claimant by reason of the wrongful, unlawful, negligent and careless acts and omissions of Respondents, their agents, servants and/or employees and in support thereof, Claimant states:

1. The name of the Claimant: F. Michael Kohlhagen, 44 Sunnyside Drive,
West Seneca, New York 14224.

2. The name of the Claimant's attorneys is:

De Marie & Schoenborn, P.C.
403 Main Street, Suite 615
Buffalo, New York 14203
(716) 856-0024

3. The claim of F. Michael Kohlhagen is against the County of Erie, for property damage sustained by the Claimant for trespassing and the subsequent destruction, improper removal and damage of trees located on Partridge Road in the Town of Colden, identified by SBL No.

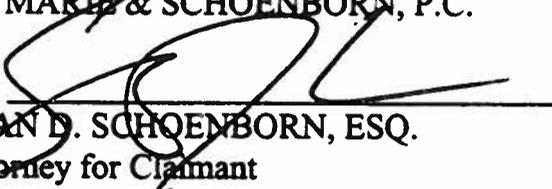
143400.230.000-2-17, by reason of the carelessness, recklessness and negligent acts and/or omissions of the Respondents, their agents, servants and/or employees, as set forth herein.

4. Upon information and belief, the incident in which the property damage were sustained by Claimant occurred on April 2 and April 3, 2012 to trees that were located outside of the "right of way" and located on Claimant's property as described above.
5. Upon information and belief, said removal and destruction of trees was done by the County of Erie, its agents, employees and/or representatives.
6. As evidenced by the attached letter of Jeffrey Gilray, four of the trees removed were valued at \$2,150.00 and is attached hereto as **Exhibit A**. In addition to these trees, multiple smaller trees were removed and other trees were damaged by the improper horticultural practices.
7. That as a result of the negligence and carelessness of the Respondent, their agents, servants and/or employees the Claimant suffered property damage upon information and belief in excess of \$10,000.00, which includes treble damages which claimant is entitled to pursuant to New York Real Property Actions and Proceedings Law.
8. On or about April 4, 2012, F. Michael Kohlhagen contacted the County of Erie who explained that the Town of Aurora may have removed said trees even though this occurred on a County Road.

9. Wherefore, Claimant demands that Respondents honor said claim.

Dated: Buffalo, New York
June 4, 2012

DE MARIE & SCHOENBORN, P.C.

By: 

SEAN D. SCHOENBORN, ESQ.

Attorney for Claimant

403 Main Street, Suite 615

Buffalo, New York 14203

(716) 856-0024

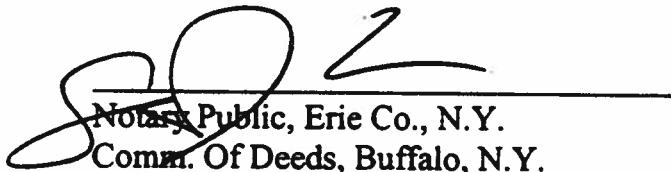
INDIVIDUAL VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

F. MICHAEL KOHLHAGEN, being duly sworn, deposes and says that deponent has read the foregoing NOTICE OF CLAIM and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.


F. MICHAEL KOHLHAGEN

Sworn to before me this
17th day of ~~June~~ ^{August}, 2012.


Notary Public, Erie Co., N.Y.
Comm. Of Deeds, Buffalo, N.Y.
My Comm. Expires:

SEAN D. SCHOENBORN
Notary Public State of New York
Qualified in Erie County
My Commission Expires Mar 15 2014

EXHIBIT A



NORTHBRIDGE
NURSERY
and Garden Center Inc.

237 Leln Road, West Seneca, New York 14224 • Phone (716) 677-5614 / Fax (716) 677-5633

June 21, 2012

RE: Property located at Partridge and Lewis Roads
owned by F. Michael Kohlhagen Holland/Colden, NY

To Whom It May Concern:

I was asked by landowner to inspect tree clearing of the right of way at the above address. The tree pruning was not according to proper horticultural practices, cutting back to buds or joints to insure re-sprouting of branches. The vertical cutting was done at random. In addition 4 trees were removed that were just outside of right of way or right on it. These trees were 3-5" caliper and are replaceable. The cost of installing 2 hardwoods 4" caliper and 2 hardwoods 5" caliper would be \$2150.00.



Jeffrey Gilray
NYS Certified Nursery & Landscape Professional



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 10, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name: *Swiderski, Joe, Individually and as p/n/g and Guardian of the Property of Joe Swiderski, Jr., an Infant, and as Co-Administrator of the ESTATE OF JACQUELINE WISNIEWSKI; and Wisniewski, Kristine, Individually and as Co-Administrator of the ESTATE OF JACQUELINE WISNIEWSKI v. County of Erie, Erie County Medical Healthcare Network and Erie County Medical Center Corporation*

Document Received: Notice of Claim

Name of Claimants: Joe Swiderski and
Kristine Wisniewski
West Seneca, New York 14224

Claimant's attorney: Christopher M. Pannozzo, Esq.
Shaw & Shaw, P.C.
4819 South Park Avenue
Hamburg, New York 14075

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enclosure

cc: Michael A. Siragusa, Erie County Attorney

STATE OF NEW YORK

JOE SWIDERSKI, Individually, as
Parent, Natural Guardian and Guardian of the
Property of JOE SWIDERSKI JR. an Infant
and as Co-Administrator of the ESTATE OF
JACQUELINE WISNIEWSKI,

NOTICE OF CLAIM

and

KRISTINE WISNIEWSKI, Individually and as
Co-Administrator of the ESTATE OF
JACQUELINE WISNIEWSKI

Claimants

vs.

COUNTY OF ERIE
95 Franklin Street
Buffalo, New York 14202

ERIE COUNTY MEDICAL CENTER
HEALTHCARE NETWORK
462 Grider Street
Buffalo, New York 14215

ERIE COUNTY MEDICAL CENTER
CORPORATION
462 Grider Street
Buffalo, New York 14215

Respondents

TO THE ABOVE-NAMED RESPONDENTS:

PLEASE TAKE NOTICE that the Claimants herein claim damages in accordance with the Requirements of General Municipal Law Section 50-e, and all other attendant Statutes and Regulations. Claimants allege as follows:

FIRST: The Name and Address of the Claimants are as follows:

- a) **JOE SWIDERSKI, Individually, as Parent, Natural Guardian and Guardian of the Property of JOE SWIDERSKI JR., an Infant, and as Co-Administrator of the ESTATE OF JACQUELINE WISNIEWSKI**
41 Lenox Street
West Seneca, New York 14224
- b) **KRISTINE WISNIEWSKI, Individually, and as Co-Administrator of the ESTATE OF JACQUELINE WISNIEWSKI**
138 Brookside Drive
Buffalo, New York 14220
- c) **Claimant JOE SWIDERSKI was appointed as the Guardian of the Property of JOE SWIDERSKI JR. by the Surrogate Court of the County of Erie on June 29, 2012.**
- d) **Claimants JOE SWIDERSKI and KRISTINE WISNIEWSKI were appointed as Co-Administrators of the ESTATE OF JACQUELINE WISNIEWSKI by the Surrogate Court of the County of Erie on June 29, 2012.**
- e) **Decedent JACQUELINE WISNIEWSKI died on June 13, 2012**

SECOND: The Claimants are represented herein by:

SHAW & SHAW P.C.
Christopher M. Panno, Esq., of Counsel
4819 South Park Avenue
Hamburg, New York 14075
(716) 648-3020

THIRD: These Claims are ones founded in Intentional Tort, Assault, Murder, Manslaughter, Criminal Possession of a Deadly Weapon, Criminal Use of a Firearm, Negligence and Respondeat Superior, and are for Personal Injuries, Pain and Suffering, Wrongful Death, and Pecuniary Loss

FOURTH: These are claims for Money Damages for Personal Injuries, Pain and Suffering, Wrongful Death, and Pecuniary Loss against the Respondents when Decedent was shot

and killed by the Respondents, and/or their Employees, Agents, Servants and/or Contractors of the Respondents, and in an area under the possession, control and ownership of the Respondents.

FIFTH: The Time when the claim arose and the time when the injuries and damages herein alleged were sustained was June 13, 2012 at approximately 7:55 a.m.

SIXTH: The incident occurred in a stairwell at the Erie County Medical Center located at 462 Grider Street, Buffalo, New York, under the possession, control, and ownership of the Respondents.

SEVENTH: That the cause of actions which form the substance of this claim arose in the following manner:

That on or about June 13, 2012, while the Decedent was lawfully on the premises stated above, Decedent JACQUELINE WISNIEWSKI was shot by Timothy Jordan M.D., an Employee, Agent, Servant and/or Contractor of the Respondents herein, causing her grave physical injury and death.

EIGHTH: That the aforesaid incident and injuries and damages resulting therefrom occurred by the intentional acts of the Respondents and their Employees, Agents, Servants and/or Contractors of the Respondents herein, the fault, neglect, and carelessness of the Respondents, their agents, servants and/or employees in that the Respondents, their agents, servants and/or employees,

and contractors, were negligent, wanton and reckless in failing to properly supervise, maintain, operate and control the premises in question; that they allowed other agents, servants, employees and contractors to subject the plaintiff to physical contact without proper supervision, thus creating a dangerous and hazardous condition, which they knew or, in the exercise of reasonable care, should have known existed for some period of time; that they failed to provide sufficient and proper protection and safeguards for the individuals lawfully using the property; that they failed to properly supervise the Timothy Jorden, M.D. in his activities; that they failed to provide a safe and secure facility, and that they failed to have a proper, adequate and sufficient number of individuals present to provide for the safety and security of the patrons in attendance; in hiring such employees that they knew or should have known to be incompetent, unskilled, inexperienced and with violent propensities; that the employees, so employed, were incompetent, unskillful and inexperienced; that the Respondents knew, or should have known, of the Timothy Jorden, M.D.'s violent propensities; in failing to properly train their employees and enforce proper and adequate rules of conduct; in failing to have a comprehensive security plan that was defined and articulated.

- NINTH:**
- a) That by the reason of the aforesaid, the Decedent sustained severe, grave, painful and permanent injuries, including, but not limited to, gunshot wounds to the body and death, was caused to incur expenses for medical treatment up until the time of her death.

 - b) Prior to the accident alleged herein, the Decedent lived with the Infant Plaintiff, and Decedent was capable of performing, and did perform, all of her usual and customary duties as a mother to her son. Solely

as a consequence of the culpable conduct of the Respondents and their agents, employees, servants and/or contractors, jointly and severally, and the resulting injuries and death to the Decedent, the Infant Plaintiff, **Joe Swiderski Jr.** has been deprived of the services, society and companionship of his mother, and has been caused to expend and will be caused to expend sums of money as the result of the death of his mother.

c) Solely as a consequence of the culpable conduct of the Respondents and their agents, employees, servants and/or contractors, jointly and severally, and the resulting injuries and death to the Decedent, Claimant **Kristine Wisniewski** has been deprived of the services, society and companionship of her daughter , and has been caused to expend and will be caused to expend sums of money as the result of the death of her daughter, including but not limited to funeral expenses.

d) That as a result of the culpable conduct of the Respondents herein, all those individuals that survived the Decedent herein, (including but not limited to the named claimants in their individual and representative capacities) have suffered a pecuniary loss from the death of the decedent herein, in an amount that cannot be determined at the present time.

WHEREFORE, the Claimant respectfully prays and requests that these claims, as set forth herein, be paid and allowed by Respondents.



SHAW & SHAW P.C.

By: Christopher M. Panno, Esq.

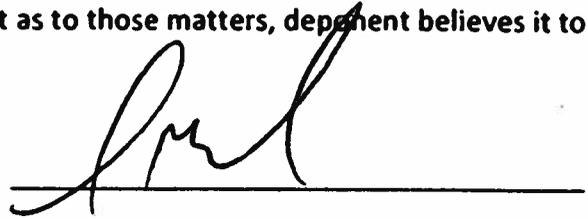
Attorney(s) for Claimants
4819 South Park Avenue
Hamburg, New York 14075
(716) 648-3020

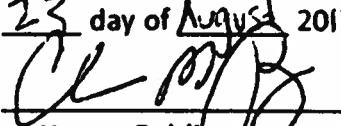
VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF)

Joe Swiderski, being duly sworn, deposes and says that (s)he

is the plaintiff in the within action; that (s)he has read the foregoing and knows the contents thereof; that the same is true to her/his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes it to be true.



Sworn to before me this
23 day of August 2012

Notary Public

CHRISTOPHER M. PANNOZZO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 03/28/13

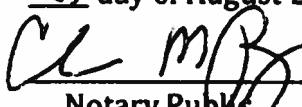
VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF ERIE)

KRISTINE WISNIEWSKI, being duly sworn, deposes and says that she is the Claimant in the within action; that she has read the foregoing and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes it to be true.


Kristine Wisniewski

Sworn to before me this
23 day of August 2012


Notary Public

CHRISTOPHER M. PANNOZZO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 03/28/13



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 10, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Geter, Carmen v. Erie County; Sheriff of Erie County, Timothy B. Howard; and Superintendent of Jail, Robert Koch</i>
Document Received:	Notice of Claim
Name of Claimant:	Carmen Geter Inmate Number: 133853 Erie County Holding Center 40 Delaware Avenue Buffalo, New York 14202
Claimant's attorney:	Vinal & Vinal 193 Delaware Avenue Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

STATE OF NEW YORK
COUNTY OF ERIE

CARMEN GETER,

Claimant,

-against-

Erie County;
Sheriff of Erie County, Timothy B. Howard;
and Superintendent of Jail, Robert Koch,

Respondents.

Plaintiff, Carmen Geter, by her attorneys, Vinal & Vinal for her Notice of Claim pursuant to County Law §50-e and related laws and regulations, alleges and states:

1. The names and post office addresses of the claimant Carmen Geter and her attorneys are:

Carmen Geter
Inmate Number: 133853
Erie County Holding Center
40 Delaware Avenue
Buffalo, New York 14202

&

Vinal & Vinal
193 Delaware Avenue
Buffalo, New York 14202

2. This is a claim for personal injury arising out of premises liability for a defective condition.

Erie County Attorney's Office
from Vanessa Gabrieleon
the 31st day of August, 2012
at 9:30 a.m. / PM
Keaneeth R. Kirby
Assistant County Attorney

NOTICE OF CLAIM

3. This claim arose the first week of June 2012, on or about June 8 or 9, 2012 during the evening shower time at approximately 7:30 p.m. The injury occurred in the area just outside the showers. Plaintiff was wearing the prescribed flip-flops and going into the shower when she was caused to fall due to the negligent maintenance, design, repair, and cleaning of the floor area which resulted in water on the floor, coupled with a floor that was dirty, slippery and slimy. Defendants had actual and constructive notice of the conditions as they were repeatedly informed of it in Complaints by the prisoners and requests for access to mops and towels. The negligence of the defendants resulted in the injury to the Claimant.

4. Plaintiff sustained personal injury including pain and suffering past and future, future medical and diminution of earnings, ability and injury to her person, including head, back and left side and being sick, sore and lame.

Dated: Buffalo, New York
August 21, 2012

VINAL & VINAL

By: Gregg S. Maxwell

Gregg S. Maxwell, Esq.
193 Delaware Avenue
Buffalo, New York 14202
(716) 832-5900

VERIFICATION

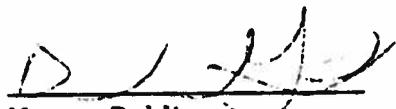
STATE OF NEW YORK)
COUNTY OF ERIE)ss.:

Carmen Geter, being duly sworn, deposes and states that she is the Claimant in this action and she has been read the Notice of Claim and that the same are true and correct to the best of her knowledge and recall.



Carmen Geter

Sworn to before me this
25 day of August, 2012.



Notary Public

DANIEL S. GVERTZ, ESQ.
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires May 10, 2011



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 14, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

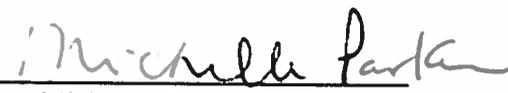
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Melski, William P. v. Town of Cheektowaga and County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	William P. Melski 85 Greenhill Terrace West Seneca, New York 14224
Claimant's attorney:	William K. Mattar, P.C. 6720 Main Street, Suite 100 Williamsville, New York 14221-5986

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enclosure

IN THE MATTER OF THE CLAIM OF:

WILLIAM P. MELSKI
85 Greenhill Terrace
West Seneca, New York 14224,

Claimant,

-against-

TOWN OF CHEEKTOWAGA
3301 Broadway Street
Town Hall
Cheektowaga, New York 14227, and

NOTICE OF CLAIM

ERIE COUNTY
95 Franklin Street
Buffalo, New York 14202,

Respondents.

PLEASE TAKE NOTICE that the undersigned, **WILLIAM P. MELSKI**, hereby presents in accordance with New York Public Authorities Law § 1299-P, this Notice of Claim and makes claim against the Town of Cheektowaga and Erie County, and in support thereof alleges:

1. The name of the Claimant is **WILLIAM P. MELSKI** and he resides at 85 Greenhill Terrace, West Seneca, New York 14224. The attorneys for the Claimant are William K. Mattar, P.C., 6720 Main Street, Suite 100, Williamsville, NY 14221-5986.

2. The nature of the Claim is one to recover damages for personal injuries and conscious pain and suffering, change of lifestyle, loss of enjoyment of life, general and special damages, medical expenses and property damage, and all other damages allowed by law resulting from the injuries suffered by the Claimant, **WILLIAM P. MELSKI**, as a result of the negligence of the Town of Cheektowaga and Erie County.

3. The incident which forms the basis of the claim herein occurred at approximately 11:47 a.m. on Tuesday, August 7, 2012 in the Town of Cheektowaga, County of Erie and State of New York. On that date and at that time, the Claimant, WILLIAM P. MELSKI, was the driver of his vehicle that was lawfully traveling westbound on Clinton Street and came to stop at a red traffic signal at the intersection of Clinton Street and Harlem Road. When the traffic signal turned green, the Claimant began to move his vehicle forward but was stopped again due to construction and, more specifically, a construction vehicle crossing Harlem Road. As a result, the Claimant's vehicle was rear-ended and then pushed into another vehicle, causing the Claimant to be violently thrown forward, resulting in him suffering bodily injury.

4. That as a result of the foregoing, the Claimant, WILLIAM P. MELSKI, sustained serious and substantial injuries, including back pain, neck pain, hip pain, shoulder pain, and other injuries which necessitated emergency medical attention. These injuries may be of a permanent or indefinite duration, and the Claimant, WILLIAM P. MELSKI, has been and may be forced to expend sums of money for hospitals, doctors, and other medically related expenses. Other injuries will be disclosed as revealed through diagnosis by treating physicians and other medical personnel.

5. That the said injuries were occasioned solely and wholly as a result of the negligence of the Town of Cheektowaga and Erie County, in the ownership, maintenance, management, operation, and control of its construction vehicle.

WHEREFORE, the Claimant, WILLIAM P. MELSKI, requests that this claim be allowed and paid by the Town of Cheektowaga and/or Erie County.

PLEASE TAKE FURTHER NOTICE, that unless said claim is adjusted and paid by the Town of Cheektowaga and/or Erie County within thirty (30) days from the date of service of

the Notice of Claim, said Claimant intends to commence an action in the Supreme Court of the State of New York against the Respondents, seeking a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest, costs and disbursements.

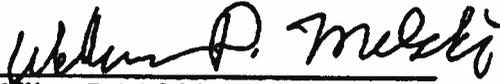
DATED: September 5, 2012



Amanda C. Townsend, Esq.
WILLIAM MATTAR, P.C.
Attorneys for Claimant
Office and Post Office Address
6720 Main Street, Suite 100
Williamsville, NY 14221-5986
(716) 633-3535

Claimant, WILLIAM P. MELSKI, being duly sworn, deposes and says:

I have read the foregoing notice of claim and know its contents; the same is true to my knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.



William P. Melski

Subscribed and sworn to before me

this 4 day of ~~August~~ ^{September} 2012.



Notary Public

MELANIE M. PHILLIPS
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires 06/01/16



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 12, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Kubicki, Mark v. Sheriff Howard, Chief Anthony, Supdt. Diina, First Deposition Supdt. Rodriguez, Erie County Correctional Facility and the County of Erie</i>
Document Received:	Verified Petition
Name of Claimant:	Mark Kubicki 391 Terrace Boulevard Depew, New York 14043
Claimant's attorney:	Diane M Roberts, Esq Lipsitz Green Scime Cambria LLP 42 Delaware Avenue Suite 100 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enclosure

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

MARK KUBICKI
391 Terrace Boulevard
Depew, New York 14043

Petitioner

For an Order and Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules

Against

TIMOTHY HOWARD, as Erie County Sheriff,
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

and

JOHN A. ANTHONY, as Chief,
Administration Services
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

and

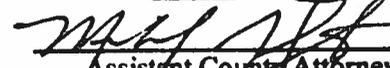
THOMAS DIINA, as Acting Superintendent of the
Jail Management Division of the Office of the
Erie County Sheriff
10 Delaware Avenue
Buffalo, New York 14202

And

JOHN RODRIGUEZ, as First Deputy
Superintendent of the Jail Management Division of the
Erie County Sheriff
10 Delaware Avenue
Buffalo, NY 14202

and

This paper received at the
Erie County Attorney's Office
from Greg Allen on
the 11 day of September, 2012
at 2:50 a.m./p.m.


Assistant County Attorney

NOTICE OF PETITION

Index No.: I-2012-003077

**ORAL ARGUMENT
REQUESTED**

**THE ERIE COUNTY CORRECTIONAL
FACILITY,**
as part of the Jail Management Division of the Office
of the Erie County Sheriff
10 Delaware Avenue
Buffalo, NY 14202

and

* **THE COUNTY OF ERIE,** *
95 Franklin Street
Buffalo, NY 14202

Respondents.

PLEASE TAKE NOTICE, that upon the annexed Verified Petition with Exhibits of Mark Kubicki, dated the 29th day of August, 2012, an application will be made before a Justice to be assigned at a special term to be held at the Erie County Courthouse located at 95 Franklin Street, Buffalo, New York, on the 3rd day of October, 2012 at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, for a Judgment and Order pursuant to C.P.L.R. Article 78, ordering, adjudicating and declaring that (a) the medical proof offered by Petitioner at the time of his General Municipal Law §207-c light duty hearing was sufficient to refute Respondents' contention that Petitioner was able to return to work light duty on March 26, 2012, and dates thereafter, through the time of this Petition, and requiring Respondents retroactively reinstate and restore Petitioner's §207-c benefits and make him whole; (b) that the June 26, 2012 decision of the Hearing Officer, Dr. George Dietz, was arbitrary and capricious, or otherwise not correct and proper based upon the record before him at the hearing; and (c) granting the Petitioner such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that a Verified Answer and Supporting Affidavit(s), if any, are to be served at least five (5) days before the time at which the Verified Petition herein is noticed to be heard.

Erie County is designated as the proper venue as the parties conduct their normal business relationship in that County.

Dated: September 7, 2012
Buffalo, New York

LIPSITZ GREEN SCIME CAMBRIA LLP

By: *Diane M. Perri Roberts*

Diane M. Perri Roberts, Esq.
Attorneys for Petitioner
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
(716) 849-1333

TO: Michael Siragusa, County Attorney
County of Erie
95 Franklin Street, 16th Floor
Buffalo, New York 14202

Timothy Howard, as Erie County Sheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

John A. Anthony, as Chief – Administrative Services
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

Thomas Diina, as Acting Superintendent of the
Jail Management Division of the Office of the
Erie County Sheriff
10 Delaware Avenue
Buffalo, New York 14202

John Rodriguez, as First Deputy Superintendent
Jail Management Division of the Office of the
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

**The Erie County Correctional Facility
as part of the Jail Management Division of the
Office of the Erie County Sheriff
10 Delaware Avenue
Buffalo, NY 14202**

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

MARK KUBICKI
391 Terrace Boulevard
Depew, New York 14043

Petitioner

For an Order and Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules

Against

TIMOTHY HOWARD, as Erie County Sheriff,
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

and

JOHN A. ANTHONY, as Chief,
Administration Services
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202

and

THOMAS DIINA, as Acting Superintendent of the
Jail Management Division of the Office of the
Erie County Sheriff
10 Delaware Avenue
Buffalo, New York 14202

And

JOHN RODRIGUEZ, as First Deputy
Superintendent of the Jail Management Division of the
Erie County Sheriff
10 Delaware Avenue
Buffalo, NY 14202

and

VERIFIED PETITION

Index No.: *I. 2012-003077*

**ORAL ARGUMENT
REQUESTED**

THE ERIE COUNTY CORRECTIONAL FACILITY,
as part of the Jail Management Division of the Office
of the Erie County Sheriff
10 Delaware Avenue
Buffalo, NY 14202

and

THE COUNTY OF ERIE,
95 Franklin Street
Buffalo, NY 14202

Respondents.

The Petitioner, Mark Kubicki, by his attorneys, Lipsitz Green Scime Cambria LLP, Diane M. Perri Roberts of Counsel, as and for his Verified Petition, alleges as follows:

1. At all times hereinafter mentioned the Petitioner was an employee of the Erie County Correctional Facility in the County of Erie, State of New York.
2. The Erie County Correctional Facility is a division, department, and/or facility of the County of Erie providing correctional services for Erie County.
3. At all times hereinafter mentioned the County of Erie was and still is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York and its charter, having its principal offices in the County of Erie and State of New York.
4. At all times hereinafter mentioned, the Respondent Timothy Howard was and still is the Erie County Sheriff, Erie County Sheriff's Department, having been duly elected and acting as such with authority to oversee personnel-related administrative operations of the Erie County Correctional Facility including, but not limited to, matters involving employees' coverage under General Municipal Law §207-c, and employees' ability to work light-duty.

5. At all times hereinafter mentioned, upon information and belief, the Respondent John A. Anthony was and still is Chief for Administrative Services for the Erie County Sheriff's Department, having been duly appointed and acting as such, with authority to act in matters involving certain of the personnel of the Erie County Sheriff's Department and the Erie County Correctional Facility, including but not limited to matters involving employees' coverage under General Municipal Law §207-c and employees' ability to work light-duty.

6. At all times hereinafter mentioned, upon information and belief, the Respondent Thomas Diina, was and still is Acting Superintendent of the Jail Management Division of the Erie County Sheriff's Department, having been duly appointed and acting as such, with authority to act in matters involving certain of the personnel of the Erie County Sheriff's Department and the Erie County Correctional Facility, including but not limited to matters involving employees' coverage under General Municipal Law §207-c and employees' ability to work light-duty.

7. At all times hereinafter mentioned, upon information and belief, the Respondent John Rodriguez, was and still is a First Deputy Superintendent of the Jail Management Division of the Office of the Erie County Sheriff, having been duly appointed and acting as such, with authority to act in matters involving certain of the personnel of the Erie County Sheriff's Department and Erie County Correctional Facility, including but not limited to matters involving employees' coverage under General Municipal Law §207-c and employees' ability to work light-duty.

8. I currently am, and was at all material times, a Correction Officer employed by Erie County and the Erie County Correctional Facility; I have been employed by the Respondent

County of Erie since on or about January 29, 2007 in the Erie County Sheriff's Department as a Correction Officer.

9. I am and was at all material times, a member of the Civil Service Employees Association, Inc., Local 1000 A.F.S.C.M.E., AFL-CIO Erie Unit of Local 815 ("CSEA").

10. It is my understanding and belief that CSEA and the County of Erie are parties to a Collective Bargaining Agreement ("CBA") which has been in force for the years 2004 through 2006, and remains in place pending ratification of a new contract.

11. I was injured on duty on July 16, 2011, when I fell backward from a broken chair in the Correctional Facility, suffering right shoulder and neck injuries when I hit a table.

12. I was placed on a form of long-term disability leave known as §207-c leave, under New York General Municipal Law §207-c.

13. An IME report (see Exhibit A) dated March 8, 2012, agreed with the neck injury, indicates no *direct* trauma to the right shoulder, but recognizes the injury "mechanism" was hitting the back of my head and neck with "radiation" almost immediately into the right shoulder.

14. The IME physician did not find "causal relationship of any intrinsic problem to the shoulders". Never, however, did the IME physician state that pain in the shoulders would not be the result of the injury – only that there was no direct trauma to the shoulders.

15. The IME physician specifically stated I could not return to my regular work activities as a Correction Officer, and as for light duty, stated no work at or above the shoulders, minimal moderate to large range of motion of the cervical area, no pushing, pulling, lifting or carrying of more than 15-20 pounds occasionally.

16. A hearing concerning my ability to work light duty at the Correctional Facility was scheduled by the Sheriff's Office for, and occurred on, April 24, 2012 before Dr. George Dietz, whom I understand to be trained in psychiatry.

17. During the April 24, 2012 hearing, on cross-examination of the Sheriff's Department clerk who oversees Worker's Compensation and §207-c leave documentation, the Clerk, Bridget Ricci, admitted that the Sheriff's Office had not sent the IME physician, Dr. Marc Bergeron, a description of the duties they wanted me to perform, to see whether those duties fit under that physician's restrictions.

18. It was my understanding that the light duty hearing concluded on April 24, 2012, as verified by the transcript from the hearing. (See p. 70 of **Exhibit B**, the transcript of the April 24, 2012 hearing).

19. The next day, the Hearing Officer sent the Sheriff's Office a letter (see **Exhibit C**) about the questioning of Ms. Ricci, and even though the hearing had concluded on April 24, 2012, with the Hearing Officer stating at that time that his decision would consider all the evidence presented (see Exhibit B at p. 70), Dr. Dietz asked the Sheriff to request the IME physician review the "light duty" job description and render "Judgment" on its contents and applicability to those restrictions in "his proposal". He then advised the Sheriff to have the IME physician *revise the light duty job description* to meet with his (the physician's) approval.

20. Upon receipt of Dr. Dietz' letter to the Sheriff, on May 1, 2012 my attorney wrote the Hearing Officer to vehemently object to this subsequent instruction to the IME physician to re-write the light-duty job description if needed, *after* my testimony was heard and some two months after Dr. Bergeron examined me. The objection was also based on the fact that the

process being mandated by the Hearing Officer precluded me from any interaction with the IME physician on any changes he might consider to the light duty tasks. (See **Exhibit D**).

21. On May 3, 2012, the Sheriff's attorney, Kristin Machelor, wrote to the Hearing Officer to state in part, "We have complied with your request". (See **Exhibit E**).

22. A "further hearing" on the hearing which was previously closed on April 24, 2012, occurred on June 14, 2012.

23. When the hearing started, my attorney noted extensive objections on the Record to the activities and whole process which occurred after the April 24, 2012 hearing. (See **Exhibit F**, p. 4 of transcript).

24. At the time of the June 14, 2012 hearing, I presented documents (e.g., consent for surgery), for cervical surgery already scheduled for July 11, 2012, or sooner if an opening occurred. (See **Exhibit G**).

25. I was asked by the Sheriff's Attorney whether I intended to go through with the surgery, and I replied that I did. In fact, I did have the cervical surgery on July 11, 2012.

26. At the June 14, 2012 "further hearing," the Sheriff introduced into evidence a May 28, 2012 "addendum" IME report of Dr. Bergeron, written without any examination of, or input from, me. (See **Exhibit H**).

27. The "addendum" makes it very clear that Dr. Bergeron repeats his cautions as to what I cannot do, and also clarifies the Sheriff sent Dr. Bergeron only 10 of the 70 pages of transcript from the April 24, 2012 hearing – the 10 pages where the clerk, Ms. Ricci, addressed the light duties the Sheriff's Office had in mind.

28. Dr. Bergeron did not receive any of my testimony from April 24, 2012, including the portions where I discussed the new development that neck surgery was the next step for me. (See p. ___ of Exhibit B). I believe the IME physician's addendum, at its "Discussion" at page 2, is clearly written in a "protective" and "cautious" tone for Dr. Bergeron, who uses words such as "as it is my understanding" and "there was no specific task described in terms of exact lifting ...except that *the tone* indicates it would be less than 25 pounds" (emphasis added). (See p. 2 of IME "addendum," Exhibit H).

29. When it received the Hearing Officer's June 26, 2012 decision, the Sheriff immediately, by letter dated June 26, 2012, ordered me back to work light duty on June 30, 2012 even though the Sheriff was aware, as evident from that letter, that I had cervical surgery scheduled for July 11, 2012.

30. The Sheriff terminated my §207-c benefits as of June 30, 2012 pending surgery, and required me to use paid accruals on and after June 30, 2012 unless I received approval for §207-c benefits because of the cervical surgery being done to correct and alleviate my pain caused by the July 16, 2011 work injury.

31. It is my understanding that CPLR Article 78 provides for court review of a determination such as that by Dr. Dietz, made after a hearing held, and at which evidence was taken, pursuant to direction by law.

32. It is my belief that the Hearing Officer, Dr. Dietz, was arbitrary and capricious in conducting the §207-c hearing and that his June 26, 2012 Decision (see Exhibit I) ordering me to work light duty is also arbitrary and capricious. Dr. Dietz also ignored the record from the hearing and actually tried to create his own record by first having the Sheriff ask the IME

physician to review the light-duty job description; second, by then permitting the Sheriff's Office to only present part of the transcript of the April 24, 2012 hearing to the IME physician; and lastly, by then asking the IME physician re-write the Sheriff's light-duty tasks if the physician found those tasks did not comport with his restrictions for me. At no time, however, did Dr. Dietz direct that the IME physician re-examine me with respect to the specific light-duty tasks the Sheriff's Office wanted me to perform.

33. In addition, Dr. Dietz was arbitrary and capricious in that he re-opened the §207-c hearing to give the Sheriff a chance to seek the opinion the Sheriff's Office never sought before it ordered me back to light duty work, specifically, whether the IME physician found I could do the light duty tasks within the restrictions set by the IME physician.

34. Further, over objections by my attorney at the conclusion of the June 14, 2012 "hearing," Dr. Dietz then made a conclusion that was based on the faulty "Addendum" IME report, finding that I could return to work light-duty during the less than two week period I was waiting for my surgery. Dr. Dietz made this decision even though it was clear the Sheriff sent the IME physician only 10 pages of a 70 page transcript and in doing so omitted all of my testimony on April 24, 2012 and also did not require scheduling of a follow up IME.

35. The Sheriff's actions essentially, with the assistance and approval of Dr. Dietz, precluded the IME physician from having any awareness that I was scheduled to have cervical surgery in a few weeks to alleviate my pain from the work injury. Dr. Dietz nevertheless relied on that faulty "Addendum" IME report.

36. Finally, in his decision, Dr. Dietz states that the IME physician's reports "*appear to be detailed and comprehensive, suggesting very carefully those restrictions to be observed. There are no specific or detailed evaluations suggesting otherwise*". (See **Exhibit I**).

37. That conclusion by Dr. Dietz is not true unless he overlooked or ignored my physician's note and the consent for neck surgery on July 11, 2012, as well as my physician's note dated April 5, 2012 from a neurologist keeping me off of work because of my neurological condition. (See **Exhibit J**). All of these documents were put into the evidentiary record by my attorney during the April 24, 2012 hearing and at the June 14, 2012 "hearing."

38. I also believe Dr. Dietz' Decision is arbitrary and capricious, and not based on the record of the hearing, because I saw (as I understand did William Whelan), Dr. Dietz walk back into the Sheriff's Administrative Offices following immediately after the Sheriff's attorney when the June 14, 2012 "hearing" concluded. (See Whelan Affidavit at ¶ 7). At the end of that "hearing," the Sheriff's attorney on the record, over my attorney's objections, requested Dr. Dietz make a decision as soon as possible because of my upcoming surgery and the Sheriff's position that I should have and could have been back at work in March when the Sheriff ordered me back. (See Exhibit F, pg. 27-28 of June 14, 2012 hearing).

39. At no time in either of his IME reports does Dr. Bergeron, the IME physician, ever state I can or should return in any capacity to Correction Officer duties.

40. At no time in either of his IME reports does Dr. Bergeron, the IME physician, ever state that I was recovered from the work injury.

41. In his IME report of March 8, 2012 (see Exhibit A), and in his "Addendum" IME report (see Exhibit H), Dr. Bergeron clearly states that I cannot return to my regular activities as a Correction Officer.

42. Dr. Dietz's June 26, 2012 Decision and the process by which it was made, was flawed in that it arbitrarily and capriciously ignored the records from my physicians, and caused a "second opinion" to be issued by the IME physician, Dr. Bergeron; that second opinion was arrived at through the efforts of the County Respondents to provide only restrictive and prejudicial, supplemental information to Dr. Bergeron, which Dr. Dietz then considered and allowed into the evidentiary record over the objections of my attorney that the record given to Dr. Bergeron was flawed.

43. Review under Article 78 is therefore appropriate, and no previous application for the same or similar relief has been made.

WHEREFORE, the Petitioner prays that this Court will enter a Judgment and Order pursuant to Article 78 of the Civil Practice Law and Rules:

(A) Ordering, adjudicating and declaring that the medical proof offered by Petitioner was sufficient to refute Respondents' contention that Petitioner was able to return to work light duty on June 30, 2012, and requiring Respondents retroactively reinstate and restore Petitioner's §207-c benefits and make him whole; and

(B) Granting such other and further relief as the Court may deem just and proper in this circumstance, together with the costs, disbursements and attorneys' fees connected with this proceeding.

Dated: September 7, 2012
Buffalo, New York

LIPSITZ GREEN SCIME CAMBRIA LLP

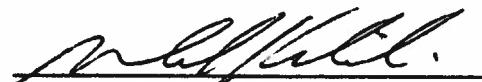
By: *Diane M. Perri Roberts*

Diane M. Perri Roberts, Esq.
Attorneys for Petitioner
42 Delaware Avenue, Suite 120
Buffalo, New York 14202
(716) 849-1333

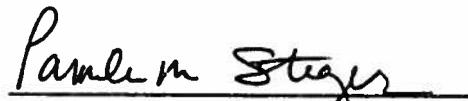
VERIFICATION

STATE OF NEW YORK)
)SS:
COUNTY OF ERIE)

Mark Kubicki, being duly sworn, deposes and says that he is the Petitioner in the within action and that he has read the foregoing Petition and knows the contents thereof, that the same is true to Deponent's knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters Deponent believes them to be true.


Mark Kubicki

Subscribed and sworn to before me
this 29th day of August, 2012


Notary Public

PAMELA M. STEGER
Notary Public, State of New York
Qualified in Erie County
Commission Expires Nov. 13, 20 14

**TO: Michael Siragusa, County Attorney
County of Erie
95 Franklin Street, 16th Floor
Buffalo, New York 14202**

**Timothy Howard, as Erie County Sheriff
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202**

**John A. Anthony, as Chief – Administrative Services
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202**

**Thomas Diina, as Acting Superintendent of the
Jail Management Division of the Office of the
Erie County Sheriff
10 Delaware Avenue
Buffalo, New York 14202**

**John Rodriguez, as First Deputy Superintendent
Jail Management Division of the Office of the
Erie County Sheriff's Department
10 Delaware Avenue
Buffalo, NY 14202**

**The Erie County Correctional Facility
as part of the Jail Management Division of the
Office of the Erie County Sheriff
10 Delaware Avenue
Buffalo, NY 14202**



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 18, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Gerstein, Justin H. v. Town of Amherst, Erie County Board of Elections, Amherst Town Clerk Marjory Jaeger, Lipinoga, David and Pollack, S. David</i>
Document Received:	Order to Show Cause
Name of Claimant:	Justin H. Gerstein 25 Ivy Green Court Amherst, New York 14228
Claimant's attorney:	Jerome D. Schad, Esq. 199 Meadowview Lane Williamsville, New York 14221

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: *Michelle Parker*
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

RECEIVED
14 2012
ERIE COUNTY
DEPARTMENT OF LAW
Hon. Timothy J. Walker

At a Special Term of the Supreme Court held in and for the County of Erie, at the Courthouse in the City of Buffalo, New York on the 13th day of September, 2012.

RESIDING JUSTICE A.J.S.C.

OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

PAID
CHECK _____ CASH _____

In the Matter of the Application of
JUSTIN H. GERSTEIN
25 Ivy Green Ct.
Amherst, NY 14226

SEP 13 2012

ERIE COUNTY
CLERK'S OFFICE

Petitioner,

vs

TOWN BOARD of the TOWN OF AMHERST NEW YORK,
5583 Main Street
Williamsville, NY 14221

ORDER TO
SHOW CAUSE

ERIE COUNTY BOARD OF ELECTIONS,
RALPH M. MOHR and DENNIS E. WARD, Commissioners
134 West Eagle Street
Buffalo, NY 14202

INDEX NO.

2012 003125

MARJORY JAEGER, TOWN CLERK of the TOWN of AMHERST,
NEW YORK
5583 Main Street
Williamsville, NY 14221

Respondents,

and

DAVID P. LIPINOGA
472 Teakwood Terrace
Amherst, NY 14221

FILED
ACTIONS & PROCEEDINGS

SEP 13 2012

and

S. DAVID POLLACK
37 Grandview Drive
Amherst, NY 14228

ERIE COUNTY
CLERK'S OFFICE

Respondents-Objectors.

For an Order and Judgment pursuant to Article 78 of the Civil Practice Law and Rules and New York Election Law Articles 4 and 16 and Town Law § 81 and § 91 requiring the Town Board of the Town of Amherst to set the date for a Special Election on a petition-initiated proposition to establish a District (Ward) System and directing the Town Clerk of the Town of Amherst to certify the proposition and special election date to the Board of Elections of the County of Erie and enjoining the Town Board and Town Clerk from taking any action to prevent the proposition from being on the ballot or otherwise willfully violating the New York State Town and/or Election Laws and seeking further relief described within the petition.

Jerry Schad
14 Sept 12
10:45
Beth Bochiechio

ERIE COUNTY CLERK'S OFFICE

Upon the Verified Petition of the Petitioner Justin H. Gerstein, dated the 12th day of September 2012, and exhibits annexed thereto, and after

DUE DELIBERATION having been had and in order to comply with Election Law Section 16-116's requirement that these proceedings be "summarily determined" and "have preference over all other cause in all courts" and Town Law Section 91's requirement that the "justice within twenty days shall determine any question arising thereunder and make such order as justice may require," it is hereby,

ORDERED, that all of the Respondents;

SHOW CAUSE BEFORE THIS COURT, at a Special Term, of Supreme Court, to be held in and for the County of Erie, State of New York, in the Courthouse at 92 Franklin Street - Buffalo, NY in Part 20, on the 21st day of September, 2012 at 11:00 o'clock in the a.m. / p.m. of that day, or as soon thereafter as counsel can be heard,

WHY an ORDER should not be made and entered herein, pursuant to CPLR Article 78, Election Law Articles 4 and 16, and particularly Sections 16-100, 16-104, and 16-116 and Town Law Sections 81 and 91, **granting the following relief against the Respondents:**

1. An Order directing and setting the referendum election date in the Town of Amherst on the District (Ward) System Petition be at the same polling locations as the general election on Tuesday, November 6, 2012, and directing the Town Clerk to certify the proposition and special election date to the Board of Elections pursuant to Election Law Section 4-108, and directing the Board of Elections to take all necessary steps to certify and assure that the proposition shall be submitted to the voters in the Town of Amherst on that date; and,

2. An Order directing the Respondent Town Board to convene at its next regularly scheduled meeting on September 24, 2012, or sooner at a special meeting called by the Town Board, and to perform its statutorily-imposed duty to adopt a resolution to set the referendum

election date on the District (Ward) System Petition on Tuesday, November 6, 2012, the same date as the General Election, or, in the event that the Respondent Town Board sets a referendum election date on a date other than November 6, 2012 but no later than November 18, 2012, such action shall be treated as taken as of the date of September 24, 2012; and restraining Town Board and Town Clerk from engaging in any review of the content or sufficiency of the District (Ward) System Petition, since such conduct of the Town Board is not so authorized by law and no objections have been filed claiming that the Petition has less than the required number of signatures for placing the proposition on the ballot; and

3. An Order, if the Court determines that delay in the referendum election date to a date from November 6 to November 18, 2012 is not a waste of Amherst taxpayer money and such referendum is to be held on such other of those dates as may be set in compliance with the law, restraining the Town Board from engaging in any review of the content or sufficiency of the District (Ward) System Petition and imposing all costs incurred by the Board of Elections to cause the holding of the referendum on such different date as an expense of the Town of Amherst to be paid by the Town of Amherst, as required by law; and,

4. An Order directing the Board of Election to prepare and deliver the machines, ballots and other necessary supplies for the November 6, 2012 general election to include such proposition as worded (or, if the Respondent Town Board chooses to set a special election date for the proposition referendum other than on the November 6, 2012 general election date, that the Board of Elections deliver such items on that date); and

5. An Order validating the underlying petition as legally sufficient under Town Law Section 81; and

6. An Order declaring that the use of the wording in such petition is clear and legally accurate as stated, and is the proper wording for the proposition to be submitted for a referendum to be voted upon by the voters in the Town of Amherst; and
7. An Order directing the Respondent Town Board to meet all the requirements of the Town Law and Election Law, in preparing for and publicizing such referendum; and
8. An Order consolidating this special proceeding with the proceeding pending in the Supreme Court, Erie County, and filed under Erie County Index Number 2012003071 entitled *Petition of DAVID P. LIPINOVA and S. DAVID POLLACK to determine the Validity and Sufficiency of a Petition for Referendum filed with the Town Clerk of the Town of Amherst on the 4th day of September, 2012*, and doing so under the title of this proceeding and index number inasmuch as all of the parties named in the first proceeding are named in this proceeding and all of the parties named in the within proceeding are necessary parties for relief to be granted; and
9. An Order maintaining continuing jurisdiction over the proceeding to ensure timely and proper compliance by all parties, in order that such referendum be properly submitted to the Amherst voters; and
10. Granting such other, further and different relief as the Court may deem just and appropriate;

SERVICE OF PROCESS:

And it is further,

ORDERED, that service of a conformed copy of this Order to Show Cause and the underlying Verified Petition and exhibits, upon the Respondents and Respondents-Objectors,

shall be deemed good and sufficient if accomplished no later than 5:00 p.m. on the 15th day of September, 2012 as follows:



1. Respondent **TOWN BOARD of the TOWN OF AMHERST:**

By delivery to the Town Clerk of the Town of Amherst, or

By delivery to the Town of Amherst Office of Supervisor, Barry A. Weinstein, Councilmembers Richard "Jay" Anderson, Guy Marlette, Mark Manna, Barbara S. Nuchereno, and Steven D. Sanders located at 5583 Main Street, Williamsville, NY 14221 and leaving with said persons or a person of suitable age in discretion employed by the Town of Amherst at said office.

2. Respondent **MARJORY JAEGER, TOWN CLERK of the TOWN OF AMHERST NEW YORK:**

By delivery to Marjory Jaeger in a manner authorized by CPLR Section 308 or leaving with a person of suitable age and discretion employed by the Town of Amherst in the Town Clerk's office located on Main Street, Williamsville, NY.

3. Respondent **ERIE COUNTY BOARD OF ELECTIONS:**

By delivery to a person authorized to accept service at the offices of such Respondent BOARD OF ELECTIONS at 134 W. Eagle Street, in the City of Buffalo;

4. Respondents-Objectors **DAVID P. LIPINOGA and S. DAVID POLLACK:**

By delivery to David P. Lipinoga and S. David Pollack in any manner authorized by CPLR Section 308 or by overnight express mail delivery to each of them at the addresses listed for them in the caption of this proceeding and overnight express mail deliver to John R. Drexelius, Esq., Attorney for David P. Lipinoga and S. David Pollack in the proceeding filed under Erie County Index Number

2012003071, with such express mail service complete by delivery to a United States Post Office by the time and date above-stated;

PRODUCTION OF ORIGINAL DOCUMENTS

and it is further,

ORDERED, that the Respondent MARJORY JAEGER, TOWN CLERK of the TOWN OF AMHERST NEW YORK, produce to the Court on the return date hereof, or have ready for such production at the Court's request, the District (Ward) System Petition received by the Town Clerk on September 4, 2012, all alleged objections allegedly filed with respect thereto, and all other memoranda or notices between the Town Clerk and the Town Board regarding the same and all resolutions, minutes, notices or memorandum related to the setting of the date for the special election on the proposition set forth in the District (Ward) System Petition; and it is further,

ORDERED, that the Respondent BOARD OF ELECTIONS shall produce to the Court on the return date hereof, or have ready for such production at the Court's request, any and all documents received by it from the Town of Amherst relating to the District (Ward) System Petition and its original documents relating to certifying the proposition for inclusion on the ballot of the special election which is the subject matter of the attached Petition; and it is further

ORDERED, that the Respondents shall file their verified answer to the petition, and affidavits or other responding papers, including motion papers, to the Court and deliver them to Petitioner' counsel, no later than noon on the 19th day of September 2012; and it is further

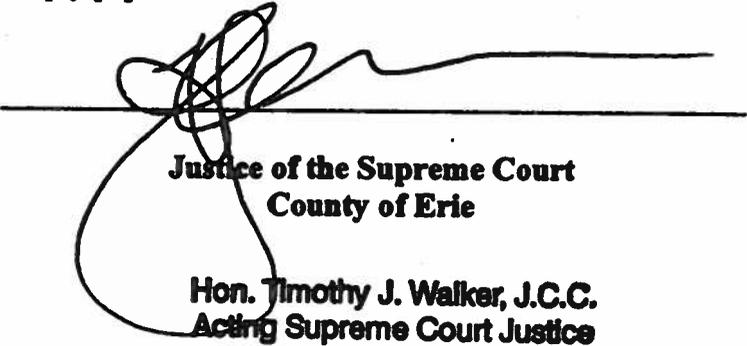
ORDERED, that the Respondents shall also deliver, in addition to the paper copy of the documents referred to above, an electronic copy of their verified answers and affidavits or other

responding papers, including motion papers, to the Petitioner's counsel at jerome.schad91@gmail.com as early as feasibly possible prior to service and filing of the original paper originals of said documents; and it is further

ORDERED, that the Respondents and Respondent-Objectors, in their answering papers, shall set forth an e-mail address to which communications from the Court and each party's attorney may transmit responding and/or reply papers.

GRANTED: September 13, 2012

Court Clerk

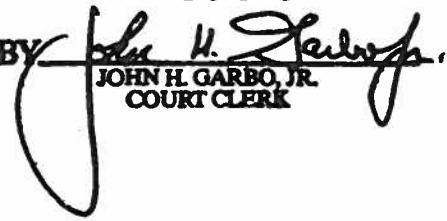

Justice of the Supreme Court
County of Erie

Hon. Timothy J. Walker, J.C.C.
Acting Supreme Court Justice

GRANTED

SEP 13 2012

BY


JOHN H. GARBO, JR.
COURT CLERK

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of
JUSTIN H. GERSTEIN
25 Ivy Green Ct.
Amherst, NY 14226

Petitioner,

vs

TOWN BOARD of the TOWN OF AMHERST NEW YORK,
5583 Main Street
Williamsville, NY 14221

**VERIFIED
PETITION**

ERIE COUNTY BOARD OF ELECTIONS,
RALPH M. MOHR and DENNIS E. WARD, Commissioners
134 West Eagle Street
Buffalo, NY 14202

INDEX NO.

2012 003125

MARJORY JAEGER, TOWN CLERK of the TOWN of AMHERST,
NEW YORK
5583 Main Street
Williamsville, NY 14221

Respondents,

and

DAVID P. LIPINOGA
472 Teakwood Terrace
Amherst, NY 14221

and

S. DAVID POLLACK
37 Grandview Drive
Amherst, NY 14228

Respondents-Objectors.

For an Order and Judgment pursuant to Article 78 of the Civil Practice Law and Rules and New York Election Law Articles 4 and 16 and Town Law § 81 and § 91 requiring the Town Board of the Town of Amherst to set the date for a Special Election on a petition-initiated proposition to establish a District (Ward) System and directing the Town Clerk of the Town of Amherst to certify the proposition and special election date to the Board of Elections of the County of Erie and enjoining the Town Board and Town Clerk from taking any action to prevent the proposition from being on the ballot or otherwise willfully violating the New York State Town and/or Election Laws and seeking further relief described within the petition.

TO THE NEW YORK STATE SUPREME COURT – ERIE COUNTY:

Petitioner **JUSTIN H. GERSTEIN**, by his attorney, **Jerome D. Schad, Esq.**, for his Verified Petition, does allege:

PETITIONER

1. Petitioner, **JUSTIN H. GERSTEIN**, resides at **25 Ivy Green Ct., Town of Amherst, New York 14226** within the County of Erie, State of New York.
2. Petitioner is a qualified elector of the Town of Amherst who is one of approximately **2,565** Amherst residents who signed a Petition entitled **"PETITION BY ELECTORS FOR SUBMISSION OF PROPOSITION AT SPECIAL TOWN ELECTION"** [hereinafter the **"District (Ward) System Petition"**] which, pursuant to Town Law Sections 81 and 91, Petitioner filed with the Respondent **Marjory Jaeger**, Town Clerk of the Town of Amherst on September 4, 2012. Attached as **Exhibit A** is a true copy of the cover sheet of the Petition reflecting the Town Clerk's receipt stamp of **4:05 p.m.** on September 4, 2012.

RESPONDENTS:

3. Respondent **TOWN BOARD** of the **TOWN OF AMHERST NEW YORK** [hereinafter the **"Town Board"**] is the duly constituted body consisting of the elected supervisor and the elected town councilmen and councilwomen or collectively **"councilmembers"**) and which is only vested with such powers as are set forth in Town Law Article 4 (Section 60 - 69) or otherwise particularly enumerated in the statute, including Section 81 of the Town Law.
4. Unless otherwise specified, at all times referred to herein, the Town Board has consisted of only Councilmen **Richard "Jay" Anderson**, **Mark Manna**, **Guy Marlette**, and **Steven D. Sanders**, and Councilwoman, **Barbara S. Nuchereno**, and the Supervisor, **Barry A. Weinstein**.

5. Respondent TOWN CLERK, MARJORY JAEGER, [hereinafter the "Town Clerk"] is the duly elected Town Clerk vested with all of the powers and duties bestowed by Town Law Section 30 with such additional powers as described therein and in other sections of the Town Law, including, specifically Section 91.
6. Respondent ERIE COUNTY BOARD OF ELECTIONS (Ralph M. Mohr and Dennis E. Ward, Commissioners) (heretofore and hereinafter, the "Board of Elections") is the administrative agency charged with the legal duty to certify ballots and the wording of propositions to appear on such ballots to be submitted to voters in general and special elections and is charged with the duty to receive and act upon a certified proposition or referendum submitted to it by a Town Clerk when a petition for a proposition or referendum has been duly filed pursuant to Town Law Section 91.
7. Respondents-Objectors DAVID P. LIPINOVA and S. DAVID POLLACK are residents of the Town of Amherst who signed a document addressed "TO THE TOWN CLERK OF THE TOWN OF AMHERST" and apparently filed with Respondent Town Clerk's office on Monday, September 10, 2012 but never delivered to nor served upon Petitioner. Attached as Exhibit B is a true copy of Respondents-Objectors' document and bearing the Town Clerk's Office receipt stamp of 8:14 a.m. on September 10, 2012.
8. Respondents-Objectors DAVID P. LIPINOVA and S. DAVID POLLACK are the Petitioners on a verified petition dated September 10, 2012 entitled *Petition of DAVID P. LIPINOVA and S. DAVID POLLACK to determine the Validity, Legality and Sufficiency of a Petition for Referendum filed with the Town Clerk of the Town of Amherst on the 4th day of September, 2012*, in which an Order to Show Cause, supported by their petition, was filed in the Supreme Court, Erie County, NY on September 10, 2012 at approximately 2:49 p.m. and filed under Erie

County Index Number 2012003071 (hereinafter the *Lipinoga-Pollack Proceeding*). Attached as **Exhibit C** is a true copy of Respondents-Objectors' Order to Show Cause, granted on September 10, 2012 with attached Petition and exhibits.

JURISDICTION

9. This is a special proceeding arising under Article 78 of the Civil Practice Law and Rules and Article 16 of the New York State Election Law, and Sections 81 and 91 of the Town Law and the Supreme Court has jurisdiction to grant summary relief against the Respondent public bodies and public officers and Respondents-Objectors.
10. Pursuant to the above-mentioned statutes, and including but not limited to Election Law Sections 16-104 and 16-116, the Supreme Court has jurisdiction to compel the Town Board to timely set the date for a special election on the District (Ward) System Petition filed with the Town Clerk on September 4, 2012 and any other actions which the Town Board is statutorily-bound to perform and to restrain, enjoin, and prohibit the Town Board from engaging in any content-based review or evaluation of the sufficiency of the District (Ward) System Petition in violation of the law and to make such other and further directions as may be necessary so that the Town Clerk appropriately will certify the proposition on the District (Ward) System Petition to the Board of Elections no later than October 1, 2012 and so that the Erie County Board of Elections can certify the ballot or ballots in the Town of Amherst to include the proposition in the District (Ward) System Petition.
11. The Supreme Court also has jurisdiction to enter such other orders as may be necessary to prevent any of the Respondents from violating the Law of the State of New York, including, but

not limited to, Town Law Sections 81 and 91 and Election Law Article 16, including, specifically, Section 16-104.

STANDING

12. Petitioner is an Amherst resident, a registered voter, a person who signed the District (Ward) System Petition, a person who witnessed to others sign the Petition and is the person who filed the District (Ward) System Petition in the office of the Town Clerk.
13. Petitioner has standing to seek to the relief sought herein.

The Petition for a District (Ward) System Proposition to Appear on the Ballot in the Town of Amherst

14. Petitioner, pursuant to Town Law Section 91, filed the District (Ward) System Petition with the Respondent Marjory Jaeger, Town Clerk of the Town of Amherst on September 4, 2012.
15. The District (Ward) System Petition states that the proposition to be submitted to the voters of the Town of Amherst is as follows: **“Shall the Town of Amherst Establish the District (Ward) System for the election of Councilmembers in the Town of Amherst?”**
16. The District (Ward) System Petition contains approximately 2,565 signatures and the minimum number required by Town Law Section 81(4) is 2,168 [being 5% of the total votes cast for governor in the Town of Amherst in the 2010 general election] and, as such, is entitled to a presumption of validity pursuant to Election Law Section 6-154(1).
17. The subject of the District (Ward) System Petition is one of the specifically-enumerated topics for such propositions set forth in Town Law Section 81; particularly, Section 81(2)(b).

18. Respondent Town Clerk was and is the sole designated Town Officer, pursuant to Town Law Section 91, authorized to and charged with the duty to receive and review the content and form of the District (Ward) System Petition.

19. Pursuant to Election Law Section 4-108, the Town Clerk is the sole designated Town Officer who is charged with the duty “*at least thirty-six days prior to the election at which such proposal, proposition or referendum is to be submitted*” to “*transmit to [the] board of elections a certified copy of the text of such proposal, proposition or referendum and a statement of the form in which it is to be submitted.*”

Time Lines for Filing and Objecting

20. Pursuant to Town Law Section 81, the District (Ward) System Petition, was subject to the Election Law’s requirements for nominating petitions, including objections thereto.

21. As one of the enumerated topics for propositions authorized in Town Law Section 81, the District (Ward) System Petition, was subject to a possible objection, as is similarly authorized by the Election Law with respect to nominating petitions, but the time to file objections is extended to five (5) days by Town Law Section 91 rather than the three days otherwise contemplated by Election Law Section 6-154 with respect to nominating petitions.

Substantive Elements for Objecting and Respondents-Objectors’ Failure to Meet those Requirements

22. Respondents-Objectors, if they intended to challenge the sufficiency of the District (Ward) System Petition, were required:

- a. pursuant to Town Law Section 91, to file a verified petition setting forth that the District Council (Ward) System Petition to which they object was lacking in the sufficient signatures to meet the minimum number of 2,168 signatures that constitute the 5% of the total votes cast for governor in the Town of Amherst in the 2010 general election and do so within five days after the filling of the petition in the Town Clerk's office but the document that Respondents-Objectors filed, in fact, did not, and does not, do so; and
- b. pursuant to Town Law Section 91, to file the verified written petition with the town clerk within five days after the filling of the petition; and
- c. pursuant to Town Law Section 91, to file a verified petition in the supreme court, in a proceeding in the manner prescribed by Election Law Section 16-116, within five days after filing of the petition but Respondents-Objectors did not properly commence such a special proceeding; and
- d. pursuant to the Town Law's incorporation of the requirements of the Election Law with respect to objections to nominating petitions, objections were required to be in writing pursuant to Election Law Section 6-154(2) with detailed specificity by page number and line number reference to the petition pursuant to Election Law Regulation at Section 6204.1(a), but the document that Respondents-Objectors filed failed to state objections with specificity by page and line number reference to the petition; and
- e. pursuant to the Town Law's incorporation of the requirements of the Election Law Section 6-154(2) and the Election Law Rules and Regulation Section 6204.1(b) with respect to objections to nominating petitions, Respondents-Objectors' written objections were required to be served upon Petitioner within five days after the filing of the Petition, but Respondents-Objectors failed to do so.

23. Respondents-Objectors failed to timely commence the *Lipinoga-Pollack Proceeding* within the five-day statute of limitations for commencement of a special proceeding pursuant to Election Law Section 16-116, as imposed on them by Town Law Section 91, and they may not be heard to complain and their purported objections are time-barred.
24. Respondents-Objectors failed to join Petitioner, a necessary party, as a party in the *Lipinoga-Pollack Proceeding*.

**The Sole Ministerial Role of the Town Board
To Set the Date of the Special Election**

25. The authority of the Town Board with respect to the District (Ward) System Petition is expressly limited to the ministerial act of setting the date for the vote on the proposition at a special or biennial town election.
26. Pursuant to Town Law Section 81, the Town Board "*The town board . . . shall upon a petition . . . cause to be submitted at a special or biennial town election, a proposition: . . . (2)(b) to establish . . . the ward system for the election of councilmen in towns having four or six councilmen.*"
27. Pursuant to Town Law Section 91, since the District (Ward) System Petition was filed with the Town Clerk on September 4, 2012 and since 2012 is not a biennial town election year, the Town Board was and is obligated to submit the proposition to the voters in a special election which may be the same day as the general election "*not less than sixty nor more than seventy-five days after the filing of such petition.*" Even if the vote is held on the date of the general election, it is considered to be a special town election.

**28. The sixtieth day after the District (Ward) System Petition filing is Saturday, November 3, 2012,
and the seventy-fifth day after the filing is Sunday, November 18, 2012.**

**Respondent Town Clerk's Role is Solely To Certify the
District (Ward) System Proposition to the Erie County Board of Elections**

29. Upon information and belief, the Town Clerk has not yet transmitted to the Board of Elections a certified copy of the text of the proposition for a District (Ward) system and a statement of the form in which it is to be submitted in compliance with Election Law Section 4-108 for the special election on the proposition, but the Town Clerk is obligated, in such transmittal, to give the date of such election.
30. The Town Clerk's duties are ministerial in nature and solely limited to certifying the text of the proposition and the Town Clerk is without jurisdiction to independently question the presumptive validity of the District (Ward) System Petition containing 2,565 signatures, which is well in excess of the minimum number of 2,168 required for placing the proposition on the general election ballot on November 6, 2012.

**Board of Elections' Role in the petition-initiated proposition
for a District (Ward) System in Amherst**

31. Pursuant to the Election Law, Article 16, including Section 16-104, the Board of Elections must certify the content of any ballot including "*the wording of the abstract or form of submission of any proposed amendment, proposition or question.*"
32. Upon information and belief, the Board of Elections, in order to certify the ballot containing the District (Ward) System proposition no later than the 35th day prior to the general election scheduled for November 6, 2012, must so certify the ballot containing the proposition no later than October 2, 2012.

**Respondent Town Board's Lack of Standing to object to the form
or content of The District Council (Ward) System Petition**

33. Pursuant to Town Law Section 81, the Town Board has no authority to and no standing to review, determine or alter the wording or content of the District (Ward) System Petition or the statement of the proposition contained therein but only the statutorily-imposed duty to set the date of the election at which voters in the Town of Amherst will decide the proposition.
34. In addition, pursuant to Town Law Section 91, anyone objecting to the District (Ward) System Petition had the right to file a "*written objection thereto to be filed with the town clerk*" but were required to timely file such written objections "*within five days after the filing of such petition*" on September 4, 2012.
35. Each and every member of the Town Board, namely, Supervisor Barry A. Weinstein, Councilmembers Guy Marlette, Mark A. Manna, Richard "Jay" Anderson, Barbara S. Nuchereno and Steven D. Sanders had the right to file written objections to the District (Ward) System Petition on or before September 10, 2012 and each chose not to object.
36. Pursuant to Town Law Section 91, anyone objecting to the District (Ward) System Petition had the right to file a verified petition setting forth their objection to the supreme court or any justice thereof of the judicial district in which the Respondent Town Board is located "*within five days after the filing of such petition*" on September 10, 2012.
37. Each and every member of the Town Board, namely, Supervisor Barry A. Weinstein, Councilmembers Guy Marlette, Mark A. Manna, Richard "Jay" Anderson, Barbara S. Nuchereno and Steven D. Sanders had the right to file a verified petition setting forth their

objection to the District (Ward) System Petition on or before September 9, 2012 and each voluntarily chose not to file a verified petition in Supreme Court.

38. Each member of the Town Board has, therefore, waived any right to object and lost any standing to object to the wording or content of the District (Ward) System Petition, either by objection (at the Town Clerk's office) or by way of review in New York State Supreme Court.

**The September 24, 2012 regularly scheduled
Amherst Town Board meeting,**

39. The next regularly-scheduled Amherst Town Board meeting is on Monday, September 24, 2012, according to the Town Board's website.

40. Respondents-Objectors, in contravention of the wording and intent of Election Law Section 16-116's requirements that these special proceedings be summarily determined and Town Law Section 91's requirement that the matter be determined "within twenty days," seeks to delay the initial consideration of this matter until three days after the Amherst Town Board's next regularly-scheduled meeting.

41. Acquiescence, knowing or otherwise, by the Town Board and Town Clerk, in the delaying actions of Respondents-Objectors to not fully complete the steps to certify the proposition and set the date of the special election, which Petitioner argues must be on the date of the general election, November 6, 2012, constitutes and will constitute willful neglect of statutorily-imposed duties on the Town Board and Town Clerk.

**Potential Town Board Waste
Over \$30,000 of Amherst Taxpayer Dollars**

42. Upon information and belief, in 2010, the Town Board placed before the Amherst voters on the date of the 2012 November general election, an identical District (Ward) System proposition.
43. Upon information and belief, the 2010 proposition regarding the District (Ward) System was scheduled on the date of the general election because the Town Clerk had provided the Town Board with cost information to the effect that if the Town Board conducted a special election on any date other than the date of the general election, it would cost Amherst taxpayers in excess of \$30,000.
44. Upon information and belief, circumstances have not changed on which one could expect that the cost to conduct a special election on a date other than the general election on November 6, 2012 would be less than \$30,000.
45. Upon information and belief, the only other dates on which the special election on the District (Ward) System Petition could be held are during the period from November 6, 2012, until November 18, 2012 and the Erie County voting machines will have been sequestered for that period following the November 6, 2012 general election such that they will not be available; and the Town Board would have to purchase or otherwise acquire other voting machines to conduct a special election during that November 6 – 18, 2012 time period.
46. Upon information and belief, if the Town Board takes action to schedule the special election for voters to decide the proposition on the District (Ward) System Petition on any date other than the November 6, 2012 general election they will be doing so in willful disregard of their fiscal responsibilities to the residents and taxpayers of the Town of Amherst and such action would constitute a waste of public funds.

Time is of the Essence:

47. Since October 1, 2012 is the last day for the Town Clerk to certify the proposition and comply with the law to transmit the proposition and the date of the special election, as set by the Town Board, to the Erie County Board of Elections, and since October 2, 2012 is the last day on which the Board of Elections has to certify the ballot containing the proposition, time is of the essence and requires judicial intervention and relief as set forth herein and as the Court may deem appropriate and necessary under the Town Law and the Election Law of the State of New York.
48. Petitioner has made no previous application to this, or any other, Court for the relief sought herein.

RELIEF REQUESTED

WHEREFORE, Petitioner, Justin H. Gerstein, requests that this Court direct entry of an Order and Judgment granting the following relief:

1. An Order to Show Cause in the form as attached hereto with provisions for court-directed service of the Order to Show Cause, Petition and attached exhibits as set forth in the Order to Show Cause; and
2. An Order directing and setting the referendum election date in the Town of Amherst on the District (Ward) System Petition be at the same polling locations as the general election on Tuesday, November 6, 2012, and directing the Town Clerk to certify the proposition and special election date to the Board of Elections pursuant to Election Law Section 4-108, and directing the Board of Elections to take all necessary steps to certify

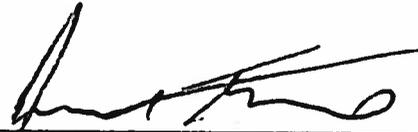
and assure that the proposition shall be submitted to the voters in the Town of Amherst on that date; and,

3. An Order directing the Respondent Town Board to convene at its next regularly scheduled meeting on September 24, 2012, or sooner at a special meeting called by the Town Board, and to perform its statutorily-imposed duty to adopt a resolution to set the referendum election date on the District (Ward) System Petition on Tuesday, November 6, 2012, the same date as the General Election, or, in the event that the Respondent Town Board sets a referendum election date on a date other than November 6, 2012 but no later than November 18, 2012, such action shall be treated as taken as of the date of September 24, 2012; and restraining Town Board and Town Clerk from engaging in any review of the content or sufficiency of the District (Ward) System Petition, since such conduct of the Town Board is not so authorized by law and no objections have been filed claiming that the Petition has less than the required number of signatures for placing the proposition on the ballot; and
4. An Order, if the Court determines that delay in the referendum election date to a date from November 6 to November 18, 2012 is not a waste of Amherst taxpayer money and such referendum is to be held on such other of those dates as may be set in compliance with the law, restraining the Town Board from engaging in any review of the content or sufficiency of the District (Ward) System Petition and imposing all costs incurred by the Board of Elections to cause the holding of the referendum on such different date as an expense of the Town of Amherst to be paid by the Town of Amherst, as required by law; and,

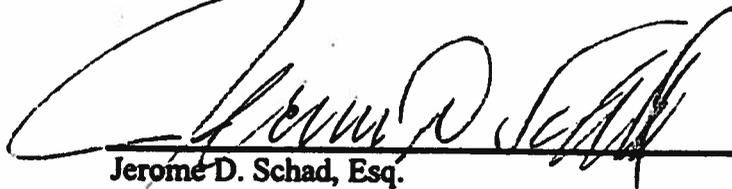
5. An Order directing the Board of Election to prepare and deliver the machines, ballots and other necessary supplies for the November 6, 2012 general election to include such proposition as worded (or, if the Respondent Town Board chooses to set a special election date for the proposition referendum other than on the November 6, 2012 general election date, that the Board of Elections deliver such items on that date); and
6. An Order validating the underlying petition as legally sufficient under Town Law Section 81; and
7. An Order declaring that the use of the wording in such petition is clear and legally accurate as stated, and is the proper wording for the proposition to be submitted for a referendum to be voted upon by the voters in the Town of Amherst; and
8. An Order directing the Respondent Town Board to meet all the requirements of the Town Law and Election Law, in preparing for and publicizing such referendum; and
9. An Order consolidating this special proceeding with the proceeding pending in the Supreme Court, Erie County, and filed under Erie County Index Number 2012003071 entitled *Petition of DAVID P. LIPINOVA and S. DAVID POLLACK to determine the Validity and Sufficiency of a Petition for Referendum filed with the Town Clerk of the Town of Amherst on the 4th day of September, 2012*, and doing so under the title of this proceeding and index number inasmuch as all of the parties named in the first proceeding are named in this proceeding and all of the parties named in the within proceeding are necessary parties for relief to be granted; and
10. An Order maintaining continuing jurisdiction over the proceeding to ensure timely and proper compliance by all parties, in order that such referendum be properly submitted to the Amherst voters; and

11. Granting such other, further and different relief as the Court may deem just and appropriate;

Dated: September 13, 2012
Amherst, New York



Justin H. Gerstein, Petitioner

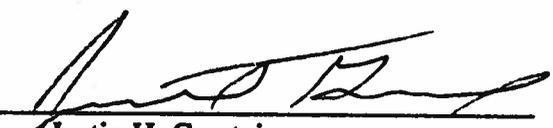


Jerome D. Schad, Esq.
Attorney for Petitioner, Justin H. Gerstein
199 Meadowview Lane
Williamsville, NY 14221-3531
716.634.8906
716.445.0842 (cell)

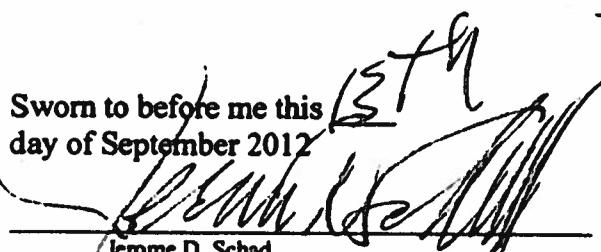
VERIFICATION:

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

Justin H. Gerstein being duly sworn deposes and says that he is the **PETITIONER** in this action; that he has read the foregoing **VERIFIED PETITION** and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.


Justin H. Gerstein

Sworn to before me this 15th
day of September 2012


Jerome D. Schad
Notary Public
Qualified in Erie County
My Commission Expires June 30, 2015

COVER SHEET – REFERENDUM PETITION
(Pursuant to Town Law, Section 81)

**PETITION BY ELECTORS FOR SUBMISSION
OF PROPOSITION AT SPECIAL TOWN ELECTION**

TO: The Town Board of the Town of Amherst, New York

WE, THE UNDERSIGNED, electors of the Town of Amherst qualified to vote upon a proposition to raise and expend money, are in number, equal to at least five per centum (5%) of the vote cast for Governor of the State of New York in the Town of Amherst, at the last general election held for the election of State Officers on November 2, 2010, do hereby petition that there be submitted to the electors of the Town of Amherst, pursuant to Section 81 of the Town Law of the State of New York, at a special town election, the proposition as follows:

SHALL THE TOWN OF AMHERST ESTABLISH THE
DISTRICT (WARD) SYSTEM FOR THE ELECTION OF
COUNCILMEMBERS IN THE TOWN OF AMHERST?

Volume Number: 1

Total Number of
Volumes in Petition: 1

The Petition contains the number, or in excess of the number, of valid signatures required by the Election Law.

Contact Person to Correct Deficiencies:

Name: Justin H. Gerstein

Residence: 25 Ivy Green Court
Amherst, NY 14226

Phone: 716.341.1441

FAX: 716.632.2048

Exhibit A

TO THE TOWN CLERK OF THE TOWN OF AMHERST

I, DAVID P. LIPINOVA (472 Teakwood Terrace, Williamsville, New York 14221) and S. SAVID POLLACK (37 Grandview Drive, Amherst, New York 14228), as individuals, taxpayers, and residents of the Town of Amherst do hereby OBJECT to the petition filed on the 4th day of September, 2012, with the Town Clerk of the Town of Amherst bearing the heading: Petition by Electors for Submission of Proposition at Special Election.

In the event that the petition is not null, void and invalid, ab-initio, we object thereto, on the following grounds:

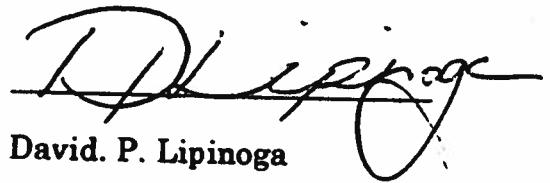
- a. There is no date indicated on the petition which Election Day the referendum should be placed.
- b. There is no authentication of the signatures by any subscribing witness on any sheet in the petition.
- c. There is no affirmation or affidavit by any subscribing witness on any sheet in the petition.
- d. In many instances, the witness failed to initial changes to the petition.
- e. In many instances, the witness is not registered at addresses set forth. Further, in many instances, the Witness is not ^{and} registered.
- f. In many instances, the witness identification information provided on the petition is incorrect.
- g. In many instances, the date of the witness statements are dated prior to the date of signatures on the petition sheet.
- h. In many instances, the petitions contain an overstatement of signatures.
- i. In many instances, there are missing statements of signatures, "write overs", and indistinguishable signatures on the petition.
- j. In many instances, many of the signatures are not in order as they are not ascending, which call into question the propriety of the signatures.
- k. In many instances, many of the signatures on the petition are not dated, which is required under the Election Law.
- l. In many instances, many of the signatures are not signatures, but instead printed. This is violative of the Election Law.

Exhibit B p-1

- m. A number of the signatures on the petition are not registered voters, not residents of the Town of Amherst, not registered at the address set forth in the Town of Amherst, or are unidentifiable.
- n. A number of the signatures lists a residential address that is unidentifiable or not within the Town of Amherst.
- o. A number of the signatures are duplicate signatures that had previously signed another sheet of the petition.
- p. There may not be sufficient, valid signatures on the petition equal to at least 5% of the number of persons who voted in the last gubernatorial election.

We, DAVID P. LIPINOVA and S. DAVID POLLACK, hereby demand that the petition be dismissed and ruled ineffective and invalid.

DATED:



David. P. Lipinoga



S. David Pollack

Exhibit B p-2

At a Special Term of the Supreme Court held in and for the County Of Erie at a courthouse located at 42 Franklin St in Buffalo, New York on the 10 day of September, 2012.

FILED
2012 SP 10 PM 2 49
ERIE COUNTY CLERK

PRESENT: Hon. Kevin M. ... J.S.C.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

Petition of DAVID P. LIPINOGA and S. DAVID POLLACK to determine the Validity, Legality and Sufficiency of a Petition for Referendum filed with the Town Clerk of the Town of Amherst on the 4th day of September, 2012.

ORDER TO SHOW CAUSE

Index Number: 2012CO3011

UPON the annexed petition of DAVID P. LIPINOGA and S. DAVID POLLACK, verified the 9th day of September, it is

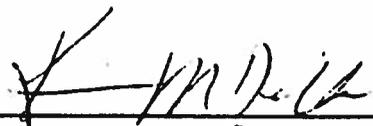
ORDERED, that the Town of Amherst, New York, the Town of Amherst Town Clerk, and the members of the Town Board of the Town of Amherst show cause before this court at a Special Term, Part 3, to be held at the Courthouse, at 42 Franklin St, Buffalo, New York, on the 27 day of September, 2012, at 2:00 in the after noon, why an Order should not be made:

- (1) Declaring the alleged petitions filed with the Town Clerk of the Town of Amherst, New York, on the 4th day of September, 2012 invalid, illegal and insufficient; and
- (2) Restraining the submission of the resolution to the electors of the town for approval or disapproval; and
- (3) Granting such other and further relief as to the court seems just and proper.

Exhibit C p-1

ORDERED, that the Town Clerk for the Town of Amherst is hereby directed to produce the true original petitions on the return date of the Order to Show Cause; and it is further

ORDERED, that service of a copy of this Order to Show Cause and the annexed papers upon Town Clerk and Town Board members on or before the 14th day of September, 2012 shall be deemed sufficient.


Hon. KEVIN M. DELOE, JUDGE

GRANTED:

GRANTED

SEP 10 2012

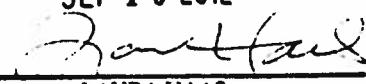
BY 
LAURA HAAS
COURT CLERK

Exhibit C p2

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

Petition of DAVID P. LIPINOGA and
S. DAVID POLLACK to determine the
Validity, Legality and Sufficiency of a
Petition for Referendum filed with the
Town Clerk of the Town of Amherst on
the 4th day of September, 2012.

VERIFIED PETITION

Index Number:

1. The Town of Amherst is a municipal corporation incorporated under the laws of the State of New York. At all times herein, the following were members of the Town Board of the Town of Amherst, New York: Guy R. Marlette, Mark A. Manna, Richard "Jay" Anderson, Barbara S. Nucheren, Steven D. Sanders.
2. At all times herein, petitioners were and remain qualified electors in the Town of Amherst, New York.
3. On the 4th day of September, 2012, a certain paper, signed by numerous persons, fastened together and claimed to constitute one petition, was offered for filing and received by the Town of Amherst Town Clerk purporting to be a petition for a proposition seeking to establish a ward system for the election of council members. Said petition requested that the submission of the same to the electors of the Town for their approval or disapproval. A copy of the cover page of the petition is annexed hereto and made a part hereof as "Exhibit A".
4. Objections to the petitions were filed with the Town Clerk. A copy of the objections are annexed hereto and made a part hereof as "Exhibit B".

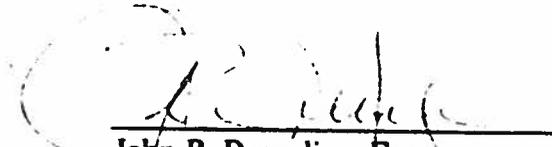
Exhibit C 0-3

5. This petition is filed in accordance with New York State Town Law. (Town Law §§81, 91)
6. Upon review of the petitions filed, there are a number of irregularities that render them invalid. These include the following:
 - a. There is no date indicated on the petition which Election Day the referendum should be placed.
 - b. There is no authentication of the signatures by any subscribing witness on any sheet in the petition.
 - c. There is no affirmation or affidavit by any subscribing witness on any sheet in the petition.
 - d. In many instances, the witness failed to initial changes to the petition.
 - e. In many instances, the witness is not registered at addresses set forth. Further, in many instances, the Witness is not a registered.
 - f. In many instances, the witness identification information provided on the petition is incorrect.
 - g. In many instances, the date of the witness statements are dated prior to the date of signatures on the petition sheet.
 - h. In many instances, the petitions contain an overstatement of signatures.
 - i. In many instances, there are missing statements of signatures, "write overs", and indistinguishable signatures on the petition.
 - j. In many instances, many of the signatures are not in order as they are not ascending, which call into question the propriety of the signatures.
 - k. In many instances, many of the signatures on the petition are not dated, which is required under the Election Law.
 - l. In many instances, many of the signatures are not signatures, but instead printed. This is violative of the Election Law.
 - m. A number of the signatures on the petition are not registered voters, not residents of the Town of Amherst, not registered at the address set forth in the Town of Amherst, or are unidentifiable.
 - n. A number of the signatures lists a residential address that is unidentifiable or not within the Town of Amherst.
 - o. A number of the signatures are duplicate signatures that had previously signed another sheet of the petition.

- p. There may not be sufficient, valid signatures on the petition equal to at least 5% of the number of persons who voted in the last gubernatorial election.
7. In addition, it does not appear as if the petitions filed with the Town Clerk were filed in accordance with Town Law §81(4).
8. Though the Town Board has not yet taken any action on the petition, this verified petition is filed to preserve any and all statutory provisions that related to the aforesaid provisions of the Town Law.
9. For the reasons set forth in the objections to the petition as well as those contained herein, the alleged petition is invalid, illegal and insufficient.

WHEREFORE, petitioners request that the petitions filed with the Town of Amherst Town Clerk be declared invalid, illegal and insufficient and granting such other and further relief as to the court seems just and proper.

DATED: September 10, 2012



John R. Drexelius, Esq.
Attorney for Petitioners
390 Stillwell Avenue
P.O. Box 141
Buffalo, New York 14223

COVER SHEET – REFERENDUM PETITION
(Pursuant to Town Law, Section 81)

**PETITION BY ELECTORS FOR SUBMISSION
OF PROPOSITION AT SPECIAL TOWN ELECTION**

TO: The Town Board of the Town of Amherst, New York

WE, THE UNDERSIGNED, electors of the Town of Amherst qualified to vote upon a proposition to raise and expend money, are in number, equal to at least five per centum (5%) of the vote cast for Governor of the State of New York in the Town of Amherst, at the last general election held for the election of State Officers on November 2, 2010, do hereby petition that there be submitted to the electors of the Town of Amherst, pursuant to Section 81 of the Town Law of the State of New York, at a special town election, the proposition as follows:

SHALL THE TOWN OF AMHERST ESTABLISH THE
DISTRICT (WARD) SYSTEM FOR THE ELECTION OF
COUNCILMEMBERS IN THE TOWN OF AMHERST?

Volume Number: 1

Total Number of
Volumes in Petition: 1

The Petition contains the number, or in excess of the number, of valid signatures required by the Election Law.

Contact Person to Correct Deficiencies:

Name: Justin H. Gerstein

Residence: 25 Ivy Green Court
Amherst, NY 14226

Phone: 716.341.1441

FAX: 716.632.2048

PCUR SEP09 12 34 4:05

Exhibit C p-8

TO THE TOWN CLERK OF THE TOWN OF AMHERST

I, DAVID P. LIPINOVA (472 Teakwood Terrace, Williamsville, New York 14221) and S. SAVID POLLACK (37 Grandview Drive, Amherst, New York 14228), as individuals, taxpayers, and residents of the Town of Amherst do hereby OBJECT to the petition filed on the 4th day of September, 2012, with the Town Clerk of the Town of Amherst bearing the heading: Petition by Electors for Submission of Proposition at Special Election.

In the event that the petition is not null, void and invalid, ab-initio, we object thereto, on the following grounds:

- a. There is no date indicated on the petition which Election Day the referendum should be placed.
- b. There is no authentication of the signatures by any subscribing witness on any sheet in the petition.
- c. There is no affirmation or affidavit by any subscribing witness on any sheet in the petition.
- d. In many instances, the witness failed to initial changes to the petition.
- e. In many instances, the witness is not registered at addresses set forth. Further, in many instances, the Witness is not a registered.
- f. In many instances, the witness identification information provided on the petition is incorrect.
- g. In many instances, the date of the witness statements are dated prior to the date of signatures on the petition sheet.
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- l. In many instances, many of the signatures are not signatures, but instead printed. This is violative of the Election Law.

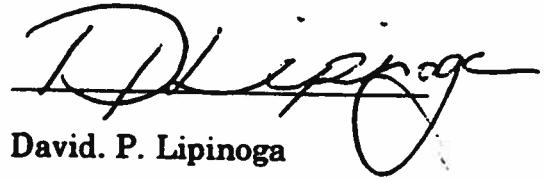
RCVD SEP10'12 AM 8:14

Exhibit C p.9

- m. A number of the signatures on the petition are not registered voters, not residents of the Town of Amherst, not registered at the address set forth in the Town of Amherst, or are unidentifiable.
- n. A number of the signatures lists a residential address that is unidentifiable or not within the Town of Amherst.
- o. A number of the signatures are duplicate signatures that had previously signed another sheet of the petition.
- p. There may not be sufficient, valid signatures on the petition equal to at least 5% of the number of persons who voted in the last gubernatorial election.

We, DAVID P. LIPINOVA and S. DAVID POLLACK, hereby demand that the petition be dismissed and ruled ineffective and invalid.

DATED:


David. P. Lipinoga

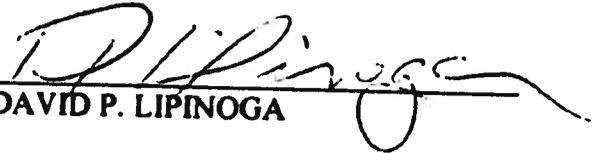

S. David Pollack

PCUD SEP10 12 AM 9:14

VERIFICATION

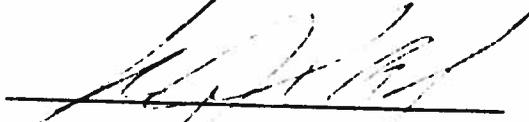
STATE OF NEW YORK)
) SS:
COUNTY OF ERIE)

DAVID P. LIPINOVA, being duly sworn, deposes and says that he is the Petitioner in the within action; that he has read the foregoing and knows the contents thereof; that the same is true to the deponent's own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes to be true.



DAVID P. LIPINOVA

Sworn to before me this 20
Day of September, 2012.



Notary Public/Commissioner of Deeds

K. JOHN BLAND
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 4/22/2014



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 19, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name: *Paige, Reginald v. Domin, Robert and County of Erie*

Document Received: Summons and Complaint

Name of Claimant: Reginald Paige
40 Olcott Street
Lackawanna, New York 14218

Claimant's attorney: J. Michael Hayes, Esq.
69 Delaware Avenue
Suite 1111
Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle Parker
First Assistant County Attorney

MMP:dld
Enclosure

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

REGINALD PAIGE
40 Olcott Street
Lackawanna, New York 14218,

Plaintiff,

-vs-

ROBERT DOMIN
1250 Bailey Avenue
Buffalo, New York 14206,

COUNTY OF ERIE
Rath Building
95 Franklin Street
Buffalo, New York 14202,

Defendants.

SUMMONS

Index No:

FILED
09/13/2012/ 14:41:00
ERIE COUNTY CLERK
RCPT # 12142571
T 2012003128

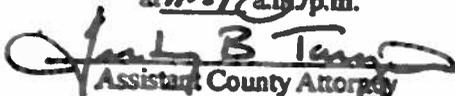
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED, to answer the complaint in this action, and to serve a copy of your answer, or, if the summons is not served with a complaint, to serve a notice of appearance, on the Plaintiff's attorney within twenty (20) days after service of this summons, exclusive of the day of service, or within thirty (30) days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

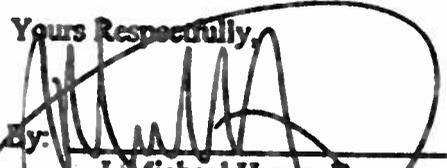
Erie County is designated as the place of trial on the basis of the residence of the Defendants who reside in Erie County, New York.

DATED: Buffalo, New York
September 12, 2012

This paper received at the
Erie County Attorney's Office
from JAMES HOUSSELL on
the 14th day of SEPT, 2012
at 11:37 a.m./p.m.


Assistant County Attorney

Yours Respectfully,

By: 

J. Michael Hayes, Esq.
Law Office of J. MICHAEL HAYES
Attorney for Plaintiff
69 Delaware Avenue - Suite 1111
Buffalo, New York 14202
Telephone: (716) 852-1111

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

REGINALD PAIGE,

Plaintiff,

vs.

ROBERT DOMIN, and
COUNTY OF ERIE

Defendants.

COMPLAINT

Index No. :

FILED
ACTING CLERK OF COURTS
SEP 17 2012
ERIE COUNTY
CLERK'S OFFICE

The Plaintiff, REGINALD PAIGE, by his attorneys, J. MICHAEL HAYES, for his Complaint against Defendants, ROBERT DOMIN and COUNTY OF ERIE, herein alleges:

1. Presently and at all time hereinafter mentioned, the Plaintiff, REGINALD PAIGE, was and is a resident of the City of Lackawanna, County of Erie and State of New York.
2. Upon information and belief, presently and at all times hereinafter mentioned the Defendant, ROBERT DOMIN, was a resident of the City of Buffalo, County of Erie and State of New York.
3. Upon information and belief, Defendant, COUNTY OF ERIE is a municipal corporation existing by virtue of the Laws of the State of New York with offices for the transaction of business located in the COUNTY OF ERIE, State of New York.
4. Upon information and belief, on or about June 9, 2010, Defendant, ROBERT DOMIN, was the owner and operator of a 1997 Chevrolet motor vehicle bearing New York State license plate number AXX9772.

5. Upon information and belief, on or about June 9, 2010, at approximately 2:50 p.m., in the Save A Lot parking lot at 1235 Abbott Road in the City of Lackawanna, County of Erie and State of New York, the vehicle being operated by Defendant, ROBERT DOMIN, came into contact with the Plaintiff, REGINALD PAIGE, a pedestrian.

6. Upon information and belief, the aforesaid incident was caused by or contributed to the careless conduct and negligence on the part of the Defendant ROBERT DOMIN.

7. Upon information and belief, Plaintiff, REGINALD PAIGE, is and/or has received MEDICAID provided by the Defendant, COUNTY OF ERIE.

9. Upon information and belief, the COUNTY OF ERIE claims a recovery right and/or a "lien" out of any resolution in the above matter by virtue of medical expenses it claims to have incurred.

9. Upon information and belief, the Defendant, COUNTY OF ERIE, is a necessary party to this action in that, for and before complete relief may be accorded, the Defendant, COUNTY OF ERIE'S claims for medical reimbursement must be considered, finalized, allocated and determined by way of compromise, settlement and/or Court determination and said Defendant has refused to join as a party plaintiff.

10. Upon information and belief, this action falls within one or more of the exceptions set forth in Article 16 of the CPLR of the State of New York and/or the aforesaid provisions of said article do not apply to the within action.

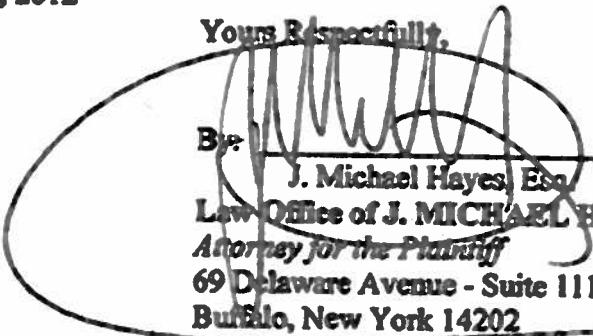
11. Upon information and belief, as a result of the foregoing, Plaintiff, REGINALD PAIGE, sustained severe and serious personal injuries including a "serious injury" and economic loss exceeding "basic economic loss" as defined by Article 51 of the

New York Insurance Reparations Law, all to his damage in a sum in excess of jurisdictional limits of all the lower courts of the State of New York.

WHEREFORE, Plaintiff, REGINALD PAIGE, demands Judgment against the Defendants, ROBERT DOMIN and the COUNTY OF ERIE for an amount in excess of the jurisdictional limits of all lower courts of the State of New York together with the costs and disbursements, and for such other and further relief as to this Court may be just, proper and equitable.

DATED: Buffalo, New York
September 12, 2012

Yours Respectfully,

By: 

J. Michael Hayes, Esq.

Law Office of J. MICHAEL HAYES

Attorney for the Plaintiff

69 Delaware Avenue - Suite 1111

Buffalo, New York 14202

Telephone: (716) 852-1111



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 19, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Taylor, Denise B. v. City of Lackawanna, Erie County Water Authority, Erie County, Erie County Division of Sewer Management and Erie County Sewer District No. 6</i>
Document Received:	Notice of Claim
Name of Claimant:	Denise B. Taylor 67 Wilkesbarre Street Lackawanna, New York 14218
Claimant's attorney:	James M. O'Keefe, Esq. 6720 Main Street, Suite 100 Williamsville, New York 14221

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle Parker
First Assistant County Attorney

MMP:dld
Enclosure

IN THE MATTER OF THE CLAIM OF:

DENISE B. TAYLOR
67 Wilkesbarre Street
Lackawanna, NY 14218

Claimant,

NOTICE OF CLAIM

-against-

CITY OF LACKAWANNA
514 Ridge Road
Lackawanna, NY 14218

ERIE COUNTY WATER AUTHORITY
295 Main Street, Room 350
Buffalo, NY 14203

ERIE COUNTY
95 Franklin Street
Buffalo, NY 14202

ERIE COUNTY DIVISION OF SEWER MANAGEMENT
95 Franklin Street
Buffalo, NY 14202

ERIE COUNTY SEWER DISTRICT NO: 6
95 Franklin Street
Buffalo, NY 14202

Respondents.

This paper received at the
Erie County Attorney's Office
from Monique Geisinger on
the 17th day of September, 20 12
at 1:10 a.m./p.m.
Denise B. Taylor
Assistant County Attorney

PLEASE TAKE NOTICE that the undersigned Denise B. Taylor hereby presents, in accordance with the General Municipal Law Section 50-e and the New York Public Authorities Law Section 1067, this Notice of Claim and hereby makes claim against the City of

Lackawanna, Erie County Water Authority, Erie County, Erie County Division of Sewer Management, and Erie County Sewer District No. 6, and in support thereof alleges:

1. That the Claimant is Denise B. Taylor. Ms. Taylor and resides at 67 Wilkesbarre Street, Lackawanna, NY 14218, She is represented by counsel: WILLIAM MATTAR, P.C.; James M. O'Keefe, Esq., 6720 Main Street, Suite 100, Williamsville, NY 14221-5986 (716) 633-3535.

2. The nature of the Claim is one to recover damages for personal injuries and conscious pain and suffering, change of lifestyle, loss of enjoyment of life, general and special damages, medical expenses, and property damages and all other damages allowed by law resulting from the injuries sustained by the Claimant due to the negligence of the City of Lackawanna, Erie County Water Authority, Erie County, Erie County Division of Sewer Management, and Erie County Sewer District No. 6, in the ownership, maintenance, management, operation, and control of the sewer drains on or about Homestead Street and Steeslawanna Avenue, Lackawanna, New York, and more specifically, in failing to ensure the premises in general were managed, maintained, and controlled in such a manner as to provide a safe street for individuals to walk.

3. That the said injuries were sustained by Claimant in the morning hours between 10:30 a.m. and 11:00 a.m. on July 29, 2012 when she stepped off of a curb on or about Homestead Street and Steeslawanna Avenue, Lackawanna, New York, and fell into an uncovered sewer drain, which was owned, constructed, and maintained by the City of Lackawanna, Erie County Water Authority, Erie County, Erie County Division of Sewer Management, and Erie County Sewer District No. 6, and their servants, agents or employees. Photographs depicting the

location where the Claimant fell are attached as Exhibit A. A photograph of another nearby drain that also was missing its cover is attached as Exhibit B.

4. That the Claimant sustained serious bodily injuries and damages, including right leg injuries. Specifically, the Claimant suffered from a severe laceration to her right leg, resulting in the need for sutures. These injuries may be of a permanent or indefinite duration, and Claimant has been and may be forced to expend sums of money for hospitals, doctors, and other medically related expenses. Other injuries will be disclosed as revealed through diagnosis by treating physicians and other medical personnel. A copy of the Claimant's discharge papers from Mercy Hospital of Buffalo relative to her leg laceration is attached hereto as Exhibit C.

5. That the said injuries were occasioned solely and wholly as a result of the negligence of the City of Lackawanna, Erie County Water Authority, Erie County, Erie County Division of Sewer Management, and Erie County Sewer District No. 6, their servants, agents or employees in failing to provide a safe location to walk, in failing to take reasonably prudent steps to avoid sustainable injuries, along with such other and further acts of negligence, carelessness, and recklessness.

6. The City of Lackawanna, Erie County Water Authority, Erie County, Erie County Division of Sewer Management, and Erie County Sewer District No. 6, by and through their agents, servants and employees had actual or constructive notice of the dangerous condition and hazard caused by said activity.

7. That the said injuries were occasioned partly and wholly as a result of the negligence of the City of Lackawanna, Erie County Water Authority, Erie County, Erie County Division of

Sewer Management, and Erie County Sewer District No. 6, and through their agents, servants and employees and without any negligence on the part of the Claimant contributing thereto

WHEREFORE Claimant requests that this claim be allowed and paid by the City of Lackawanna; Erie County Water Authority, Erie County, Erie County Division of Sewer Management, and Erie County Sewer District No. 6.

PLEASE TAKE FURTHER NOTICE, that unless said claim is adjusted and paid by the City of Lackawanna, Erie County Water Authority, Erie County, Erie County Division of Sewer Management, and Erie County Sewer District No. 6 within thirty (30) days from the date of service of the Notice of Claim, said Claimant intends to commence an action in the Supreme Court of the State of New York against the Respondents, seeking a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest, costs and disbursements.

DATED: Williamsville, New York
 September 13, 2012



James M. O'Keefe, Esq.
WILLIAM MATTAR, P.C.
Attorney for Claimant
Office and P.O. Address
6720 Main Street, Suite 100
Williamsville, NY 14221 5986

VERIFICATION

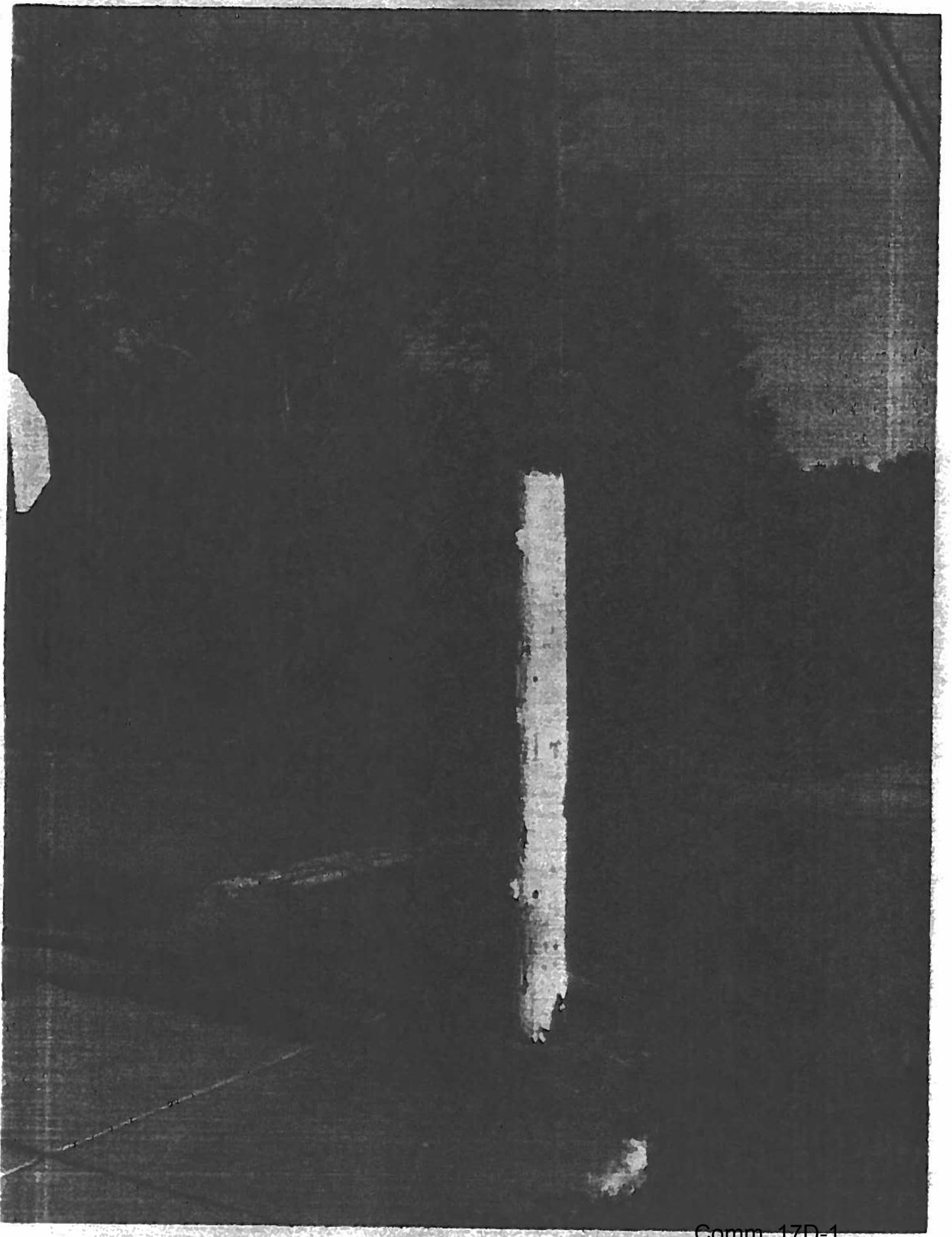
Denise B. Taylor, being duly sworn, depose and say that she is the Claimant in this action; that she has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to her knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters they believe them to be true.

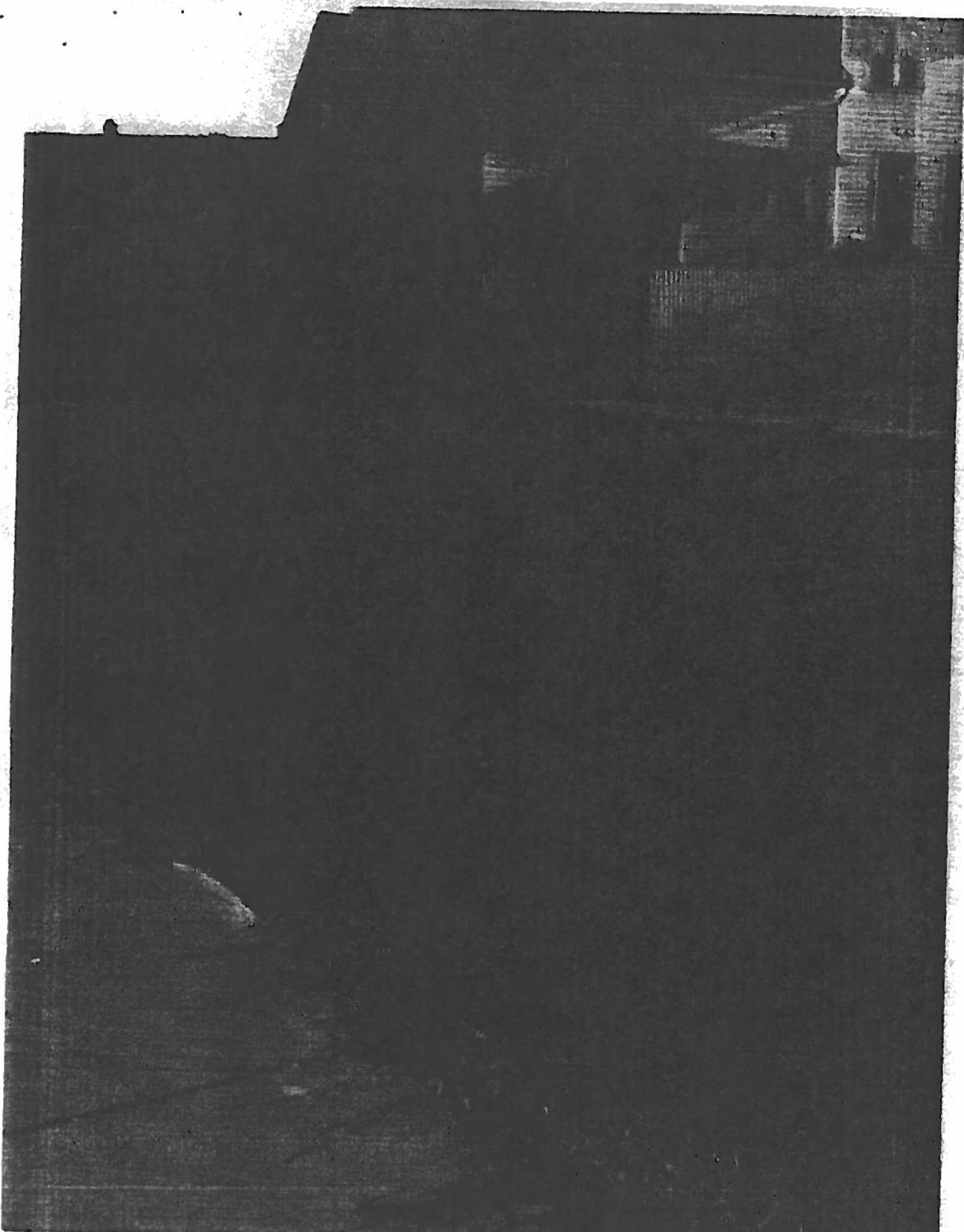
Denise B. Taylor
Denise B. Taylor

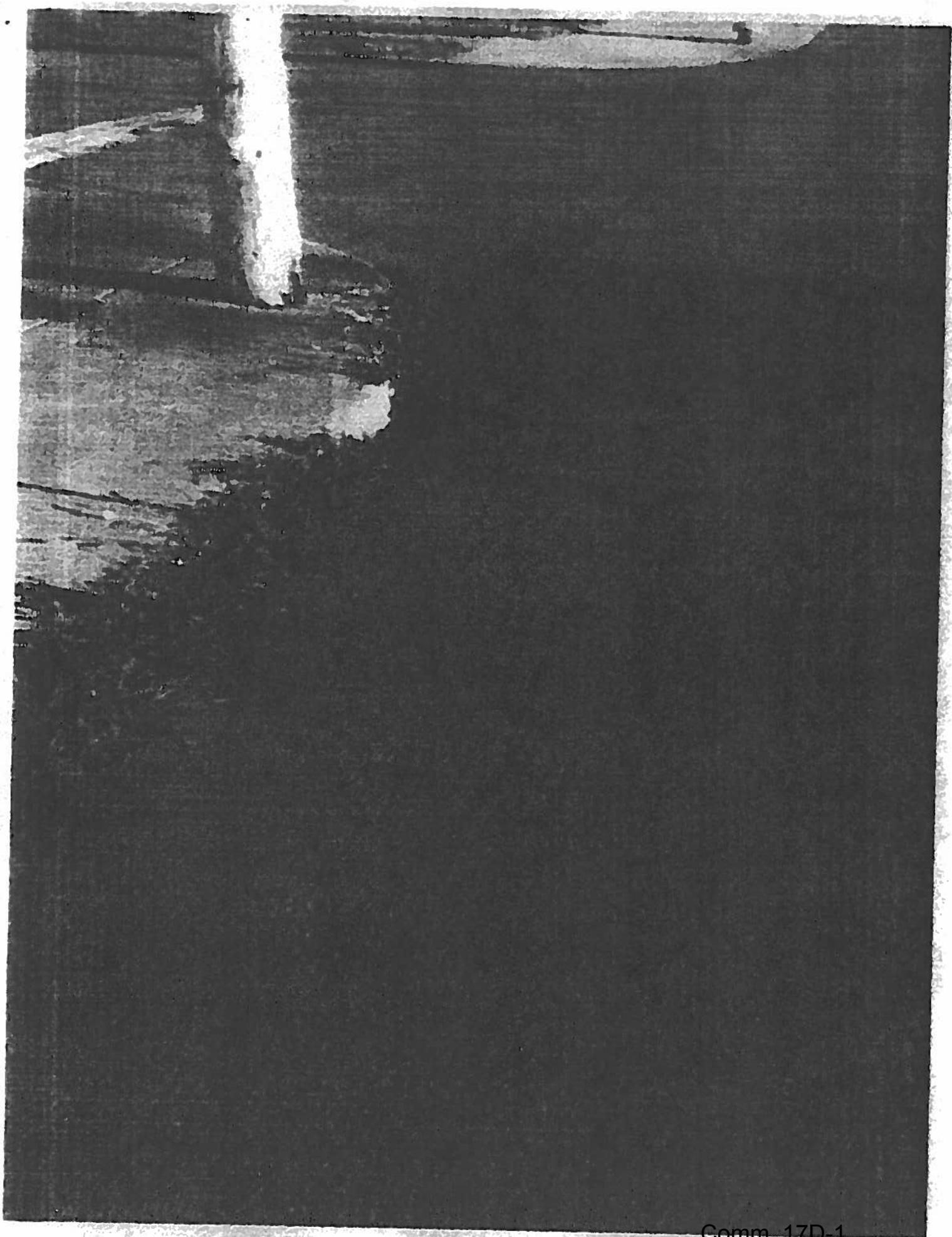
Sworn to before me this
13 day of September, 2012

Kelly Ann Giambra
Notary Public

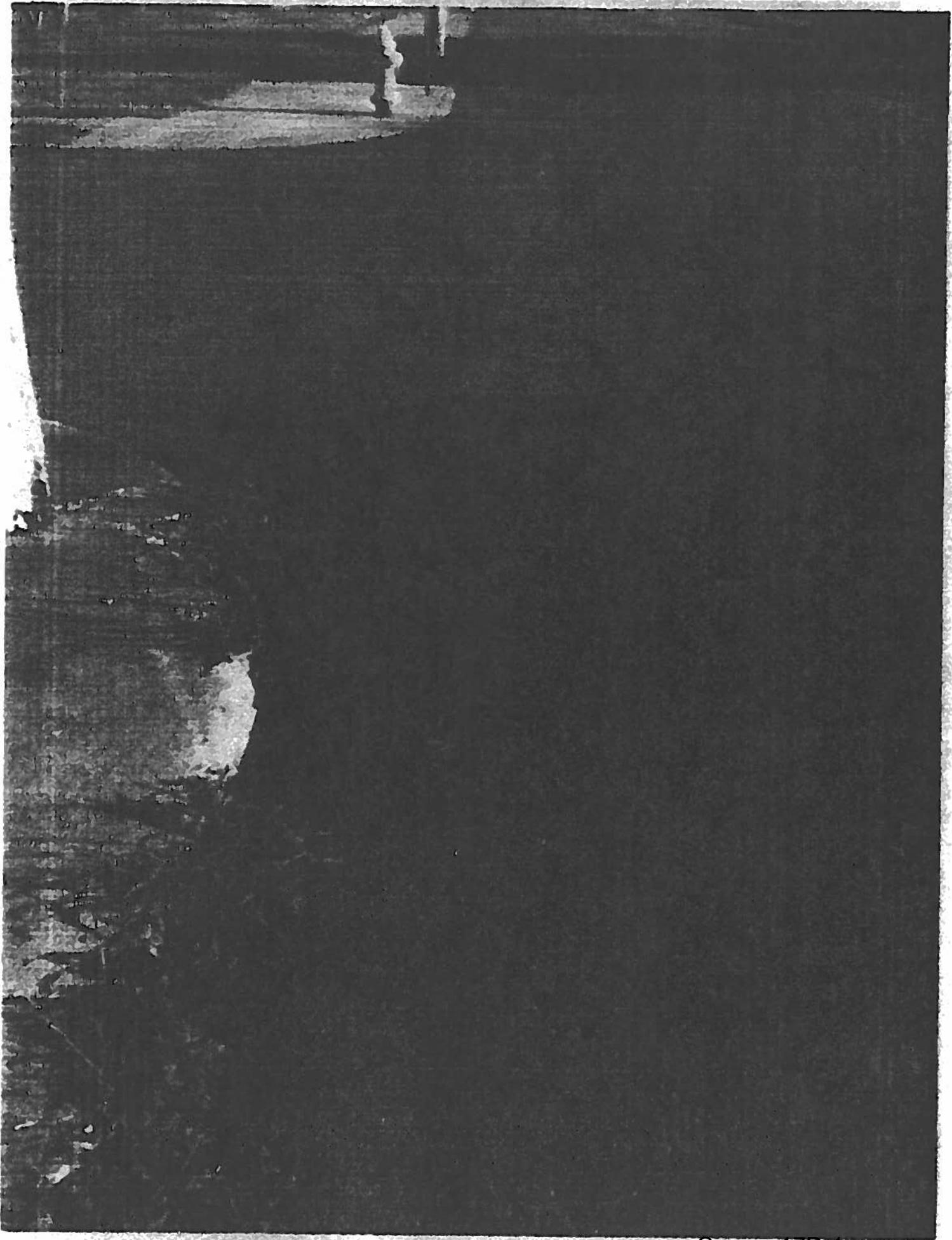
KELLY ANN GIAMBRA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01G16258713
Qualified in Erie County
My Commission Expires April 02, 2016

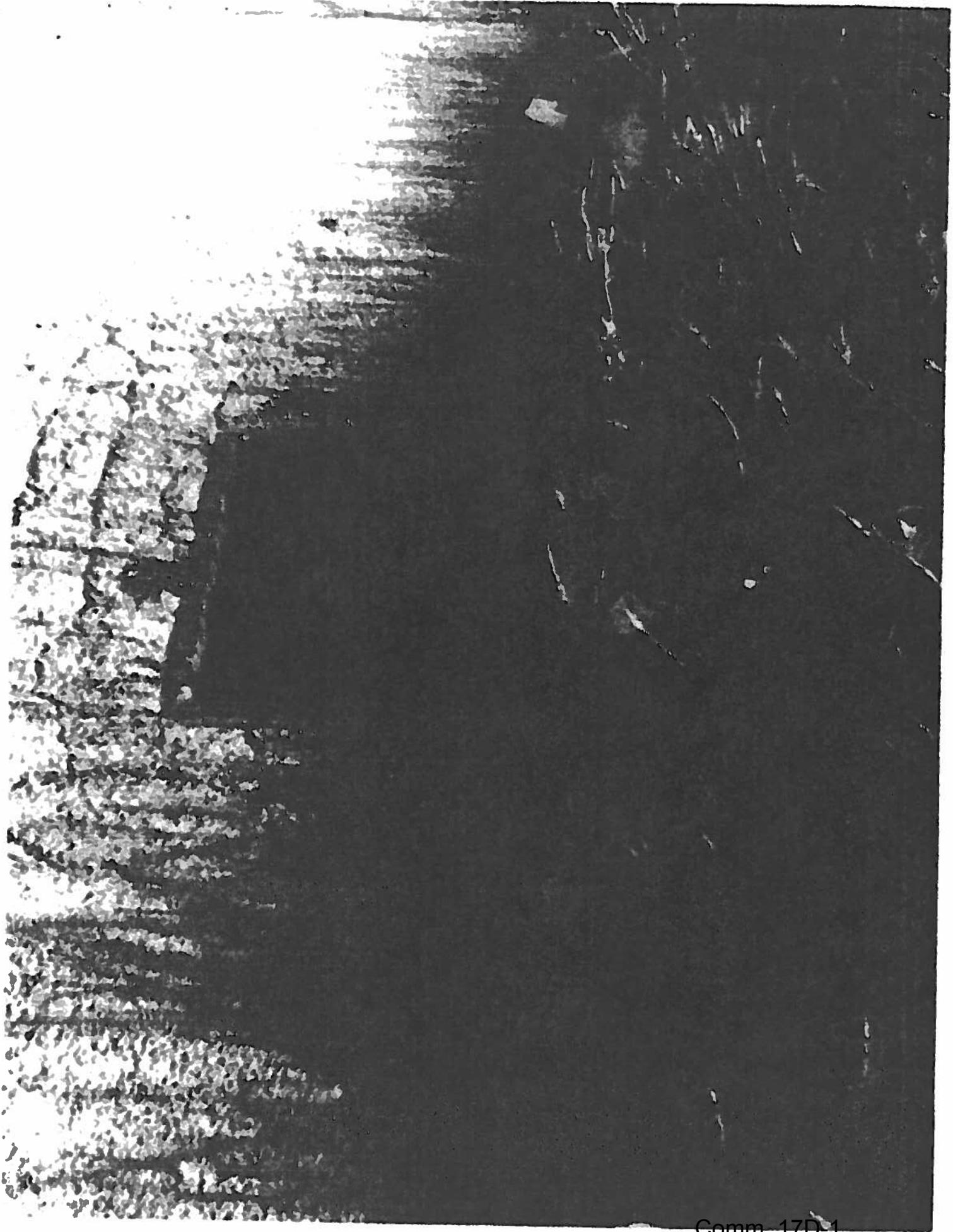












**Mercy Hospital of Buffalo
Discharge Information**

**Home Medication Form
Mercy Hospital of Buffalo
Emergency Department**

Name: Denise Taylor
Age: 53 years Gender: Female
Physicians: Mirshak, Monique
Fitzgerald, James, PA

Visit Date: 07/26/12 11:41
MRN: 00256228

Thank you for visiting Mercy Hospital of Buffalo. This form contains information about your medications. It is important that you read and understand this information.

Home Meds recorded during this visit

Drug, Route & Dose	Frequency	Reason	Continue		
			Yes	No	PCP
amlodipine Oral 10 mg	daily				

Medications you received during your visit:

Drug & Dose	Route	Rate	Duration	Given At
TDAP 0.5 ml,	IM			07/26 12:30
Motrin 600 mg	Oral			07/26 12:45

Prescriptions you received during your visit:
No Prescriptions

Home Medications you should continue to take:

Drug, Route & Dose	Frequency	Reason

Home Medications you should STOP taking:

Drug, Route & Dose	Frequency	Reason

You should follow up with your primary care physician after discharge regarding continuation of these medications:

Drug, Route & Dose	Frequency	Reason

Notes

You will need to see your MD to get refills.

PLEASE GIVE THIS FORM TO YOUR NEXT PROVIDER OF MEDICAL SERVICE (DOCTOR, CLINIC, HOME CARE, ETC.)

Signature:

Mirshak, Monique

Mercy Hospital of Buffalo

Mercy Hospital of Buffalo

565 Abbott Road
Buffalo, NY 14220
716-828-2888

Discharge Instructions for:
Arrival Date:

Taylor, Denise
Sunday, July 29, 2012

Thank you for choosing Mercy Hospital of Buffalo for your care today. The examination and treatment you have received in the Emergency Department today have been rendered on an emergency basis only and are not intended to be a substitute for an effort to provide complete medical care. You should contact your follow-up physician as it is important that you let him or her check you and report any new or remaining problems since it is impossible to recognize and treat all elements of an injury or illness in a single emergency care center visit.

Care provided by: Mirshak, Monique, MD
Fitzgerald, James, PA

Diagnosis: Leg Laceration

DISCHARGE INSTRUCTIONS	FORMS
Laceration Care	Medication Reconciliation
FOLLOW UP INSTRUCTIONS	PRESCRIPTIONS
Private Physician When: 7 - 10 days; Reason: Suture removal Emergency Department When: 7 - 10 days; Reason: Suture removal	None
SPECIAL NOTES	
None	

X-RAYS and LAB TESTS:

If you had x-rays today they were read by the emergency physician. Your x-rays will also be read by a radiologist within 24 hours. If you had a culture done it will take 24 to 72 hours to get the results. If there is a change in the x-ray diagnosis or a positive culture, we will contact you. Please verify your current phone number prior to discharge at the check out desk.

MEDICATIONS:

If you received a prescription for medication(s) today, it is important that when you fill this you let the pharmacist know all the other medications that you are on and any allergies you might have. It is also important that you notify your follow-up physician of all your medications including the prescriptions you may receive today.

Patient Copy

Discharge Instructions for: Denise Taylor

FOLLOW UP INSTRUCTIONS

Private Physician

When: 7 - 10 days

Reason: Suture removal

Emergency Department

When: 7 - 10 days

Reason: Suture removal

Mercy Hospital of Buffalo

Laceration Care

A laceration is a cut or lesion that goes through all layers of the skin and into the tissue just beneath the skin.

BEFORE THE PROCEDURE

The laceration will be inspected by your caregiver for amount and extent of tissue damage, for bleeding, for evidence of foreign bodies (pieces of dirt, glass, etc.), and for cleanliness. Pain medications can be used if necessary. The wound will then be cleansed to help prevent infection. Sutures, staples, steri strips, or wound adhesive will be used to close the wound, stop bleeding and speed healing. Sometimes this will decrease the likelihood of infection and bleeding.

LET YOUR CAREGIVERS KNOW ABOUT THE FOLLOWING:

- > Allergies.
- > Medications taken including herbs, eye drops, over the counter medications, and creams.
- > Use of steroids (by mouth or creams).
- > Previous problems with anesthetics or novocaine.
- > Possibility of pregnancy, if this applies.
- > History of blood clots (*thrombophlebitis*).
- > History of bleeding or blood problems.
- > Previous surgery.
- > Other health problems.

RISKS AND COMPLICATIONS:

Most lacerations heal fully. The healing time required varies depending on location. Complications of a laceration can include pain, bleeding, infection, *dehiscence* (splitting open or separation of the wound edges) and scar formation. The likelihood of complication depends on wound complexity, location, and on how the laceration occurred.

HOME CARE INSTRUCTIONS

- > If you were given a dressing, you should change it at least once a day, or as instructed by your caregiver. If the bandage sticks, soak it off with water.
- > Twice a day, wash the area with soap and water and rinse with plain water to remove all soap. Pat (do not rub) dry with a clean towel. Look for signs of infection (below).
- > Re-apply prescribed creams or ointments as instructed. This will help prevent infection. This also helps keep the bandage from sticking.
- > If the bandage becomes wet, dirty, or develops a foul smell, change it as soon as possible.
- > Only take over-the-counter or prescription medicines for pain, discomfort, or fever as directed by your doctor.
- > Have your sutures, staples, or steri strips removed in _____ days. Steri strips will peel off from the outer edges toward the center and will eventually fall off. Report to your caregiver if the strips are falling off and the wound does not appear fully healed.

SEEK MEDICAL CARE IF:

- > There is redness, swelling, or increasing pain in the wound.
- > There is a red line that goes up your arm or leg.
- > Pus is coming from wound.
- > You develop an unexplained oral temperature above 102° F (38.9° C), or as your caregiver suggests.
- > You notice a foul smell coming from the wound or dressing.
- > There is a breaking open of the wound (edges not staying together) before or after sutures have been removed.
- > You notice something coming out of the wound such as wood or glass.
- > The wound is on your hand or foot and you find that you are unable to properly move a finger or toe.
- > There is severe swelling around the wound causing pain and numbness or a change in color in your arm.

hand, leg, or foot.

SEEK IMMEDIATE MEDICAL CARE IF:

- > Pain is not controlled with prescribed medication or with acetaminophen or ibuprofen.
- > There is severe swelling around the wound site.
- > The wound splits open and bleeding recurs.
- > You experience worsening numbness, weakness, or loss of function of any joint around or beyond the wound.
- > You develop painful lumps near the wound or on the skin anywhere on your body.

If you did not receive a tetanus shot today because you did not recall when your last one was given, make sure to check with your caregiver when you have your sutures removed to determine if you need one.

AGREEMENT BETWEEN PATIENT AND HEALTHCARE TEAM:

Your signature on this document represents an understanding between you and the healthcare team that took care of you today. That means that you:

- > Understand these discharge instructions.
- > Will monitor your condition.
- > Will seek immediate medical care as instructed.

Document Released: 12/18/2009 Document Re-Released: 03/28/2009
ExitCare® Patient Information ©2009 ExitCare, LLC.

IMPORTANT: HOW TO USE THIS INFORMATION: This is a summary and does NOT have all possible information about this product. This information does not assure that this product is safe, effective, or appropriate for you. This information is not individual medical advice and does not substitute for the advice of your health care professional. Always ask your health care professional for complete information about this product and your specific health needs.

AMOXICILLIN/CLAVULANIC ACID - ORAL

(a-MOX-i-SIL-in/KLAV-ue-LAN-ik AS-id)

COMMON BRAND NAME(S): Augmentin

USES: Amoxicillin/clavulanic acid is a combination penicillin-type antibiotic used to treat a wide variety of bacterial infections. It works by stopping the growth of bacteria.

This antibiotic treats only bacterial infections. It will not work for viral infections (such as common cold, flu). Unnecessary use or misuse of any antibiotic can lead to its decreased effectiveness.

HOW TO USE: Take this medication by mouth with a meal or snack as directed by your doctor. Depending on your specific product, this medication is usually taken every 8 or 12 hours.

The dosage is based on your medical condition and response to treatment.

Antibiotics work best when the amount of medicine in your body is kept at a constant level. Therefore, take this drug at evenly spaced intervals. To help you remember, take it at the same times each day.

Continue to take this medication until the full prescribed amount is finished, even if symptoms disappear after a few days. Stopping the medication too early may allow bacteria to continue to grow, which may result in a return of the infection.

Tell the doctor if your condition persists or worsens.

SIDE EFFECTS: Diarrhea, nausea, or vomiting may occur. If any of these effects persist or worsen, tell the doctor or pharmacist promptly. Taking this medication with food will help to reduce stomach upset.

Remember that your doctor has prescribed this medication because he or she has judged that the benefit to you is greater than the risk of side effects. Many people using this medication do not have serious side effects.

Tell the doctor immediately if any of these rare but serious side effects occur: dark urine, persistent nausea/vomiting, severe stomach/abdominal pain, yellowing eyes/skin, easy bruising/bleeding, new signs of infection (such as fever, persistent sore throat), unusual tiredness.

This medication may rarely cause a severe intestinal condition (Clostridium difficile-associated diarrhea) due to a type of resistant bacteria. This condition may occur during treatment or weeks to months after treatment has stopped. Do not use anti-diarrhea products or narcotic pain medications if you have any of the following symptoms because these products may make them worse. Tell the doctor immediately if you develop: persistent diarrhea, abdominal or stomach pain/cramping, blood/mucus in your stool.

Use of this medication for prolonged or repeated periods may result in oral thrush or a new yeast infection. Contact the doctor if you notice white patches in your mouth, a change in vaginal discharge or other new symptoms.

A very serious allergic reaction to this drug is rare. However, get medical help right away if you notice any

symptoms of a serious allergic reaction, including: rash, itching/swelling (especially of the face/tongue/throat), severe dizziness, trouble breathing.

Amoxicillin can commonly cause a mild rash that is usually not serious. However you may not be able to tell it apart from a rare rash that could be a sign of a severe allergic reaction. Therefore, get medical help right away if you develop any rash.

This is not a complete list of possible side effects. If you notice other effects not listed above, contact the doctor or pharmacist.

In the US -

Call your doctor for medical advice about side effects. You may report side effects to FDA at 1-800-FDA-1088.

In Canada - Call your doctor for medical advice about side effects. You may report side effects to Health Canada at 1-866-234-2345.

PRECAUTIONS: Before taking this product, tell your doctor or pharmacist if you are allergic to amoxicillin or clavulanic acid, or to penicillin or cephalosporin antibiotics; or if you have any other allergies. This product may contain inactive ingredients, which can cause allergic reactions or other problems. Talk to your pharmacist for more details.

Before using this medication, tell the doctor or pharmacist your medical history, especially of: liver disease (including liver problems caused by previous use of amoxicillin/clavulanic acid), kidney disease, a certain type of viral infection (infectious mononucleosis).

Before having surgery, tell your doctor or dentist about all the products you use (including prescription drugs, nonprescription drugs, and herbal products).

This product may cause live bacterial vaccines (such as typhoid vaccine) not to work as well. Therefore, do not have any immunizations/vaccinations while using this medication without the consent of your doctor.

During pregnancy, this medication should be used only when clearly needed. Discuss the risks and benefits with your doctor.

This medication passes into breast milk. Consult your doctor before breast-feeding.

DRUG INTERACTIONS: Drug interactions may change how your medications work or increase your risk for serious side effects. This document does not contain all possible drug interactions. Keep a list of all the products you use (including prescription/nonprescription drugs and herbal products) and share it with your doctor and pharmacist. Do not start, stop, or change the dosage of any medicines without your doctor's approval.

Products that may interact with this drug include: methotrexate.

Before taking this product, tell your doctor or pharmacist if you are also taking probenecid. Probenecid slows down the removal of amoxicillin from your body, resulting in higher levels of this antibiotic in your bloodstream. For certain types of difficult-to-treat infections, your doctor may prescribe these 2 medications together in order to achieve this effect. Consult your doctor or pharmacist for more details.

Although most antibiotics probably do not affect hormonal birth control such as pills, patch, or ring, some antibiotics may decrease their effectiveness. This could cause pregnancy. Examples include rifamycins such as rifampin or rifabutin. Be sure to ask your doctor or pharmacist if you should use additional reliable birth control methods while using this antibiotic.

This medication may interfere with certain laboratory tests (including certain urine glucose tests), possibly causing false test results. Make sure laboratory personnel and all your doctors know you use this drug.

OVERDOSE: If overdose is suspected, contact a poison control center or emergency room immediately. US residents can call the US National Poison Hotline at 1-800-222-1222. Canada residents can call a provincial poison control center. Symptoms of overdose may include: severe vomiting, persistent diarrhea, changes in the amount of urine.

NOTES: Do not share this medication with others.

This medication has been prescribed for your current condition only. Do not use it later for another infection unless your doctor directs you to do so. A different medication may be necessary in that case.

With prolonged treatment, laboratory and/or medical tests (such as kidney/liver function, complete blood counts) may be performed periodically to monitor your progress or check for side effects. Consult this doctor for more details.

MISSED DOSE: If you miss a dose, take it as soon as you remember. If it is near the time of the next dose, skip the missed dose and resume your usual dosing schedule. Do not double the dose to catch up.

STORAGE: Store at room temperature away from light and moisture. Do not store in the bathroom. Keep all medications away from children and pets.

Do not flush medications down the toilet or pour into a drain unless instructed to do so. Properly discard this product when it is expired or no longer needed. Consult your pharmacist or local waste disposal company for more details.

Information last revised February 2011 Copyright(c) 2011 First DataBank, Inc.

FOLLOW UP INSTRUCTIONS

Private Physician

When: 7 - 10 days

Reason: Suture removal

Emergency Department

When: 7 - 10 days

Reason: Suture removal



MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 19, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Clabeaux, Eugene v. County of Erie, Village of Gowanda & Town of Persia</i>
Document Received:	Notice of Claim
Name of Claimant:	Eugene R. Clabeaux 10274 Broadway Road Gowanda, New York 14070
Claimant's attorney:	Christopher M. Pannozzo, Esq. Shaw & Shaw, P.C. 4819 South Park Avenue Hamburg, New York 14075

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

STATE OF NEW YORK

EUGENE R. CLABEAUX
10274 Broadway Road
Gowanda, NY 14070

Claimant

-vs-

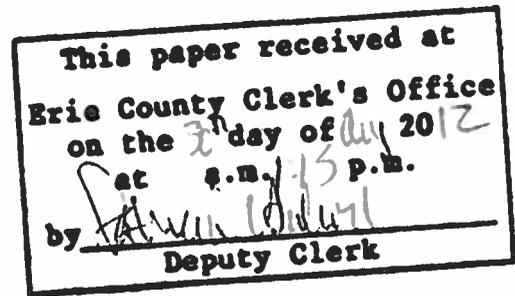
COUNTY OF ERIE
25 Delaware Avenue
Buffalo, NY 14202

Respondent

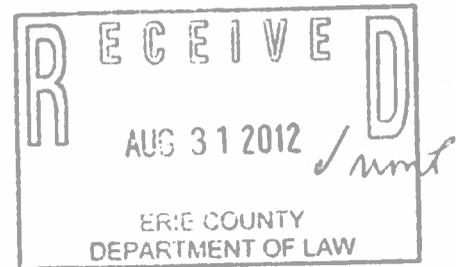
TO THE RESPONDENT:

PLEASE TAKE NOTICE claimant herein claims damages against respondents and in accordance with the requirements of General Municipal Law § 50-e, state as follows:

1. Claimant resides at 10274 Broadway Road, Gowanda, New York 14070.
2. Claimant is represented by Shaw & Shaw, P.C., Christopher M. Pannozzo, Esq., of counsel, 4819 South Park Avenue, Hamburg, New York 14075, (716) 648-3020 Telephone, (716) 648-3730 Telecopier.
3. This claim is for personal injuries and/or other damages generally sustained by claimant as a result of the intentional acts of battery, assault, and violation of Claimant's Federal Civil Rights by employees of the County of Erie, Village of Gowanda and Town of Persia.
4. The time when the claim arose and the time when injuries and damages herein alleged were sustained was June 13, 2012 at approximately 1:00 a.m.
5. The incident occurred within the confines of the Village of Gowanda on Perry Street.



NOTICE OF CLAIM



6. This is a claim for money damages for personal injuries and economic loss sustained by claimant against respondents, their agents, servants and employees, when claimant sustained serious personal injuries while under the custody and control of the respondents when said officers and employees of respondents caused and inflicted serious physical injuries to claimant.
7. The incidents aforesaid and the injuries and resulting damages were caused wholly and solely by the intentional actions of the respondents, their agents, servants and/or employees in that said agents, servants and/or employees exercised their authority in an intentionally malicious and careless manner, causing serious and permanent injuries and/or damages to the claimant herein.
8. As a result of the of the aforesaid conduct of said agents, servants and employees of respondent, the claimant has suffered severe and permanent injuries including, but not limited to, injuries to his back and other parts of his body, the full extent to be determined; has been caused to suffer and sustain pain and suffering as to the past to the present and, upon information and belief, into the future; has suffered shock to the nerves and nervous system; together with internal injuries, emotional upset and depression; has been deprived of the ability to enjoy a life and lifestyle that he was able to participate in and enjoy prior to the happening of said accident; has incurred medical and hospital expenses related to his care, treatment and attempted cure of said injuries and residual effects thereof and, upon information and belief, will continue to incur said injury-related expenses in the future; has been and may be further subjected to impairment of earnings, future earnings and/or future earning capacity as a result of the injuries sustained and/or the residual permanent effects relating thereto.

WHEREFORE, claimant respectfully prays and requests that these claims, as set forth herein, be honored and paid by respondents.

DATED: August 21, 2012
Hamburg, New York

SHAW & SHAW, P.C.



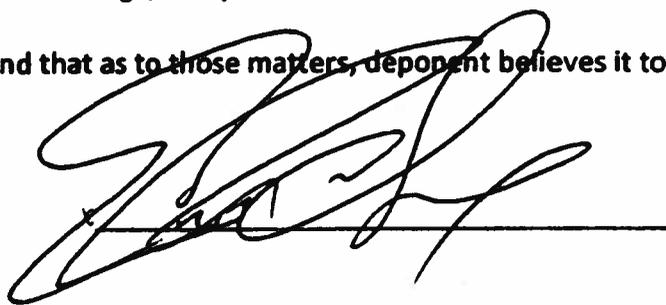
Christopher M. Panizzo
Attorneys for Claimant
Office and Post Office Address
4819 South Park Avenue
Hamburg, NY 14075
(716) 648-3020 Telephone
(716) 648-3730 Fax

VERIFICATION

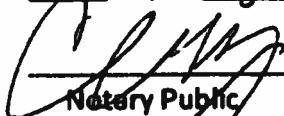
STATE OF NEW YORK)
)ss.:
COUNTY OF)

Eugene R. Clabean, being duly sworn, deposes and says that (s)he

is the plaintiff in the within action; that (s)he has read the foregoing and knows the contents thereof; that the same is true to her/his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes it to be true.



Sworn to before me this
27 day of August 2012



Notary Public

CHRISTOPHER M. PANNOZZO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 03/28/2013



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 19, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Hairston, Rita v. Erie County Sheriff's Office and County of Erie & various John Doe and Mary Doe parties</i>
Document Received:	Notice of Claim
Name of Claimant:	Rita Hairston 171 East Morris Avenue Buffalo, New York 14214
Claimant's attorney:	James P. Davis, Esq. 181 Franklin Street, Suite 101 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ERIE

RITA HAIRSTON
Plaintiff

INDEX NO. _____

-vs -

NOTICE OF CLAIM

ERIE COUNTY SHERIFF DEPARTMENT and COUNTY OF ERIE
(Various JOHN DOES and MARY DOES
Those names being fictitious, with
Intention of Naming Others When Known)
Defendant (s)

This paper received at the
Erie County Attorney's Office *James Davis*
from *[Signature]* on
the 10 day of Sept, 2012
at 3:00 a.m./p.m.
[Signature]
Assistant County Attorney

I, RITA HAIRSTON, hereby submit this Notice of Claim to the County of Erie and the Erie County Sheriff Department for Violation of various constitutional rights, wrongful execution of a search warrant, destruction of my dog Prada, ransacking of my home at 171 East Morris Ave., Buffalo, New York, and causing extreme emotional distress and loss of my quiet and enjoyment and the inability to reside in my home, among other injuries.

NAME OF CLAIMANT

RITA HAIRSTON
171 East Morris Ave.
Buffalo, New York 14214

ATTORNEY FOR CLAIMANT

JAMES P. DAVIS, ESQ.
181 Franklin St., Ste. 101
Buffalo, New York 14202

DATE OF INJURIES

: August 24, 2012

TIME

: Approximately 8:00 p.m.

WHERE

: 171 E. Morris Ave.
Buffalo, New York 14214

CONDITIONS

: Execution of Search Warrant
on the home of a homeowner
not named in the warrant.

Shooting and killing of Claimant's dog; rummaging through and ransacking of house; causing extreme emotional distress; and

INJURIES

:

leaving blood and dog brain matter on the floor; putting six bullet holes in her wall and eight shotgun holes in her bedroom door; ransacking her private and personal papers & containers; leaving a horrible odor in her house.

METHOD

:

Failure to competently investigate case before obtaining search warrant wrongful execution of search warrant on wrong house, wrong person, and violation of privacy and property rights and wrongful destruction property and animal.

**DATED: September 5, 2012
Buffalo, New York**

Yours, etc



JAMES P. DAVIS, ESQ.

Attorney for Claimant

RITA HAIRSTON

181 Franklin Street, Suite 101

Buffalo, New York 14202

(716) 847-2606

Fax: (716) 847-6516

**CERTIFICATION
22 NYCRR 202, 169(e)**

CLIENT CERTIFICATION

I, RITA HAIRSTON, hereby certify, under penalty of perjury that I have carefully read the annexed NOTICE OF CLAIM and that all information contained in that document is true and accurate in all respects to the best of my knowledge and understanding.

I further certify under penalty of perjury, that neither my attorney nor anyone acting on my attorney's behalf, was the source of any of the information contained in the annexed document; that I provided all of the information contained in the annexed document to my attorney; and that I understand that my attorney, in executing the Attorney Certification required by 22 NYCRR 202. 16(e) is relying entirely upon the information provided by me and upon my certification that all such information is true and accurate.

I further certify that the annexed document includes all information which I provided to my attorney which is relevant to such document and that my attorney has not deleted, omitted or excluded any such information.

Dated: 9/6/12


RITA HAIRSTON

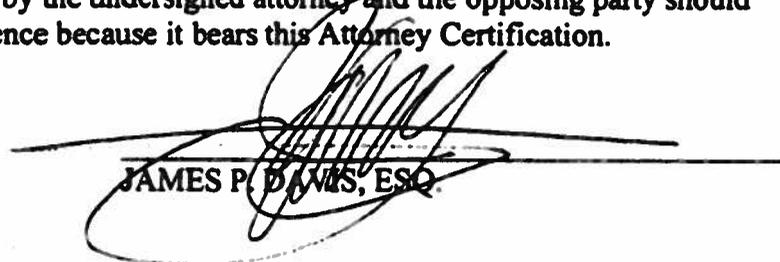
ATTORNEY CERTIFICATION

I, JAMES P. DAVIS, ESQ. , hereby certify, under the penalty of perjury, that I have no actual knowledge that the substance of any statements of fact contained in the annexed document are false. This Certification is based solely and exclusively upon information provided by the client, and upon the client's certification to the undersigned attorney that such information is not false, and is not based upon any review, audit, examination, inquiry or investigation made by the undersigned attorney or anyone on behalf of said attorney.

PLEASE TAKE FURTHER NOTICE that this Certification is made by the Attorney as an officer of the court and is directed solely and exclusively to the court in accordance with 22 NYCRR 202.16(e) and is expressly not directed or extended to the opposing party herein.

PLEASE TAKE FURTHER NOTICE, that the opposing party may not and should not rely upon this Attorney Certification in assessing the truth or validity of the information contained in the annexed document. The credibility of this submission is no greater than the credibility of the client represented by the undersigned attorney and the opposing party should give this document no greater credence because it bears this Attorney Certification.

Dated: 9/6/12


JAMES P. DAVIS, ESQ.



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

September 20, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Kennedy, Timothy M. v. Ward, Dennis and Mohr, Ralph, as Commissioners and Comprising the Erie County Board of Elections and Betty Jean Grant (Candidate-Respondent)</i>
Document Received:	Order to Show Cause
Name of Claimant:	Timothy M. Kennedy
Claimant's attorney:	Connors & Vilardo, LLP 1000 Liberty Building 424 Main Street Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle Parker
First Assistant County Attorney

MMP:dld
Enclosure

AT A TERM OF THE SUPREME COURT OF
THE STATE OF NEW YORK, COUNTY OF
ERIE, ON THE ____ DAY OF SEPTEMBER,
2012

PRESENT:

HON.

J.S.C.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

TIMOTHY M. KENNEDY,

Petitioner,

ORDER TO SHOW CAUSE

**DENNIS WARD AND RALPH MOHR,
AS COMMISSIONERS OF AND COMPRISING
THE ERIE COUNTY BOARD OF ELECTIONS**

INDEX NO.

Respondent:

and

BETTY JEAN GRANT,

Candidate-Respondent.

For an Order, pursuant to Sections 16-102, 16-106, 16-112 and 16-113 of the Election Law: directing the preservation of all ballots cast in the Primary Election held on September 13, 2012 for the Public Office of State Senator from the 63rd Senate District, in the County of Erie and directing the examination of all ballots cast in said election by Petitioner's counsel and agents; invoking the Court's jurisdiction to rule on the counting and canvassing, or refusal to cast or canvass, any ballot as set forth in Election Law Section 116-106(1); preserving Petitioner's rights under Section 9-209 (4)(d) of the Election Law and Section 16-113 of the Election Law; and at the conclusion of this proceeding certifying Petitioner as the lawfully elected candidate in this election.

Upon the annexed petition of Timothy Kennedy, duly verified this 19th of September, 2012, and upon all of the papers and proceedings hereinafter had herein, sufficient reason appearing therefore, it is hereby

ORDERED that Respondents Dennis Ward and Ralph Mohr, as Commissioners of and comprising the Board of Elections of the County of Erie, and Betty Jean Grant, Candidate-Respondent for Public Office of Democratic Candidate for the 63rd New York State Senate District show Cause before this Court at a Special Term for Election Proceedings, to be held at the Supreme Court Chambers, _____, Buffalo, State of New York, on the 20th day of September, 2012 at 10:30 of that day or as soon thereafter as counsel can be heard, for an ORDER

1. Impounding voting machines, ballots, absentee and affidavit ballots cast in or used in the Democratic Primary Election in the New York State 63rd Senate District held on September 13, 2012, and;
2. Directing the preservation of said ballots, and determining the process for the use of said ballots, in connection with any canvass or recanvass of the votes cast for said office of 63rd New York State Senate, and it is further, and;
3. Directing that Respondent Board of Elections and the Commissioners thereof certify Petitioner as the person duly elected to the subject Public Office of Democratic Candidate for State Senator from the 63rd State Senate District at the Primary Election held on the 13th day of September, 2012, or alternatively enjoining the improper issuance of a certificate of election to said Public Office, and it is further
4. Directing that the testing and inspection of any voting machines which have malfunctioned or have been tampered with is hereby ordered, and that the Court

shall make appropriate findings of fact, issue orders preserving evidence, and make adjustments to the canvass as shall be just and proper, and it is further

5. **ORDERED** that Petitioner is to be certified as the Democratic Candidate for State Senate from the 63rd Senate District at the September 13, 2012 Democratic Primary, upon the conclusion of this proceeding, and it is further

ORDERED that the Respondent Erie County Board of Elections produce upon the day of the hearing of this Order the ballots, canvass sheets, machine audit reports, minutes of the meeting of the Commissioners of Elections regarding the audit of the machines used in the September 13, 2012 Democratic Primary Election in the 63rd Senate District, poll books and other records which are the subject of this proceeding, and the determinations of the said Board of Elections upon any objections and challenges to voters and/or ballots and/or applications thereof, and any other papers or worksheet relating thereto, and it is further

ORDERED that Respondent Board of Elections preserve inviolate the ballots for the subject public office, from all others, and it is further,

ORDERED, that said Board of Elections shall preserve a record of all objections entered against the canvassing of any ballot, together with a record of the vote upon the objection thereon (sustained, overruled or split vote), and shall further preserve any ballot and supporting documentation upon a split vote of said Commissioners so that this Court may review same, and it further

ORDERED that, in the interests of justice, the efficient administration of the law, and judicial economy, the objections of any of the parties hereto to any ballot, ballot envelope, affidavit, application or documents relating to the ballots of the September 13,

2012 Primary Election for the subject Public Office are hereby ordered to be preserved, unopened, until the time of the hearing of this matter before this Court, regardless of whether three days have elapsed with respect to any split ruling on any such ballot, and all such ballots and documents shall be preserved, unopened, for the review of this court, and it is further

ORDERED that all voting machines used in this election shall be preserved as used in the Primary Election until further Order of this Court.

SUFFICIENT REASON APPEARING THEREFORE, leave is hereby granted to the Petitioner to submit on the date set forth for the hearing of the trial of this matter additional witnesses, exhibits, proofs and other evidence as may be necessary, and

SUFFICIENT REASON APPEARING THEREFORE, leave is hereby granted to the Petitioner to amend his pleadings as may be necessary and to submit a Bill of Particulars and Offer of Proof as to any fraud committed by any person in the Primary Election, and

SUFFICIENT REASON APPEARING THEREFORE, it is further

ORDERED, that, pending the hearing and determination of this Court upon the within petition, the Respondent Board of Elections be and hereby are enjoined and restrained from taking any action to certify with regard to any aspect of the Primary Election for the Public Office of Democratic Candidate as State Senator for the 63rd State Senate District, and it is further

ORDERED, that service of a copy of this order, together with a copy of the papers upon which it is granted, on the Respondents Dennis Ward and Ralph Mohr be made by leaving a copy of said order and papers at the Office of the said BOARD OF ELECTIONS

at 134 West Eagle Street, Buffalo, NY, or by delivering same to any one of the

Commissioners of Elections of the said BOARD OF ELECTIONS, on or before the

9/20/12 by 10:00 AM, 2012; that service of a copy of this Order to Show Cause, together

with a copy of the papers upon which it is granted, upon the Respondent-Candidate, ^{BM} ~~be~~ *- or personally served*

made by leaving a copy at her place of residence, and/or, at Petitioner's option, service may

be made to any or all Respondents via overnight mail, and depositing same with the U.S.

Postal Service on or before September 20, 2012, and/or by service upon respondents

attorney(s), and that ^{BM} ~~service shall~~ such service shall be deemed sufficient, and that proof of

such service will be presented at the date set forth for the hearing or the trial of this matter.

ENTER

HON. *Patrick M. Moyle*

JUSTICE OF THE SUPREME COURT
OF THE STATE OF NEW YORK

STATE OF NEW YORK
SUPREME COURT :: COUNTY OF ERIE

TIMOTHY M. KENNEDY

Petitioner,

VERIFIED
PETITION

**DENNIS WARD AND RALPH MOHR
AS COMMISSIONERS OF AND COMPRISING
THE ERIE COUNTY BOARD OF ELECTIONS**

INDEX NO. /2012

Respondents,

and

BETTY JEAN GRANT,

Candidate-Respondent,

For an Order, pursuant to Sections 16-102, 16-106, 16-112 and 16-113 of the Election Law: directing the preservation of all ballots cast in the Primary Election held on September 13, 2012 for the Public Office of State Senator from the 63rd Senate District, in the County of Erie and directing the examination of all ballots cast in said election by Petitioner's counsel and agents; invoking the Court's jurisdiction to rule on the counting and canvassing, or refusal to cast or canvass, any ballot as set forth in Election Law Section 116-106(1); preserving Petitioner's rights under Section 9-209 (4)(d) of the Election Law and Section 16-113 of the Election Law; and at the conclusion of this proceeding certifying Petitioner as the lawfully elected candidate in this election.

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Petitioner, by his attorneys, Connors and Vilardo, LLP, respectfully shows:

1. That petitioner is, and at all times hereinafter mentioned was, a resident of the City of Buffalo, County of Erie, State of New York. That he was a candidate for the Public Office of Democratic Candidate for the 63rd District New York State Senate in the

primary election held on September 13, 2012, in the County of Erie, that he was a duly registered voter at the primary election held on September 13, 2012, in the County of Erie, and that he voted in said election. Petitioner has standing under Sections 16-100, 16-102, 16-106, 16-112 and 16-113 to bring this proceeding.

2. That respondent Erie County Board of Elections is charged under the laws of the State of New York with the administration of elections throughout Erie County, and more particularly, here, with the fair and impartial administration of the election process in the 63rd District of the New York State Senate.

3. That respondents Dennis Ward and Ralph Mohr are the Commissioners that constitute the respondent Erie County Board of Elections.

4. That respondent Betty Jean Grant, residing at 100 Park Ridge Avenue, in the City of Buffalo, County of Erie, State of New York, was a candidate for the Public Office of Democratic Candidate for the office of 63rd District New York State Senate in the primary election held on September 13, 2012, in the County of Erie.

5. This Petition is brought pursuant to Election Law Section 16-106 (1), which grants jurisdiction to the court to rule on contested ballots, either challenging the casting of such ballots or the refusal to cast such ballots. It also invokes the court's jurisdiction under Section 16-106 (4) for the correction of errors in the Board of Elections' canvass and grants the court the jurisdiction to order a re-canvass. The statute sets forth a Statute of Limitations of 10 days from the primary election day (or the contested action of the Board of Elections) for commencement of such a proceeding. Election Law §16-102.

Your petitioner believes that the public interest requires that a judicially monitored examination and inspection of the voting machines, ballots, absentee and affidavit ballots cast for the said office of 63rd State Senate be allowed. Further, that the said machines and ballots must be impounded by the Court in view of the prospective contest respecting the said office for use in any canvass or recanvass of the votes cast for said office.

Unofficial election night results indicate this contest is exceedingly close with conflicting returns. As such, the outcome will hinge upon the recanvassing of voting machine ballots and of all other paper ballots. These other paper ballots include affidavit ballots, emergency ballots, absentee ballots and military ballots.

6. That your petitioner believes that the discretion of the Court should be exercised in allowing the relief herein sought so that any doubt and lack of confidence in the result of said election may be removed, and so that no doubt shall remain respecting the correctness and integrity of the result of the election for the office of 63rd District State Senate. A stay is requested to allow for the determination of the process of any canvass or recanvass of the ballots or votes cast in this election.

7. "Pursuant to Election Law § 16-113, the court, in a special proceeding brought by any candidate, may direct a manual audit of the voter verifiable audit records where evidence presented to the court otherwise indicates that there is a likelihood of a material discrepancy between such manual audit tally and such voting machine or system tally." Matter of Slisz v. Breyer, 92 A.D.3d 1238, 1240. Here, the actions and biases of the Board are sufficient, without regard to the apparent closeness of the election, to give rise

to a reasonable assumption that a manual audit may well produce a different result than that being reported in increasingly erratic fashion by Respondent Board.

8. Petitioner requests leave to and reserves the right to submit further proofs by way of witnesses, affidavits and evidence on the date set by this court for the trial and hearing of this matter, and to amend these pleadings to reflect the facts of the conduct of the subject election and/or facts adduced by the way of further investigation and/or a canvass of the ballots for the election for the subject public office by the Board of Elections, insofar as numerous facts have been presented to your petitioner which give rise to the reasonable assumption that the election for the 63rd District New York State Senate and the ongoing process are and were lacking the level of correctness and integrity required of respondent Board of Elections.

9. In *Slisz*, the Fourth Department held that "the court... may direct a manual audit ... where evidence presented to the court otherwise indicates that there is a likelihood of a material discrepancy ... which creates a substantial possibility that the winner of the election as reflected in the voting machine or system tally could change if a voter verifiable record audit of additional voting machines or systems or of all voting machines or systems applicable to such election were conducted." *Matter of Slisz*, 92 A.D.3d at 1240.

10. Here, numerous facts indicate both that there is a "likelihood of a material discrepancy between such manual audit tally and such voting machine or system tally" and a "discrepancy as defined in [section 9-208 (3)]," and that either or both of these situations "creates a substantial possibility that the winner of the election" might be

changed. Throughout the review of ballots, such discrepancies have been common. In particular, there appears to be a substantial error in Respondent Erie County Board of Elections accounting for the number of emergency and affidavit ballots received when compared to the number of ballots remaining in the poll books.

11. Additionally, that data provided to your respondent and his staff has been, at best, inaccurate. Initially, the Board indicated that the margin of votes was 271 votes on Election night. Subsequently, the Board changed that margin to 91 votes. On Friday, my staff was informed by Commissioner Ward that there were 1188 absentee ballots that still needed to be counted. This number was also reported to the media. After some investigation, it was revealed that there were only 1138 absentee ballots. On Friday, September 14th, my legal team was told by Commissioner Ward that he would provide to them by Monday, September 17th, at 9:00 AM, the number of affidavit ballots for the 63rd district. As of September 18, 2012 at 3 pm, that number had not yet been provided to my campaign or to my legal team.

12. In the course of the canvass of ballots there may be erroneous determinations made by the Board of Elections, and such determinations may be sustained by a unanimous vote. Without Court intervention at this juncture such ballot envelope would be opened, the ballot removed from the envelope and intermingled with others, depriving the Petitioner of the ability to have the administrative determination of the Boards of Elections reviewed by the Court.

13. In the event that there is a split vote of Respondent Commissioners with respect to the validity of a ballot at the Board of Elections, with the return date set by the Court

more than three days from the entry of an objection , the ballot envelope would be burst, the ballot removed and intermingled with others, depriving the Petitioner of the ability to have the administrative determination of the Board of Elections reviewed by the Court. Thus, the protections sought in the annexed Order to Show Cause are necessary to preserve the ballot for the Court's review.

14. In the event there are unanimous votes of the Respondent Commissioners against the objections of the Petitioner, the ballot envelopes would be opened, and the ability of this Court to review the objection and ruling thereon would be mooted.

15. Failure to so preserve objections would irreparably harm your Petitioner.

16. Petitioner may request various information to be provided to him by the Board of Elections. This information is required for Petitioner to have a meaningful participatory role in the canvass of paper ballots. It is requested that this be done without the need for a subpoena.

17. The Petitioner requests leave to effect service of a copy of the Order to Show Cause, together with as copy of the papers on which it is granted, upon Respondent-Candidate by leaving at her residence on or before the 20th day of September, 2012, and/or, at Petitioner's option, service may be made to any or all Respondents via overnight mail, and depositing same with the U.S. Postal Service on or before September 20th, 2012, and that such service shall be deemed sufficient, and/or by service upon respondents attorney(s), and that proof of such service will be presented at the date set forth for the hearing or the trial of this matter.

18. No prior application for the relief requested herein has been made by the Petitioner to any court.

19. Petitioner has no other remedy at law other than that applied for herein. Leave is respectfully requested and the Petitioners respectfully reserve the right to amend these pleadings as needed.

20. Leave is respectfully requested and Petitioner respectfully reserve his right to produce evidence in support of this petition by way of testimony, affidavits, and other evidence at the trial or hearing of this matter.

21. Leave is respectfully requested and the Petitioners respectfully reserve the right to make further applications to the Court for interim relief as may be needed.

22. In the event the Erie County Clerk's Office is closed and the Petitioners are unable to purchase an Index Number and RJL, and in light of the timing necessary for the procurement of an Order to Show Cause, leave is hereby requested to allow the Petitioners to purchase an Index Number and Request for Judicial Intervention, as well as file the instant Petition and Order to Show Cause with the clerk of Erie County on or before the 20th day of September 2012.

WHEREFORE, your petitioner prays for an order for the relief sought in the Order to Show Cause, and for such other and further and different relief as the Court may deem just and proper.

