



COUNTY OF ERIE

MARTIN A. POLOWY
ACTING COUNTY ATTORNEY

CHRIS COLLINS
COUNTY EXECUTIVE
DEPARTMENT OF LAW

THOMAS F. KIRKPATRICK, JR.
ACTING FIRST ASSISTANT COUNTY ATTORNEY

GA

February 11, 2011

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>Harleysville Worcester Ins. Co. as Assignee/Subrogee of Fisher Development & General Contracting, Inc. vs County of Erie</i>
Document Received:	Summons and Complaint
Name of Claimant:	Harleysville Worcester Insurance Company 355 Maple Avenue Harlesville, PA 19438-2297
Claimant's attorney:	C. Allan Reeve, Esq. Reeve Law Firm, PLLC 2151 Monroe Avenue, Suite 200A Rochester, New York 14618

Should you have any questions, please call.

Very truly yours,

MARTIN A. POLOWY
Acting Erie County Attorney

By: THOMAS F. KIRKPATRICK, JR.
Acting First Assistant County Attorney

TFK/mow
Enc.

cc: MARTIN A. POLOWY, Acting Erie County Attorney

6D-1

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

HARLEYSVILLE WORCESTER INSURANCE
COMPANY as Assignee/Subrogee of
FISHER DEVELOPMENT & GENERAL
CONTRACTING, INC.
355 Maple Avenue
Harleysville, PA 19438-2297,

Plaintiff,

vs.

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

Defendant.

SUMMONS

Plaintiff designates Erie
County as the place of trial.

Index No. 2010-011790

This paper received at the
Erie County Attorney's Office
from Felicia Conti on
the 18th day of Nov, 2010
at 2:10 a.m./p.m.
Stephanie Calhoun
Assistant County Attorney
L.A.H. 10/10

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorney an Answer to the Complaint in this action within twenty (20) days after service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you with the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

The basis of venue designated is the county where the Defendant, County of Erie, is situated pursuant to CPLR §504(1).

Dated: October 29, 2010
Rochester, New York

REEVE LAW FIRM, PLLC

By:

C. Allan Reeve
C. Allan Reeve, Esq.
Attorney for Plaintiff
Office and P.O. Address
2151 Monroe Avenue, Suite 200A
Rochester, New York 14618
Tel: (585) 287-5275

REEVE LAW FIRM PLLC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

HARLEYSVILLE WORCESTER INSURANCE
COMPANY, as Assignee/Subrogee of
FISHER DEVELOPMENT & GENERAL
CONTRACTING, INC.,

VERIFIED
COMPLAINT

Index No. 2010-011790

Plaintiff,

vs.

COUNTY OF ERIE,

Defendant.

Plaintiff, Harleysville Worcester Insurance Company, by its attorney Reeve Law Firm, PLLC, as and for its complaint against the defendant alleges as follows:

1. At all time herein mentioned, plaintiff Harleysville Worcester Insurance Company ("Harleysville") was and now is a foreign corporation organized and existing pursuant to the laws of the Commonwealth of Massachusetts with its principal place of business in Harleysville, Pennsylvania, and at all times relevant hereto was and now is authorized to issue surety bonds in the State of New York.

2. At all times herein mentioned, defendant County of Erie ("County") was and now is a domestic municipal corporation, duly organized and existing by virtue of the laws of the State of New York, and situated in the City of Buffalo, County of Erie, State of New York.

3. On or about July 23, 2003, the County and Fisher Development and General Contracting, Inc. ("Fisher") entered into a contract (the "Contract") whereby Fisher agreed to provide labor and materials in furtherance of a project known as Contract 203, Foundations and Flatwork for Phase I of the new Public Safety Campus for the Erie County Central Police Services, 2170 Whitehaven Road, Grand Island, New York (the "Project") (A copy of the Contract is attached hereto as Exhibit "A.").

REEVE LAW FIRM PLLC

4. On or about July 28, 2003, pursuant to the terms of the Contract and Section 137 of the State Finance Law, Harleysville, as surety, and Fisher, as principal, executed a Performance and Labor and Material Payment Bond ("Bond") No. BBC061394 with a penal sum in the Contract amount of \$1,821,916.00 in favor of the County, as obligee (A copy of the Bond is attached hereto as Exhibit "B").

5. Previously, on or about June 10, 2002, in partial consideration for Harleysville's issuing the Bond, Harleysville, Fisher and other individuals (the "Individual Indemnitors") entered into a General Agreement of Indemnity (the "Indemnity Agreement") (A copy of the Indemnity Agreement is attached hereto as Exhibit "C").

6. Pursuant to Para. 5 of the Indemnity Agreement, Fisher and the Individual Indemnitors agreed that Fisher's rights under the Contract would be assigned to Harleysville upon the occurrence of the condition of an "Event of Default" as defined in the "DEFINITIONS" section of the Indemnity Agreement

7. Due to the "failure, delay, refusal or inability of [Fisher] to pay claims, bills or indebtedness incurred in, or in connection with the performance of the" Contract, an Event of Default occurred under the Indemnity Agreement resulting in the assignment of Fisher's rights under the Contract to Harleysville.

8. By letter dated June 2, 2006, Harleysville, by its attorneys, notified the County that Fisher had failed to pay some of its subcontractors and suppliers on the Project.

9. In said June 2, 2006 letter, Harleysville also notified the County that Harleysville had sustained a loss in connection with the Bond in the amount of \$299,000.00.

10. In said June 2, 2006 letter, Harleysville also requested that the County forward to Harleysville the remaining Contract funds being held by the County, then believed by Harleysville to be in the amount of \$130,869.97.

20. Release of the \$87,884.51 to Fisher before all article 3-A trust claims had been paid or discharged constituted an improper diversion by the County of article 3-A trust assets regardless of the propriety of the County's intention.

21. Despite due demand for payment by Harleystville, the County has failed and refused to pay any part of the \$87,884.51 to Harleystville, and has not provided any evidence of the propriety of its deduction of \$42,985.46 from the Contact funds.

22. The County's refusal to make the demanded payment to Harleystville is a breach of its contractual obligations to Harleystville under the Bond, and a breach of its equitable obligations to Harleystville.

23. As a result of the County's breach of the Contract, breach of its equitable obligations to Harleystville and diversion of Article 3-A trust assets, Harleystville has been damaged by the County and is therefore entitled to payment from the County in the amount of \$130,869.97, less any proper deductions by the County, plus interest.

WHEREFORE, Plaintiff Harleystville Worcester Insurance Company demands judgment against the Defendant County of Erie in the amount of \$130,869.97, less any proper deductions by the County, plus interest, together with such other and further relief as to the Court may seem just and appropriate.

Dated: October 29, 2010
Rochester, New York

REEVE LAW FIRM, PLLC

By: 
C. Allan Reeve, Esq.
Attorney for Plaintiff
Office and P.O. Address
2151 Monroe Avenue, Suite 200A
Rochester, New York 14618
Tel: (585) 287-5275

REEVE LAW FIRM PLLC

VERIFICATION
(Foreign Corporation CPLR §3020)

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

C. ALLAN REEVE, ESQ., being duly sworn states that he is the attorney for plaintiff in this action and that the foregoing complaint is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes them to be true; that the grounds of his belief as to all matters not stated upon his knowledge are correspondence and other writings furnished to him by plaintiff and interviews with officers and employees of plaintiff; and that the reason why the verification is not made by plaintiff is that plaintiff is a foreign corporation.



C. Allan Reeve

Sworn to before me this
29th day of October 2010

Catherine E. Maletta
Notary Public

CATHERINE E. MALETTA
Notary Public, State of New York
Qualified in Wayne County
Commission Expires February 23, 2012