



COUNTY OF ERIE

MARTIN A. POLOWY
ACTING COUNTY ATTORNEY

CHRIS COLLINS
COUNTY EXECUTIVE

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

DEPARTMENT OF LAW

MEMORANDUM

TO: Robert Graber, Clerk, Erie County Legislature

FROM: Thomas F. Kirkpatrick, Jr., Acting First Assistant County Attorney

DATE: July 13, 2011

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 two (2) new claims brought against the County of Erie. The claims are as follows:

Claim Name

Lee-Ann Deering vs County of Erie, et al.
Linda C. Arthur vs County of Erie

TFK/crj

Attachments

cc: Jeremy A. Colby, Erie County Attorney



COUNTY OF ERIE

JEREMY A. COLBY
ERIE COUNTY ATTORNEY

CHRIS COLLINS
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MARTIN A. POLOWY
FIRST ASSISTANT COUNTY ATTORNEY

THOMAS F. KIRKPATRICK, JR.
SECOND ASSISTANT COUNTY ATTORNEY

July 13, 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>Deering, Lee-Ann vs Town of Hamburg, County of Erie and Village of Hamburg</i>
Document Received:	Order to Show Cause
Name of Claimant:	Lee-Ann Deering 26 Columbus Avenue Buffalo, New York 14220
Claimant's attorney:	Arienne J. Irving, Esq. 6720 Main Street, Suite 100 Williamsville, New York 14221

Should you have any questions, please call.

Very truly yours,

JEREMY A. COLBY
Erie County Attorney

By: 

THOMAS F. KIRKPATRICK, JR.
Second Assistant County Attorney
thomas.kirkpatrick@erie.gov

TFK/mow
Enc.

cc: JEREMY A. COLBY, Erie County Attorney

At a Special Term of the Supreme Court, held in and for the County of Erie, at the Courthouse thereof, Buffalo New York on the 1st day of July, 2011.

PRESENT: Honorable Timothy J. Walker
Justice Presiding

FILED
ACTIONS & PROCEEDINGS

JUL 01 2011

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE
LEE-ANN DEERING

ERIE COUNTY
CLERK'S OFFICE

Claimant,

v.

ORDER TO SHOW CAUSE

TOWN OF HAMBURG,
COUNTY OF ERIE, and
VILLAGE OF HAMBURG

Index No.: 2011002622

Respondents.

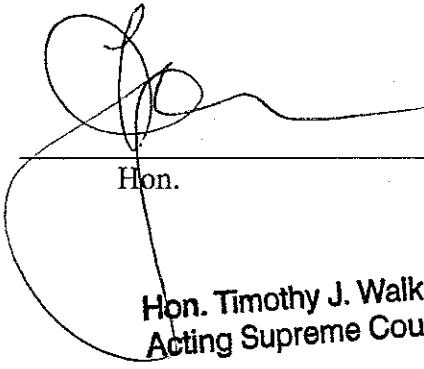
Upon reading the annexed affidavit of Arienne J. Irving, Esq., sworn to on the 30th day of June, 2011 let Respondents, Town of Hamburg, Erie County and Village of Hamburg, show cause at a Special Term of the Supreme Court, County of Erie, to be held at Part 20, 5 Delaware, Buffalo, NY 14202 on the 22nd day of July, 2011 at 9:30 am a.m./p.m., or as soon thereafter as counsel or the parties may be heard, why an Order under General Municipal Law Art. 4 § 50-e (5) allowing Claimant leave to file and serve a late notice of claim upon Respondents should not be granted, and for such other and further relief as this Court may deem just and proper, and it is further;

This paper received at the Erie County Attorney's Office from Margaret Beisler on the 17th day of July, 2011 at 2:00 a.m. 160 of 24

PAID / NO FEE
07/01/2011 14:08:30
ERIE COUNTY CLERK
RCPT # 11096159
I 2011002622

Dated: 7/1/11

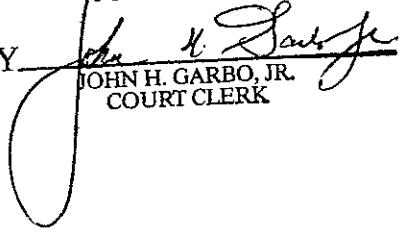
ENTER:



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

GRANTED

JUL 01 2011

BY 
JOHN H. GARBO, JR.
COURT CLERK

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

LEE-ANN DEERING

Claimant,

ATTORNEY AFFIDAVIT

v.

Index# 2011002622

TOWN OF HAMBURG,
ERIE COUNTY, and
VILLAGE OF HAMBURG

Respondents.

STATE OF NEW YORK)
COUNTY OF ERIE):ss

ARIENNE J. IRVING, ESQ., being duly sworn, deposes and says:

1. I am an attorney at law duly licensed, admitted, and authorized to practice in the Courts of the State of New York and I am not a party to this action. I am an associate at the law firm of WILLIAM MATTAR, P.C., attorneys for the Claimant. As such, I am fully familiar with all of the proceedings in this matter.

2. I submit an affidavit in support of Claimant's motion for leave to file and serve a late notice of claim against the TOWN OF HAMBURG, ERIE COUNTY and VILLAGE OF HAMBURG for personal injuries resulting from a motor vehicle accident occurring on May 9, 2010.

3. A copy of the proposed claim is attached hereto as **Exhibit "A"**.

STATEMENT OF FACTS

4. Claimant, Lee-Ann Deering, was driving at approximately 5:30pm on May 9, 2010 with her mother Tammy Huber, along with others, southbound on Bayview Road near the

intersection of New York State Route 5 also known as Lakeshore Road (hereinafter "Route 5") in the Town of Hamburg in Erie County, NY. The vehicle in which they were traveling was owned and operated by Ms. Deering. Ms. Deering was traveling southbound on Bayview Road entering the Bayview Road/Route 5 intersection when she was struck by a vehicle traveling eastbound on Route 5 owned and operated by William J. Mackey. This accident resulted in severe injuries to Ms. Deering and the death of her passenger, Tammy Huber. The Hamburg Police arrived at the scene of the accident and performed a thorough investigation including photographs and diagrams of the accident. The Hamburg Police Report is attached hereto as **Exhibit "B"**.

Upon information and belief, the layout of the intersection in which the accident occurred was a proximate cause of this motor vehicle accident. This intersection was known by the Town of Hamburg to cause a dangerous situation for motor vehicle operators attempting to cross through the intersection. In 2006 the New York State Department of Transportation, on the request of the Town of Hamburg Traffic Safety Advisory Board, performed a safety study of the relevant intersection and identified a safety issue. Specifically, the Department of Transportation found that the accident rate at the intersection of Bayview Road and Route 5 was significantly higher than the statewide average. The Department of Transportation calculated the rate of accidents as 1.04 accidents per million entering vehicles at the Route 5 and Bayview intersection as opposed to the statewide average accident rate of 0.27 accidents per million entering vehicles.

The Department of Transportation advised the Town of Hamburg Traffic Safety Advisory Board that the solution for the safety risks caused by this intersection was to close the

Bayview Access Road not permitting vehicles to travel straight through the intersection. The Department of Transportation specifically stated, “our study determined that the closure of the access road would generate **significant** safety benefits.” Exh. C [**emphasis added**] Upon completion of this study, the Hamburg Town Board unanimously ruled in favor of the NYS Department of Transportation’s plan to close the Bayview access road and construction was scheduled to take place in 2008. However, on March 12, 2007 the Hamburg Town Board held a meeting wherein the road closure was discussed with local business owners, and at this meeting it was determined that the Department of Transportation’s plan of closing part of Bayview Road would not be utilized. The Department of Transportation then agreed to consider other options as a solution to the safety risks, including installation of a signal light or reduction of the speed limits. The Department of Transportation’s further study received by the Town of Hamburg on January 16, 2008 found that a reduction in the speed limit was not justified and the installation of a traffic signal was not warranted in order to resolve the safety risks of the intersection. Upon information and belief, at the time of the accident on May 9, 2010 none of the proposed solutions, or any further solutions, had been implemented at this intersection. The Town of Hamburg, Erie County and Village of Hamburg were negligent in their failure to act on the known safety risk.

Correspondence between the Town of Hamburg and the New York State Department of Transportation, Meeting Minutes from the Town of Hamburg Traffic Safety Board and Town Board, and the NYS Department of Transportation’s safety study are attached as **Exhibits “C”, “D” and “E”**, respectively.

5. Following the accident, Ms. Deering was transported to Erie County Medical Center via Mercy Flight wherein she arrived unresponsive and required immediate brain surgery for a brain contusion which caused her to lose consciousness due to intracranial bleeding. Ms. Deering's injuries and subsequent surgery resulted in her being in a medically induced coma for several days and an extended hospital stay. Ms. Deering was hospitalized for 26 days. Once she came home from the hospital, she was immersed in her physical pain and recovery as well as the emotional pain from the loss of Ms. Huber. Ms. Deering was wheelchair bound for several weeks, and was unable to pursue a claim. In addition, Ms. Deering was not in the right mental state, as she was suffering from severe depression, to be focusing on a potential claim. She did not have an expectation that a matter immediately reported and investigated by the Town of Hamburg Police would be so rapidly time barred.

Attached hereto is a physician's affirmation from Ms. Deering's neurologist, Dr. Gary Wang, who has been treating Ms. Deering for her traumatic brain injury, as Exhibit "F". In addition, attached hereto is an affidavit from Dr. Lisa A. Keenan, who oversaw Ms. Deering's psychological treatment, as Exhibit "G".

6. Upon information and belief, on August 3, 2010, the Estate of Tammy Huber served a Notice of Claim upon the Town of Hamburg, Erie County and the Village of Hamburg personally and by certified mail. In addition, on August 3, 2010, the Estate also personally served a Notice of Intent to Sue upon the State of New York, the NYS Thruway Authority, and the NYS Department of Transportation. The service of both the Notice of Claim and the Notice

of Intent to Sue were within the requisite time limitations. The claims alleged by the Estate of Tammy Huber parallel those that Ms. Deering is now asserting.

7. Ms. Deering retained the law firm of William Mattar, P.C. on March 16, 2011. Since that time, our office has been investigating the matter in order to have the necessary documentation and evidence to pursue a claim. This investigation included, Freedom of Information requests to the Town of Hamburg and the NYS Department of Transportation, medical records requests to Erie County Medical Center, discussions with Highway Construction specialists, and communication with Ms. Deering's treating physicians and the attorney for the Estate of Tammy Huber.

APPLICABLE LAW

8. General Municipal Law Art. 4 § 50-e (a) states a claimant has 90 days to notify a public corporation of a potential claim founded upon a tort. This is referred to as a "Notice of Claim". However, General Municipal Law Art. 4 § 50-e (5)(1)(a) gives this court discretion to extend the time to serve a notice of claim.

9. General Municipal Law Art. 4 § 50-e (5) further states that the court may consider the following relevant factors in making a determination of whether to grant the application for leave to file a late notice of claim: (1) whether the public corporation or its attorney or its insurance carrier acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one of this section or within a reasonable time thereafter; (2) whether the claimant was ...mentally or physically incapacitated...; (3) whether the claimant in serving a notice of claim made an excusable error concerning the identity of the

public corporation against which the claim should be asserted; and (4) whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits. The § 50-e considerations numbered 1-4 above will be analyzed below.

ANALYSIS

10. (1) NOTICE. The Respondents in this matter did have actual notice of the incident at issue. Agents of the Respondents were present at the intersection of Bayview Road and Lakeshore Road/NYS Route 5 on the day of the accident. Upon arrival at the scene, these agents performed a thorough investigation including photographs, diagrams and witness interviews. These agents were also aware of the seriousness of Ms. Deering's injuries caused by the motor vehicle accident, because the agents themselves administered her first aid treatment, and handled her removal from the scene to the hospital. In addition, the Respondents were served with a notice of claim by the Estate of Tammy Huber within the requisite time period for the identical claims Ms. Deering now asserts. As such, the Respondents had sufficient notice of this claim.

11. (2) INCAPACITY. Ms. Deering suffered a traumatic brain injury and was hospitalized for 26 days following the incident, then was housebound and wheelchair bound for several weeks thereafter. See **Exhibit F**. In addition, Ms. Deering was treating with Denise Riley, a psychological intern who was overseen by clinical psychologist Lisa Keenan, Ph.D., for the mental toll caused by the traumatic brain injury she sustained in the accident as well as the sudden and tragic loss of her mother. See **Exhibit G**. Thus, it was not until early 2011 that she was able to begin attempting to seek legal counsel to discuss this matter and see what could be done.

12. (3) EXCUSABLE ERROR. Ms. Deering was unaware of her potential claim against the Respondents for her motor vehicle accident, and thus was unaware of the need for notice within 90 days from the date of the accident. Ms. Deering was unaware or could not reasonably have known of the safety risks present at the intersection of Route 5 and Bayview Road, or of the safety studies performed there in the years prior to this accident. Ms. Deering was focused on her physical and emotional recovery, and only learned of a potential claim against the Respondents after consulting an attorney in relation to the accident.

13. (4) PREJUDICE. Respondents will suffer no prejudice should this court grant leave to file a late notice of claim. The Respondents' agents were immediately alerted to the incident and had the opportunity to fully investigate the matter on the day it occurred. In addition, they were notified of the claim within the requisite 90 day time period by the Estate of Tammy Huber, and thus were able to adequately prepare to defend such claim. The Estate of Tammy Huber's action against the Respondents is currently pending in Erie County Supreme Court in front of Justice Timothy Walker (Index # 000793/2011). The Respondents will be required to defend this action against the Estate of Tammy Huber, and the addition of Ms. Deering's claims involving the same parties and facts should not and would not cause any prejudice.

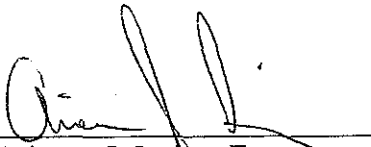
14. SUPPORTING CASE LAW. The Fourth Department Appellate Division recently affirmed an Oneida County Supreme Court decision with issues similar to the present case. Carpenter v. N.Y. Advance Elec., Inc., 77 A.D.3d 1344, 908 N.Y.S.2d 297 (4 Dept. 2010). In *Carpenter*, the defendant municipality was immediately alerted to the incident that gave rise to the eventual action. The court ruled, the "trial court's grant of leave to file a late notice

of negligence or malfeasance claim against the village was not abuse of discretion, where actual notice was had and there was no compelling showing of prejudice to the village." Id. The immediate and actual notice in *Carpenter* was, in large part, the basis for the ruling in plaintiff's favor. Additionally, *Carpenter* also reiterates a county Supreme Court's "broad discretion to grant or deny application for leave to serve a late notice of claim." Id.

CONCLUSION

15. This court has broad discretion to grant Ms. Deering's application for leave to file a late notice of claim. Ms. Deering's reasons for filing a late notice of claim fit within the considerations prescribed by General Municipal Law Art. 4 § 50-e (5) because the public corporation was immediately notified, Ms. Deering was physically and mentally incapacitated for the 90-day notification period, and she did make an excusable error about the method by which to proceed under the circumstances. Furthermore, because of the Respondent's immediate notice of the events that gave rise to the claim, the detailed investigation performed by agents of the public corporation, and the fact that they were placed on notice by a related claimant for the exact same claims within the requisite 90 day time period they suffer no prejudice by this court's granting of the leave.

WHEREFORE, your deponent requests an Order granting the Claimant's motion for leave to file and serve a late notice of claim against the TOWN OF HAMBURG, ERIE COUNTY and VILLAGE OF HAMBURG, and such other and further relief as may be proper.


Arienne J. Irving, Esq.

Sworn to before me this
30th day of June, 2011.


Notary Public

Cheryl M. Reed
Notary Public, State of New York
Qualified in Erie County
No. 02RE6220324
My Commission Expires
April 12, 20 14



COUNTY OF ERIE

JEREMY A. COLBY
ERIE COUNTY ATTORNEY

CHRIS COLLINS
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MARTIN A. POLOWY
FIRST ASSISTANT COUNTY ATTORNEY

THOMAS F. KIRKPATRICK, JR.
SECOND ASSISTANT COUNTY ATTORNEY

July 13, 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>Arthur, Linda C. vs County of Erie</i>
Document Received:	Summons and Complaint
Name of Claimant:	Linda C. Arthur 858 Nicole Lane Angola, New York
Claimant's attorney:	David J. Seeger, Esq. 69 Delaware Avenue Suite 1100 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

JEREMY A. COLBY
Erie County Attorney

By: 

THOMAS F. KIRKPATRICK, JR.
Second Assistant County Attorney
thomas.kirkpatrick@erie.gov

TFK/mow
Enc.

cc: JEREMY A. COLBY, Erie County Attorney

UNITED STATES DISTRICT COURT

for the
WESTERN DISTRICT OF NEW YORK

ORIGINAL

LINDA C. ARTHUR

Plaintiff

v.

COUNTY OF ERIE

Defendant

Civil Action No.

11 CV 0492

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

COUNTY OF ERIE
95 Franklin Street, Room 1634
Buffalo, NY 14202

This paper received at the
Erie County Attorney's Office
from Paula Altieri on
the 7th day of July, 2011
at 10:28 a.m./p.m.

Jessette M. DiStato
Assistant County Attorney

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David J. Seeger, Esq.
69 Delaware Avenue, Suite 1100
Buffalo, New York 14202
716-856-1536

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: JUN 13 2011

Michael J. Roemer
Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ORIGINAL
RECEIVED AND FILED
UNITED STATES DISTRICT COURT CLERK
WESTERN DISTRICT OF NEW YORK

LINDA C. ARTHUR,

Plaintiff,

JUN 13 2011

BY: 

COMPLAINT

-v-

COUNTY OF ERIE,

Civ. Action No. **11 CV 0492-S**

Defendant.

INTRODUCTION

Plaintiff, by her attorney, DAVID J. SEEGER, ESQ., states as and for her Complaint:

1. Plaintiff's claims pertain to Defendant's deprivation of her Constitutional rights during her detention at the Erie County Holding Center on December 27, 28 & 29, 2008.

2. Defendants have 1) deprived Plaintiff of her right to substantive due process under the Fourteenth Amendment, 2) deprived Plaintiff of her right to be free from unreasonable searches and seizures under the Fourth and Fourteenth Amendments.

JURISDICTION AND VENUE

3. Jurisdiction in this action arises under 42 U.S.C. §1983.

4. Venue of this action lies in the United States District Court for the Western District of New York because it is the judicial district where the claims arose and where the parties reside.

5. The constitutional violations and other wrongs alleged herein occurred within the County of Erie, State of New York.

PARTIES

6. Plaintiff Linda C. Arthur, at the times relevant hereto, is a resident of Erie County

in the State of New York, residing at 858 Nicole La., Angola, NY.

7. Upon information and belief, Defendant is a municipal corporation chartered by the Legislature of the State of New York.

STATEMENT OF FACTS

8. The Erie County Holding Center is under the management of the Sheriff's Department of the County of Erie. The County Executive is Chris Collins. The County Sheriff is Timothy J. Howard.

9. Plaintiff is undergoing treatment for breast cancer; Plaintiff has been prescribed Arimydex, an estrogen blocker, to be taken daily to prevent the recurrence of her breast cancer.

10. Plaintiff suffers from severe arthritis, which if not regularly treated with ibuprofen every six to seven hours, causes extreme swelling in and around the knee joints. Such swelling frequently renders her unable to walk.

11. At some times in or about the year 2008 Plaintiff had been ticketed for parking violations and, upon information and belief, had the registration on the vehicle she owned and/or her driver's license suspended for non-payment of parking tickets.

12. Plaintiff did not know or receive actual notice of the suspension prior to it taking effect.

13. In or about the month of November, 2008 Plaintiff was given an appearance ticket requiring her, upon information and belief, to appear in Buffalo City Court on a charge of operating a motor vehicle during the aforesaid suspension.

14. Plaintiff promptly thereafter ascertained the charges due on the unpaid parking tickets, paid them and took all steps necessary to have the aforesaid suspension(s) lifted.

15. In doing so, Plaintiff acquired the belief that she had resolved the Vehicle &

Traffic Law violation(s) for which she had been ticketed.

16. As a result, Plaintiff did not appear in Buffalo City Court on the date set forth in the aforesaid appearance ticket, and unbeknownst to Plaintiff a "bench warrant" for her arrest was issued.

17. On Saturday, December 27, 2008, Plaintiff voluntarily went to the Town of Evans police station to make an unrelated complaint, and was arrested on the outstanding warrant.

18. Plaintiff was arrested on Saturday, December 27, 2008 at the Town of Evans police station and taken later that day to the Erie County Holding Center in the City of Buffalo.

19. Upon arrival, Plaintiff was booked, taken to a separate room, stripped naked and was shoved against a wall.

20. Plaintiff was strip searched in the presence of two unknown officers, one male and one female.

21. As part of the search, an unknown female corrections officer forcefully removed Plaintiff's bra, aggravating the spot where she had had breast cancer surgery.

22. When Plaintiff cried out, the unknown female corrections officer told her "you're a big girl; you can handle it."

23. An unknown male corrections officer was present during the search and could see Plaintiff undressed from the rear.

24. Plaintiff requested and was denied medication for her breast cancer.

25. Plaintiff requested and was denied medication for her arthritis.

26. Plaintiff was then fingerprinted. While being fingerprinted, Plaintiff told two additional corrections officers of her need for her medication; one of the corrections officers responded "you won't be needing them."

27. Plaintiff did not receive medical screening upon entering the Holding Center.
28. Upon information and belief, it is the Holding Center's policy or custom not to medically screen inmates as they are admitted to the facility.
29. The Holding Center does not have the personnel to properly screen incoming inmates.
30. It is believed that the holding Center does not have registered nurses overseeing licensed practicing nurses, as State law requires (see *United States of America v. Erie County*, p. 29-30).
31. After booking, Plaintiff was placed in a small holding room often referred to as the "Court hold," roughly 8 feet by 15 feet. At the back of the room was a metal bench which could seat four.
32. Upon information and belief, this room was designed to hold up to four people for short periods while awaiting a hearing or bail. It was not designed for sleeping.
33. The room had a toilet guarded by a low wall (about 3 ½ feet high by six inches wide) that offered very little privacy. The room had a window on the side of the cell with the toilet, and corrections officers (both male and female) walking by the room could easily see the female detainees as they used the toilet.
34. The cell had no toilet paper.
35. Attached to the toilet was a contraption that somewhat resembled a water fountain, however, it was not functional, and Plaintiff and the other inmates were not able to drink water during their time at the Holding Center.
36. Plaintiff was not allowed to shower or wash her hands during the approximately 48 hours she was in the Holding Center.

37. The room was extremely cold and had a foul odor.
38. On the day that Plaintiff was arrested, the weather was unusually warm. Plaintiff was wearing light clothing not meant for cold temperatures.
39. When Plaintiff was taken to the room there were three or four others. This equates to 24-30 square feet per person. By the end of Saturday the number reached seven or eight, or roughly 12-15 square feet per person.
40. Early Sunday morning the room held a total of eleven people, including Plaintiff.
41. Among the other inmates was a young female, bleeding openly from a bite wound allegedly suffered in a fight with an HIV-infected prostitute.
42. That female was not allowed to go to the hospital and remained in the cell with Plaintiff and the other detainees.
43. Another detainee was arrested for stabbing.
44. Another detainee was charged with attempted vehicular manslaughter.
45. According to Plaintiff another detainee admitted Saturday night: a large, drunk female was taken to the cell and started bullying the other detainees and attempted to pick a fight with the girl with the bite mark.
46. The room was crowded, so that most of the detainees were forced to sit on the floor or otherwise stand.
47. There was a stain which appeared to be blood smeared on the wall, and the detainees who could not sit on the bench were made to sit with their backs up against the blood-covered wall.
48. This room was not a cell in the traditional sense; there were two windows made of

Plexiglas, one next to the toilet and one on the door. There were no holes through which air could get in or sound could get out. Plaintiff could not speak to the corrections officers or get their attention.

49. On several occasions the detainees did pound on the glass asking for water and for medical treatment, but were ignored.

50. On one occasion the young woman with the bite wound pounded on the glass demanding water, and the corrections officer on duty made the effort to go get several bottles of water, walk by the window, and then proceed to the booking area to share with the other corrections officers as if to taunt the dehydrated detainees.

51. Plaintiff's only means for hydration was the half pint milk cartons served with meals.

52. Because there was no garbage can in the cell, the prisoners had to put their trash on the floor.

53. The trash would be allowed to accumulate for up to one day. The detainees had the opportunity to clean the floor of the cell with bleach once a day.

54. Many of the detainees who did not have a seat on the bench sat in the trash.

55. Plaintiff was denied a mattress on which to sleep Saturday night. She was also denied a pillow, sheets or a blanket.

56. The lights in the room remained bright for the duration of Saturday night.

57. Plaintiff was not allowed to make a phone call until 2:30 a.m. on Sunday morning.

58. The deprivation of Plaintiff's ibuprofen caused her knees to swell up to the point where she could no longer walk. When she was taken to Court she needed the other detainees to carry her.

59. On Sunday, December 28th, Plaintiff was taken to Buffalo City Court for arraignment. Her case was not called, and an unknown corrections officer told her that the County had "lost her paperwork." She was returned to the cell for an additional 24 hours.

60. When Plaintiff returned to her cell she started to "lose it" mentally. Another detainee commented "Oh my God, what's wrong with you?" The cold made her lips turn blue and the lack of sleep and severe conditions caused Plaintiff to hallucinate and shake convulsively.

61. Only then, and after frequent pounding on the glass was Plaintiff given a sweatshirt and a pair of sweatpants by one of the corrections officers.

62. On Sunday night Plaintiff was taken to a dormitory inside the Holding Center where she was given a thin mattress to place atop a bench, which was meant to serve as a bed.

63. The toilet was situated directly in front of a male corrections officer.

64. Also, this toilet did not come with toilet paper.

65. There was once again no functional sink or water fountain to be seen.

66. Aside from her Court appearance, this was the only time Plaintiff was taken out of the Court hold room during her approximate 48 hour stay at the Holding Center.

67. Plaintiff was denied any opportunity for exercise or recreation.

68. Plaintiff was denied the ability to read, write or even know the time of day during the period of her detainment.

69. Throughout the time she was at the ECHC, Plaintiff was denied any basic hygiene materials, including a toothbrush and toothpaste.

70. Defendant County knew or should have known of the conditions at the Holding Center. Defendant knew or should have known of the callousness of the corrections officers.

71. Because Defendant was aware or should have been aware, Defendant's conduct rises at least to the level of deliberate indifference, if not deliberate intent to punish.

72. Such deliberate indifference (or deliberate malice) constitutes a policy or custom actionable under a 42 U.S.C. §1983 claim.

73. Plaintiff was released from the Holding Center at midday on Monday, December 29, 2008. She still suffers from the trauma of her experience at the Holding Center, treatment for which includes counseling. She barricades the door to her room, fearful that somehow she will be taken back to the Holding Center.

74. Following her arraignment and release, the charge(s) forming the basis for the aforesaid arrest warrant were dismissed.

75. Plaintiff has never been convicted of a crime, and is neither a detainee nor an inmate.

FIRST CLAIM FOR RELIEF:

DEPRIVATION OF DUE PROCESS

76. Plaintiff repeats all the foregoing allegations.

77. Plaintiff was deprived of her Fourteenth Amendment right to substantive Due Process.

78. Defendant County subjected Plaintiff to numerous conditions of confinement which separately and in confluence amounted to punishment without the benefit of Due Process of law.

SECOND CLAIM FOR RELIEF:

UNLAWFUL SEARCH AND SEIZURE

79. Plaintiff repeats all the foregoing allegations.

80. Plaintiff's Fourth Amendment right (applicable to the States through the Fourteenth Amendment) to be free from unreasonable search and seizure was violated when she was subjected to a strip search without reasonable suspicion.

JURY DEMAND

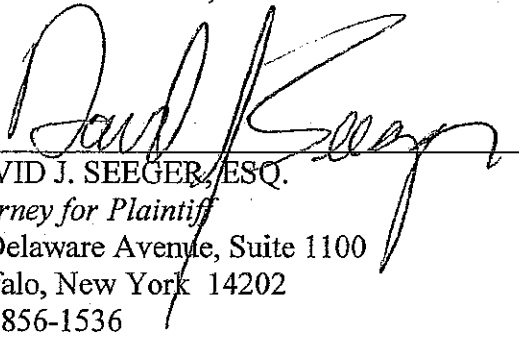
81. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff does hereby demand a jury trial in this action.

WHEREFORE, Plaintiff demands judgment against the Defendant 1) awarding Plaintiff compensatory damages in an amount to be determined by a jury, 2) awarding reasonable attorney's fees and litigation costs pursuant to 42 U.S.C. §1988, 3) awarding declaratory and injunctive relief in favor of Plaintiff and against Defendant and 4) such other and further relief as this Court deems just and proper.

DATED: Buffalo, New York
June 6, 2011

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