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

May 13, 2013

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:	*Ekes, Thomas v. Village of Kenmore, Town of Tonawanda, City of Buffalo and County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	Thomas Ekes 200 Wallace Avenue Buffalo, New York 14216
Claimant's attorney:	Richard E. Updegrove, Esq. Spadafora & Verrastro, LLP 2 Symphony Circle Buffalo, New York 14201

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle M. Parker (dld)
Michelle M. Parker
First Assistant County Attorney

MMP
Enclosure

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Claim of

THOMAS EKES

Claimant

- vs -

VILLAGE OF KENMORE,
TOWN OF TONAWANDA,
CITY OF BUFFALO and
COUNTY OF ERIE

Respondents

NOTICE OF CLAIM

This paper received at the
Erie County Attorney's Office
from Nicole Williams on
the 3 day of May, 2013
at 1:00 a.m. p.m.
Kristin M. Walden
Assistant County Attorney

PLEASE TAKE NOTICE, that THOMAS EKES has claims and hereby makes claims against the COUNTY OF ERIE, for personal injuries and damages sustained, and pursuant to statutes in such cases made and provided, does hereby make claims against the CITY OF BUFFALO, and in support thereof, states:

1. The address of the Claimant, THOMAS EKES, 200 Wallace Ave., Buffalo, New York.

2. The name and address of the Attorneys for the Claimant is:

SPADAFORA & VERRASTRO
2 Symphony Circle
Buffalo, New York 14201
(716) 854-1111

3. This claim is for damages resulting from the personal injuries to the Claimant, THOMAS EKES, as a result of the negligence and carelessness of the COUNTY OF ERIE.

4. This claim arises from the personal injuries sustained by the Claimant, THOMAS EKES, when he was legally, lawfully and properly walking over, along and on the sidewalk area on Deerhurst Park Blvd, Buffalo, New York, at or near a residence located at 275 Deerhurst Park Blvd., said sidewalk used and utilized by members of the public in general and this Claimant in particular, when dangerous, defective, hidden and/or unsafe conditions on or near the sidewalk area which consisted of, without limitation thereto, concrete and/or surface area which was broken, missing and/or excavated, which as a direct result thereof, the Claimant, THOMAS EKES, was caused to fall to the ground sustaining severe and permanent injuries to his neck, back, and arms, together with other and further bodily injuries. Said accident having occurred on or about February 16, 2013.

5. That the injuries sustained by the Claimant, THOMAS EKES, caused as the result of the negligence and carelessness of, among others, the COUNTY OF ERIE, its agents, servants and/or employees, were serious, severe and permanent injuries including, but not limited to, a sprain/strain of the cervical and thoracic spine with radiculopathy into the right upper extremity, possible cubital tunnel syndrome and/or aggravation and/or precipitation of a pre-existing cervical condition, and other injuries: various contusions and abrasions; traumatic injury to cells, tissues, blood vessels, nerves, veins, and arteries in and about the cervical and thoracic spine with pain, soreness, tenderness, limitation of motion, movement, function and strength with resultant swelling and other injuries as yet unknown. At the present time, Claimant is still suffering from his injuries sustained or the residual effects thereof.

6. The foregoing injuries and damages were sustained as a result of the negligence and carelessness of the COUNTY OF ERIE, its respective officers, agents, servants and/or employees in causing, creating, maintaining or allowing to exist said sidewalk in a dangerous, defective, hazardous and unsafe condition for members of the general public to walk over, along and on said sidewalk area, and permitting the same to continue and exist for a long period of time prior to and including February 16, 2013. Upon information and belief, the CITY OF BUFFALO, it agents, servants and/or employees, had prior written notice, as set forth under GML Section 50-e(4) and/or under any other statute, rule, regulation, ordinance or the like applicable as to the dangerous, defective, hazardous and unsafe conditions of said sidewalk. Upon information and belief, the COUNTY OF ERIE, its agents, servants and/or employees had actual and/or constructive notice of the dangerous, defective, hazardous and unsafe conditions of said sidewalk area and/or affirmatively and actively created and/or caused said conditions to exist.

7. Upon information and belief, the culpable conduct and negligence on the part of the COUNTY OF ERIE, and its officers, agents, servants and/or employees during the course of the performance of their duties, causing, creating and/or contributing to the accident and personal injuries of the Claimant, THOMAS EKES, and rendering the COUNTY OF ERIE liable for Claimant's damages including, but are not limited to:

a) Improperly designing, constructing and/or maintaining said sidewalk area in a defective, dangerous, hazardous and unsafe condition in the area of the accident;

b) Failing to provide, post and maintain adequate warnings along said sidewalk area and in the area of the accident;

c) Failing to inspect the sidewalk area and correct the dangerous, defective, hazardous and unsafe conditions which existed and which had existed for a considerable period of time prior to the date of this accident;

d) Failing to remedy, eliminate and/or remove the dangerous, defective and hazardous conditions that existed in and about said area of the accident at the time of said accident and for a considerable period of time prior thereto;

e) In causing and/or creating dangerous, defective, hazardous and unsafe conditions to exist, of which the COUNTY OF ERIE, its respective officers, agents, servants and/or employees had notice of and knew or should have known through the exercise of due care and diligence;

8. By reason of the carelessness and negligence of the COUNTY OF ERIE, its officers, agents, servants and/or employees as aforesaid, Claimant, THOMAS EKES, was rendered sick, sore, lame, disabled and sustained various and diverse injuries including those aforementioned, shock to his nervous system, conscious pain and suffering, traumatic injury in and to the various parts of his body; all necessitating Claimant being confined to couch and home for a period of time thereafter, as well as for other personal injuries of which Claimant, THOMAS EKES, is not yet informed, including the permanent effects thereof.

9) The claimant THOMAS EKES may make claims for any and all damages that she would be entitled to receive as to the aforesaid accident as a result of the carelessness and negligence of the COUNTY OF ERIE by and through its agents, servants and/or employees of aforesaid.

The items of damages and injuries claimed by THOMAS EKES are as follows:

a) Medical and hospital expenses and any and all other expenses related to care, treatment and attempted cure of injuries sustained or permanent effects relating thereto – past, present and future;

b) Mental anguish, distress and/or loss of sleep;

c) Injuries and residuals of same;

d) Pain and suffering – past, present and future;

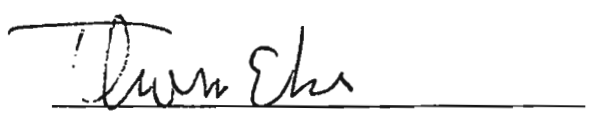
e) Economic loss, if applicable – past, present and future;

f) Other special and general damages as they manifest themselves subsequent to the date of this notice.

10) That upon your failure to pay such claims within the statutory period provided therefore, it is the intention of the Claimant to commence an action against said COUNTY OF ERIE, and such others as may be liable, to recover damages sustained by Claimant as hereinabove set forth.

WHEREFORE, the Claimant respectfully requests that his claim be adjusted and paid as provided by law.

DATED: April 30, 2013



THOMAS EKES

STATE OF NEW YORK)
COUNTY OF NIAGARA) S S . . .

THOMAS EKES, being duly sworn, deposes and says: That he is the Claimant, above-named in the within action; that he has read the foregoing **NOTICE OF CLAIM** and knows the contents thereof; that same is true to his own knowledge except as to those matters stated to be alleged on information and belief, and as to those matters, he believes it to be true.

THOMAS EKES

Sworn to before me this
30 day of April, 2013

RICHARD UPDEGROVE
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires 12/9/14

TO: COUNTY OF ERIE

TO: COUNTY OF ERIE

I hereby certify that, to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the claim within or the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1 of the Rules of the Chief Administrator (22NYCRR).

Richard E. Updegrove, Esq.
SPADAFORA & VERRASTRO, LLP
2 Symphony Circle
Buffalo, New York 14201
(716) 854-1111