(11)

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

May 21, 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:	*Gerken, David M., Estate of, by Marion Gerken, Individually and as Administratrix v. Erie County, Erie County Sheriff's Office, and Town of Orchard Park Police Department*
Document Received:	Notice of Claim
Name of Claimant:	Marion Gerken 123 Hyde Parkway Palmyra, New York 14522
Claimant's attorney:	Eric M. Dolan, Esq. Trevett Cristo Salzer & Andolina P.C. 2 State Street, Suite 1000 Rochester, New York 14614

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

MARION GERKEN, individually and as administrator of the estate of DAVID M. GERKEN, JR., Deceased,

Claimant,

vs.

ERIE COUNTY, ERIE COUNTY SHERIFF'S OFFICE, and TOWN OF ORCHARD PARK POLICE DEPARTMENT,

Defendants.

NOTICE OF CLAIM

TO: ERIE COUNTY
Mark Poloncarz, County Executive

ERIE COUNTY ATTORNEY

PLEASE TAKE NOTICE that Marion Gerken, as administrator of the estate of David M. Gerken, Jr., deceased, makes a claim against: Erie County, a municipal corporation with offices at 95 Franklin Street, 16th Floor, Buffalo New York, 14202, for damages sustained by claimant as set forth in this notice, and in connection with the claim states:

1. Claimant is the mother and administrator of the estate of David M. Gerken, Jr., with an address of 123 Hyde Parkway, Palmyra, New York 14522. Letters of administration were issued February 7, 2013 by Wayne County Surrogate's Court.

2. David M. Gerken, Jr. (hereinafter the "deceased") died November 16, 2012. At the time of his death, deceased had a primary residence in the County of Wayne, State of New York.

3. The nature of the claim is a wrongful death action to recover damages suffered by claimant and decedent due to negligence of defendant Erie County.

4. The time when, the place where, and the manner in which the claim arose is set forth as follows:

a. On November 15, 2012, decedent attended a football game between the Miami Dolphins and Buffalo Bills at Ralph Wilson Stadium in Orchard Park, New York.

b. Decedent was ejected from the game and escorted out of the stadium.

c. Decedent had been consuming alcohol prior to and during the game, including alcohol he purchased at the stadium, and was intoxicated at the time he was ejected from the stadium.

d. After being ejected from the game, decedent fell from a ravine, or cliff, in a poorly lit, incompletely fenced area adjacent to the stadium.

e. Upon information and belief, Erie County owns Ralph Wilson Stadium and is responsible for ensuring the safety of patrons of the stadium.

f. Claimant claims that decedent's injuries and death were caused, in whole or in part, by the negligence of Erie County and/or its employees and agents in ejecting decedent from the game in an intoxicated condition.

g. Claimant claims that decedent's injuries and death were caused, in whole or in part, by a hazardous condition on the property of Erie County (to wit, the poorly lit and incompletely fenced ravine or cliff where decedent fell), and that Erie County had actual or constructive notice of the hazard and failed to correct it.

5. As a result of Erie County's negligence, claimant and decedent suffered conscious pain and suffering and pecuniary loss in an amount to be determined at a trial of this action.

Dated: May 3, 2013

TREVETT CRISTO SALZER & ANDOLINA P.C.

Eric M. Dolan, Esq.
Attorneys for Claimants
2 State Street, Suite 1000
Rochester, New York 14614
(585) 454-2181

VERIFICATION

STATE OF NEW YORK
CITY OF ROCHESTER
COUNTY OF MONROE

MARION GERKEN, being duly sworn, states that she is the claimant in this action and the foregoing Notice of Claim is true to her own knowledge, except as to matters therein stated to be made upon information and belief and as to those matters she believes it to be true, that the grounds for her belief as to all matters not stated upon her knowledge are correspondence and other writing known to her.

Dated: May 4, 2013

MARION GERKEN

Sworn to before me this

4th day of May, 2013.

Notary Public

DONNA L. FRANK
NOTARY PUBLIC, State of New York
Qualified in Monroe County
Registration No. 01FR4611432
Commission Expires May 31, 2015