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

July 24, 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:	*Gallagher, Suzanne M. v. City of Buffalo and County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	Suzanne M. Gallagher 1457 Amherst Street Buffalo, New York 14214
Claimant's attorney:	Sinead O'Connor, Esq. McMahon, Martine & Gallagher, LLP 55 Washington Street, Suite 720 Brooklyn, New York 11201

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

This paper received at the
Erie County Attorney's Office
from Gary Hall on
the 22nd day of July, 2013
at 10:42 a.m./p.m.
Assistant County Attorney

IN THE MATTER OF THE CLAIM OF:

SUZANNE M. GALLAGHER,

Claimant,

NOTICE OF CLAIM

-against-

CITY OF BUFFALO and COUNTY OF ERIE,

Respondents.

PLEASE TAKE NOTICE, that SUZANNE M. GALLAGHER, hereby makes claim against the CITY OF BUFFALO and COUNTY OF ERIE and in support thereof alleges:

1. That the undersigned, SUZANNE M. GALLAGHER, (hereinafter referred to as GALLAGHER), residing at 1457 Amherst Street, Buffalo, New York 14214, by and through her attorneys, MCMAHON, MARTINE & GALLAGHER, LLP, 55 Washington St., Suite 720, Brooklyn, NY 11201, claims damages against the Respondents, CITY OF BUFFALO and COUNTY OF ERIE for personal injuries, pain and suffering, general and special damages, medical expenses and property damages sustained by her.

2. That the said injuries were sustained by the Claimant, GALLAGHER, in a bicycle accident that occurred on April 28, 2013 at approximately 10.30am, traveling northbound on the Buffalo Bike Trail, approximately 45-50 feet north of Arthur Street, in the City of Buffalo, County of Erie, and State of New York. A photograph and a map of the accident location are both marked "X".

3. Upon information and belief, the aforementioned Buffalo Bike Trail, in the City of Buffalo, County of Erie, and State of New York was controlled, designed, constructed and maintained by agents, servants and/or employees of the Respondents. The Claimant, GALLAGHER, was operating a bicycle at the time of the incident and she was traveling northbound on the aforementioned Buffalo Bike Trail, in the City of Buffalo, County of Erie and State of New York.

4. The Claimant, GALLAGHER, crossed Arthur Street and traveled approximately 45-50 feet north of same and began proceeding around a curve which veered to the left. As the Claimant, GALLAGHER, proceeded around the curve she immediately came upon a chain link gate fence that had been placed across the bike trail. Claimant, GALLAGHER, was caused forced to suddenly apply the brakes to avoid colliding with the chain link fence and in doing so she was caused to lose control of the bicycle and fall forward to the ground below.

5. The chain link gate fence was hazardous as it was unseen from any distance due to the left hand curve trail and there was no notice and/or warning of said hazardous chain link fence to the Claimant, GALLAGHER. Hence, it was impossible for the Claimant to foresee the chain link gate fence within a sufficient time period to avoid the incident occurring.

6. Respondents are aware of the high frequency of bicycle traffic at the aforementioned Buffalo Bike Trail north of Arthur Street described in this notice. Respondents were aware for a sufficient period of time to remedy the hazardous condition, but failed to exercise due care to inspect and/or make safe the hazardous condition. Further, respondents caused and created the hazardous condition by placing the chain gate link fence at the accident location.

7. As a result of the above, the Claimant, GALLAGHER, was caused to sustain serious and permanent injuries.

8. That the Claimant's damages and injuries occurred as a result of the negligence, carelessness, recklessness and disregard for the safety of others including Claimant, GALLAGHER. Respondents, its servants agents and employees' negligence includes, but is not limited to properly inspecting, in the design, repair, supervision, inspection, construction and maintenance of the Bike Trail, particularly in failing, through their agents, servants and/or employees, to properly maintain the Bike Trail in a proper and safe condition; in failing to inspect the bike trail at the area of the accident herein; in failing to warn of the dangers inherent on the Bike Trail; which caused the accident herein; in failing to use reasonable precautions with regard to the bike trail and chain link fence; in failing to maintain the Bike Trail as a public area in a safe and proper condition; in causing and creating unsafe, trap-like condition; in negligently and carelessly permitting and allowing the bike trail to remain in an unsafe and trap-like condition for an unreasonable amount of time; in allowing, permitting and/or creating a nuisance and/or trap like condition; in violating the applicable rules, regulations, statutes and ordinances made and provided; in failing to place any warning signs, warning devices or barricades in the pertinent area; in failing to properly post safety signs or other devices to warn cyclists of said hazardous conditions; in creating a dangerous condition due to the above; and in negligently hiring, retaining and employing maintenance workers and in failing to provide a safe location to transit on a designated bike trail along with other acts of negligence, carelessness and recklessness.

9. That the aforesaid Respondents, by and through its agents, servants and employees, had actual or constructive notice of the aforementioned hazardous condition.

10. Upon information and belief, as a result of the aforesaid incident, the Claimant, GALLAGHER sustained severe bodily injuries and was painfully and seriously injured; was rendered sick, sore, lame and disabled; and more particularly, Claimant, GALLAGHER's injuries include but are not limited to the following: fracture of the right wrist requiring surgery, scarring, bruising, loss of range of motion, loss of enjoyment of life, pain and suffering, medical expenses, future medical expenses, lost earnings and lost earnings capacity and capability, physical and psychological impairment due to trauma. Upon information and belief, the aforementioned injuries are permanent and progressive in nature and may require further medical treatment with all risks attendant thereto.

11. That as a result of the foregoing, the Claimant, GALLAGHER, sustained severe and serious injuries and will seek damages for pain and suffering, mental and emotional distress, unreimbursed and uncompensated medical expenses and every other item of like general damages as may properly be proven at a time of trial this action.

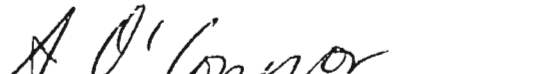
12. That the said injuries were occasioned as a result of the negligence of the Respondents and through its agents, servants and employees and without any negligence on the part of the Claimant contributing thereto.

WHERFORE, Claimant, GALLAGHER, requests that her claim be allowed and paid by the Respondents.

PLEASE TAKE NOTICE that unless said claim is adjusted and paid by the Respondents 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, cost and disbursements.

Dated: Brooklyn, New York
July 9, 2013

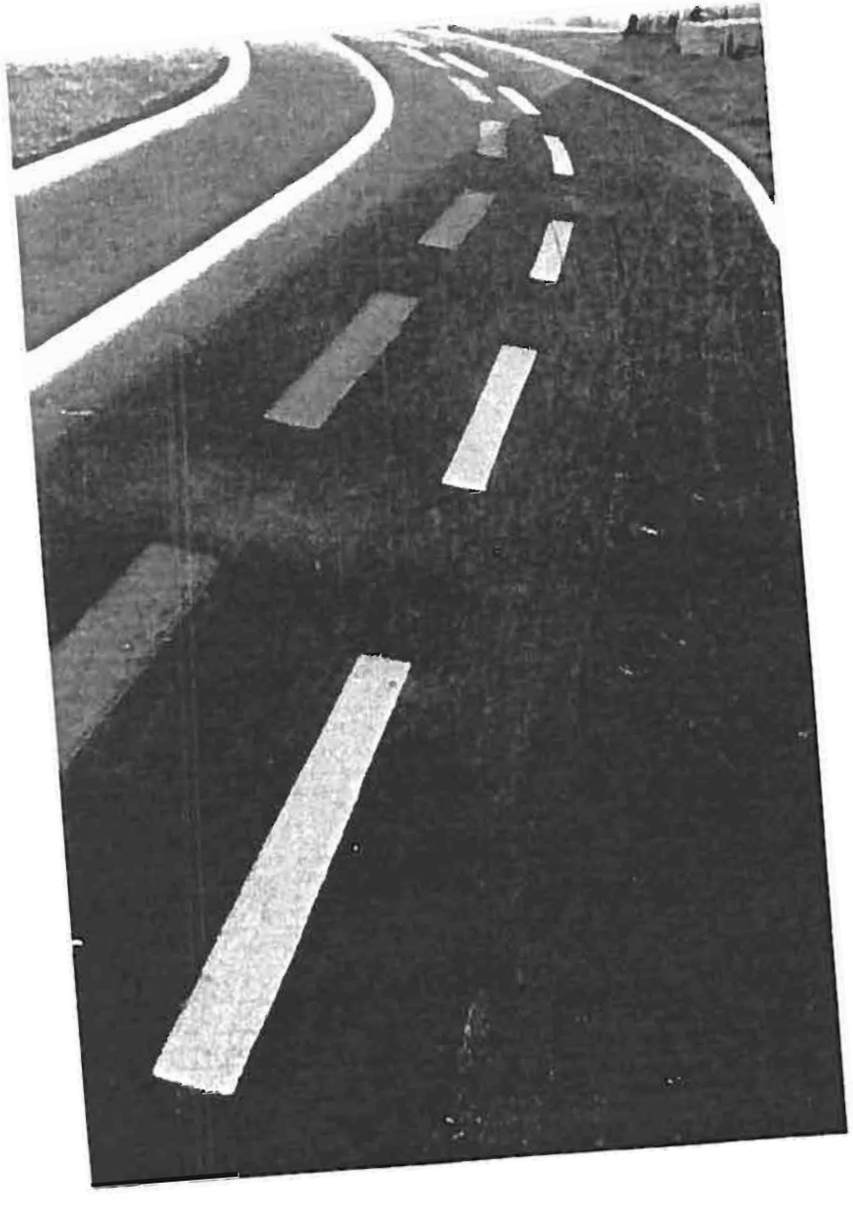
Yours, etc.,

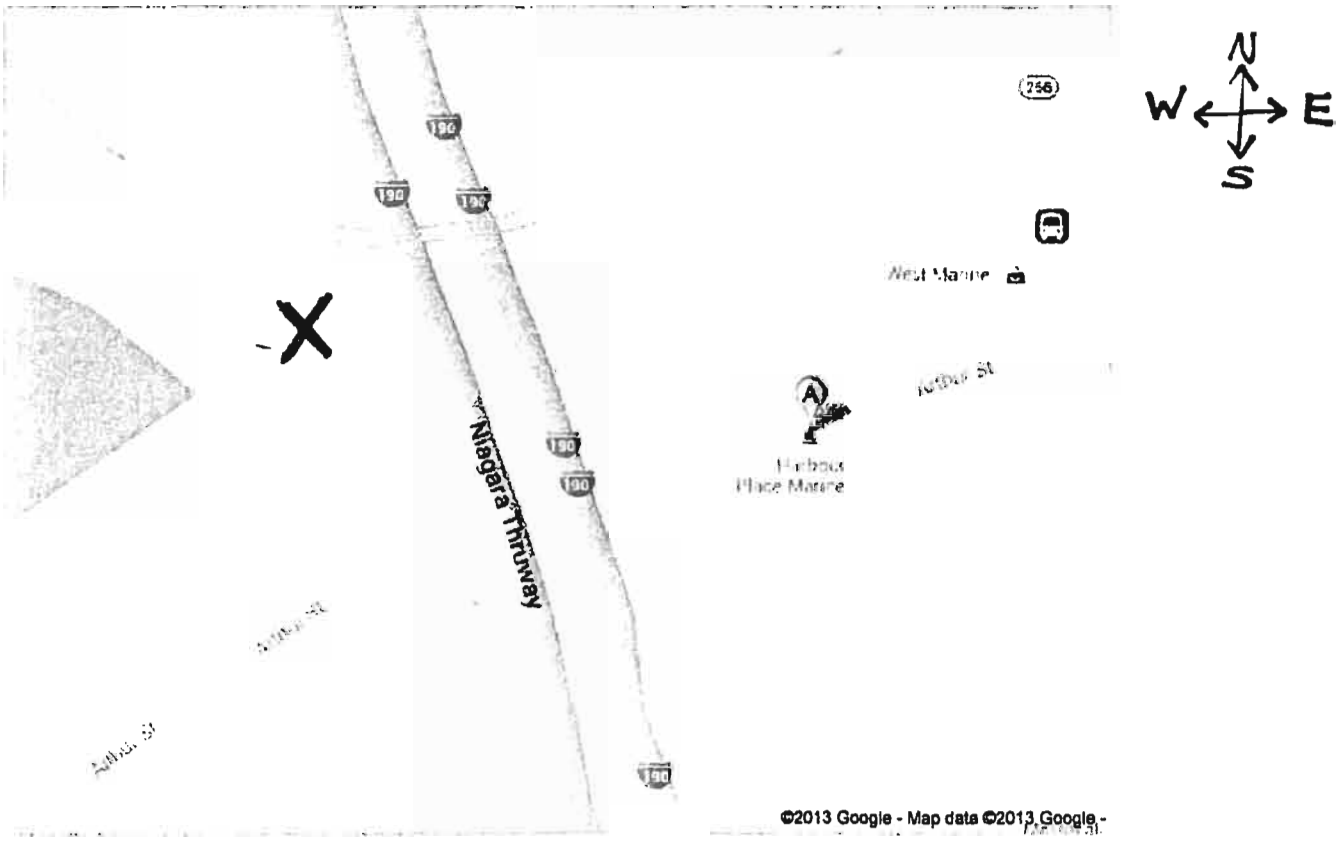


By: Sinead O'Connor, Esq.
McMAHON, MARTINE & GALLAGHER, LLP.
Attorneys for Claimant
SUZANNE GALLAGHER
55 Washington Street, Suite 720
Brooklyn, New York 11201
(212) 747-1230

TO: SEE ATTACHED RIDER

ACROSS DRIVEWAY BIKE PATH GRADE




N
W
E
S
X
190
256
Niagara Thruway
West Marine
Harbour Place Marine
©2013 Google - Map data ©2013 Google -

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE)
CITY OF BUFFALO)SS

SUZANNE GALLAGHER, being duly sworn, depose and say that she is the Claimant in this action; that she has read the foregoing Notice of Claim and know the contents thereof; that the same is true to the knowledge of deponents, 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.

Suzanne Gallagher
SUZANNE GALLAGHER

Sworn to before me this
9th day of July 2013

Suhady Suarez
Notary Public
SUHADY SUAREZ
Notary Public, State of New York
No. 01SU6228506
Qualified in Bronx County
Commission Expires Sept. 20, 2014

RIDER

CITY OF BUFFALO
Corporation Counsel for the City of Buffalo
65 Niagara Square
1100 City Hall
Buffalo, New York 14202

COUNTY OF ERIE
95 Franklin Street
Room 1634
Buffalo, New York 14202