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

September 30, 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:	*Klimtzak, Robert v. County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	Robert Klimtzak 25 Hilldale Avenue West Seneca, New York 14224
Claimant's attorney:	Kevin J. Graff, Esq. Paul William Beltz, P.C. 36 Church Street Buffalo, New York 14202

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
Enc.

This paper received at the
Erie County Attorney's Office
from Mark Winsick on
the 20 day of September, 2013
at 3:45 a.m./p.m.
Assistant County Attorney

IN THE MATTER OF THE CLAIM
OF ROBERT KLIMTZAK

Claimant,

vs.

COUNTY OF ERIE, NEW YORK

Respondent.

NOTICE OF CLAIM

PLEASE TAKE NOTICE that ROBERT KLIMTZAK, does hereby make claim against the County of Erie, New York, and in support of such claim does state the following:

1. My address is 25 Hilldale Avenue, West Seneca, New York 14224.

2. My attorney is **PAUL WILLIAM BELTZ, P.C.,** 36 Church Street, Buffalo, New York 14202.

3. The facts and circumstances arising out of this claim in the above-entitled action are as follows:

On or about June 28, 2013, ROBERT KLIMTZAK was lawfully operating his motor vehicle while stopped at a red light on Maple Road, at or near its intersection with Main Street in East Aurora, New York, when his vehicle was struck a tree limb that had fallen of a tree located adjacent to Maple Road, causing the claimant to sustain certain severe, permanent and painful injuries due to the negligence of the respondent and others, as hereinafter set forth.

4. That upon information and belief, the negligence of the respondent was in the selection of the type of tree that caused this accident, in allowing said tree to remain adjacent to Maple Road near its intersection with Main Street in East Aurora, New York, in locating said tree adjacent to Maple Road near its intersection with Main Street in East Aurora, New York, in

not removing said tree prior to the incident complained of herein, in failing to properly inspect the tree, in failing maintain the tree; in failing to properly repair damage to the tree, failing to properly recognize the deteriorated nature of the tree which struck plaintiff's vehicle, failing to remedy the deteriorated nature of the tree prior to the incident, failing to utilize procedures which would have aided in the detection of the deteriorated nature of the tree, failing to monitor its property for dangerous conditions, failing to warn of the danger relative to the subject tree, hiring improperly trained or qualified persons to inspect and/or maintain the tree, failing to adhere to appropriate standards and practices relative to tree maintenance, carelessly and negligently allowing said deteriorated tree to exist in a high profile and heavily frequented area.

5. That by reason of the premises, the claimant, Robert Klimtzak, suffered certain severe, permanent and painful injuries, internal as well as external, all to his damage pursuant to General Municipal Law §50-e and CPLR §3017(c).

6. That the amount of damages sought by the claimant exceeds the jurisdictional limits of all lower courts and that this action is properly brought in the Supreme Court, Erie County, New York, pursuant to CPLR §3017(c).

WHEREFORE, claimant requests that the claim be allowed and paid for by the County of Erie, New York.

Kevin J. Graff, Esq.
Paul William Beltz, P.C.
Attorneys for Claimant
36 Church Street
Buffalo, New York 14202
(716) 852-1000

ROBERT KLIMTZAK

KEVIN J. GRAFF
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires Jan. 20, 2017

Sworn to before me this
31st day of July, 2013

Notary Public

STATE OF NEW YORK :
COUNTY OF ERIE : SS.:

Robert Klimtzak, being duly sworn, deposes and says: I am the Claimant in this action; I have read the foregoing Notice of Claim and know the contents thereof; and that the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true.

ROBERT KLIMTZAK

Sworn to before me this
31st day of July, 2013

Notary Public

KEVIN J. GRAFF
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires Jan. 23, 2014