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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

October 25, 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:	*Sekeret, Daniel R. and Doris E. v. Erie County Medical Center Corporation, County of Erie, LP Ciminelli Construction Corp. and Eaton Associates*
Document Received:	Order to Show Cause
Name of Claimant:	Daniel R. Sekeret and Doris E. Sekeret 1204 Penora Street Depew, New York 14043
Claimant's attorney:	Frank J. Dolce, Esq. Cantor, Dolce & Panepinto, P.C. 1600 Main Place Tower 350 Main 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.

At a Special Term of the Supreme Court held in and for the County of Erie, Buffalo, New York on the 23rd day of October, 2013.

Hon. Henry J Nowak
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE APPLICATION OF

Daniel R. Sekeret
Doris E. Sekeret

Petitioners

Index# 802243-2013

vs.

ORDER TO SHOW CAUSE

Erie County Medical Center Corporation
County of Erie
LP Ciminelli Construction Corp.
Eaton Associates

Respondents.

Upon reading the annexed Affirmation of Frank J. Dolce, Esq., duly affirmed on the 10 day of October, 2013, it is hereby

ORDERED, that Respondents show cause at a Special Term of the Supreme Court of New York to be held in and for the County of Erie at 25 Delaware - Part 25, Buffalo, New York on the 6th **day of** November, **2013 at 9:30 o'clock in the forenoon** of that day or as soon thereafter as counsel can be heard, why an Order should not be granted: (1) compelling the Respondents to submit to pre-action discovery pursuant to CPLR § 3102(c) and directing

Respondents to provide and produce and/or to allow petitioner opportunity to inspect the following with regard to the construction work being performed at the Erie County Medical Center Corporation facilities located on Grider Street in the City of Buffalo, New York ongoing on August 15, 2013:

A. Any and all prime and/or subcontract agreements involving Eaton Associates to perform drywall installation on the aforesaid building project;

B. A copy of the construction management agreement and a copy of the general contractor agreement entered into by Erie County Medical Center Corporation and/or County of Erie as contracting owner of the construction project.

C. The contract and agreements between Erie County Medical Center Corporation and/or the County of Erie and/or LP Ciminelli for the construction project in which Eaton Associates was performing drywall installation on August 15, 2013 on the third floor of the building being erected as a subcontractor on the project;

D. Any and all incident reports prepared by LP Ciminelli Construction Corp. and/or Easton Associates regarding the personal injury incident of Daniel R. Sekeret of Eaton Associates occurring on the third floor on August 15, 2013 at approximately 10:45 a.m.;

E. All photographs taken by personnel from LP Ciminelli Construction Corp. and/or Eaton Associates of the scene of the incident and the baker's scaffold involved in the work place incident of August 15, 2013;

ORDERED, that service of a copy of this Order and the papers upon which it is granted be sent by certified mail to the main place of business of the respondents;

Erie County Medical Center Corporation
462 Grider Street
Buffalo, NY 14215

LP Ciminelli Construction Corp.
2421 Main Street
Buffalo, NY 14214

County of Erie
95 Franklin Street
16th Floor
Buffalo, New York 14202

Eaton Associates
242 Blaine Avenue
Buffalo, NY 14208

on or before October 28, 2013, which shall be deemed good and sufficient service.

DATED: Buffalo, New York
October 23, 2013

Hon.
HENRY J. NOWAK

GRANTED:

GRANTED

OCT 23 2013

BY Elaine J. Xenos
ELAINE J. XENOS
COURT CLERK

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE APPLICATION OF

Daniel R. Sekeret
Doris E. Sekeret

Petitioners

vs. **AFFIRMATION**

Erie County Medical Center Corporation
County of Erie
LP Ciminelli Construction Corp.
Eaton Associates

Respondents.

Frank J. Dolce, Esq., an attorney duly admitted to practice law in the State of New York, affirms the following under penalty of perjury:

1. I am an attorney at law duly licensed to practice in the State of New York and am the attorney for the Petitioners, Daniel Sekeret, and that my firm has been retained to represent him for the injuries he sustained on August 15, 2013. As such, I am fully familiar with the facts and circumstances herein.

2. Upon information and belief, on and prior to August 15, 2013, petitioner was employed by Respondent, Eaton Associates on a construction project at Erie County Medical Center where LP Ciminelli was acting as construction manager and/or general contractor. On August 15, 2013 during the course of this construction project the claimant, Daniel Sekeret, was caused to fall from an elevated height off of a baker's scaffold and as a result Mr. Sekeret sustained personal injuries to his body. It is alleged that respondents, Erie County Medical Center Corporation and/or County of Erie as contracting owners of subject property and project and LP Ciminelli did not

provide a safe place to work, nor adequate construction practices and safety devices for the petitioner as is mandated by the New York State Labor Law §§200, 240(1) and 241(6) together with specific regulations of Industrial Code Rule 23 related thereto, and were further negligent, careless and reckless, which negligence, carelessness and recklessness was in violation of the New York State Labor Law and caused injury to the claimant and resulting damages.

3. That petitioner requests that respondents provide and produce the following:

A. Any and all prime and/or subcontract agreements involving Eaton Associates to perform drywall installation on the aforesaid building project;

B. The construction management agreement and the general contractor agreement entered into by Erie County Medical Center Corporation and/or County of Erie as contracting owner of the construction project.

C. The contract and agreements between Erie County Medical Center Corporation and/or the County of Erie and/or LP Ciminelli Construction Corp. for the construction project in which Eaton Associates was performing drywall installation on August 15, 2013 on the third floor of the building being erected as a subcontractor on the project;

D. Any and all incident reports prepared by LP Ciminelli Construction Corp. and/or Easton Associates regarding the personal injury incident of Daniel R. Sekeret of Eaton Associates occurring on the third floor on August 15, 2013 at approximately 10:45 a.m.;

E. All photographs taken by personnel from LP Ciminelli Construction Corp. and/or Eaton Associates of the scene of the incident and the baker's scaffold involved in the work place incident of August 15, 2013;

4. That the petitioner seeks this information pursuant to CPLR §3102(c), which provides that "before an action is commenced, disclosure to aid bringing an action, to preserve

information . . . may be obtained, but only by Court order." The assessment of the propriety of pre-litigation disclosure lies within the broad discretion of the Court (Matter of *Thomas v. New York City TR. Police Department*, 91 A.D.2d 898).

5. That petitioner requests that respondents herein allow such document inspection and disclosure and provide the requested disclosure to identify the responsible owners of and contractors on the aforesaid project so as to aid in petitioner's ability to bring a cause of action(s) as well as to preserve important information in such action.

6. That no prior application for the relief sought herein has been made.

WHEREFORE, your affiant respectfully requests that this Court, in its discretion grant Claimant's pre-litigation discovery and Order the requested pre-litigation document inspection and document disclosure and information disclosure.

Dated: Buffalo, New York
October 16, 2013

Frank J. Dolce, Esq.
CANTOR, DOLCE & PANEPINTO
Attorneys for Petitioner
1600 Main Place Tower
350 Main Street
Buffalo, New York 14202
(716) 852-1888