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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

May 23, 2014

Mr. Scott W. Kroll, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Kroll:

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:	*WS Empire LLC v. County of Erie(re: 70 Empire Drive, West Seneca 2/20/14 flooding)*
Document Received:	Notice of Claim
Name of Claimant:	WS Empire LLC 70 Empire Drive West Seneca, New York
Claimant's attorney:	John G. Schmidt, Esq. Phillips Lytle LLP One Canalside 125 Main Street Buffalo, New York 14203-2887

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.

Phillips Lytle LLP

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 20, 2014

Town of West Seneca
ATTN: Town Clerk Jacqueline A. Felser
1250 Union Road, Room 212
West Seneca, New York 14224

RECEIVED
MAY 21 2014
ERIE COUNTY
DEPARTMENT OF LAW

County of Erie
Department of Law
ATTN: Property Damage Department
95 Franklin Street, Room 1634
Buffalo, New York 14202

Re: Flooding and Property Damage at 70 Empire Drive, West Seneca, New York

Dear Sir or Madam:

We represent WS Empire LLC, which is the owner and lessor of the property at 70 Empire Drive, which includes a building, parking area, and driveway ("Property"). The Property was severely flooded on June 13, 2013 and again on February 20, 2014.

Photographs of the flooding in 2013 are attached as Exhibit A. Photographs of the flooding in 2014 are attached as Exhibit B. As you may be aware, there are food distribution companies and medical care facilities in the area. The severe flooding in the area creates unsanitary and unhealthy conditions for WS Empire's property, tenants and these other facilities. We are writing to request that the Town of West Seneca ("Town") and County of Erie ("County") review and address the cause of the flooding which creates the potential to create unsanitary and unhealthy conditions during every precipitation event.

We would like to schedule a meeting with the Town Department of Highways, Sanitation and Buildings and Grounds and the County Department of Public Works to discuss potential corrections, maintenance and repairs.

ATTORNEYS AT LAW

JOHN G. SCHMIDT JR., PARTNER DIRECT 716 847 7095 JSCHMIDT@PHILLIPSLYTLE.COM

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100
NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER CANADA: WATERLOO REGION WWW.PHILLIPSLYTLE.COM

May 20, 2014

We have forwarded a copy of this letter to John Loffredo, Commissioner of Public Works and Matthew D. English, Superintendent of Highways, Sanitation and Buildings and Grounds. We are requesting a meeting with the appropriate personnel in their respective departments to discuss potential solutions.

Additionally, as required by New York State General Municipal Law, in order to protect our client's legal right to present a claim, we have advised our client that it is necessary to complete and submit a Notice of Claim. A Notice of Claim is attached as Exhibit C. Nonetheless, we look forward to working with the Town and County to resolve this amicably.

Very truly yours,

Phillips Lytle LLP

By

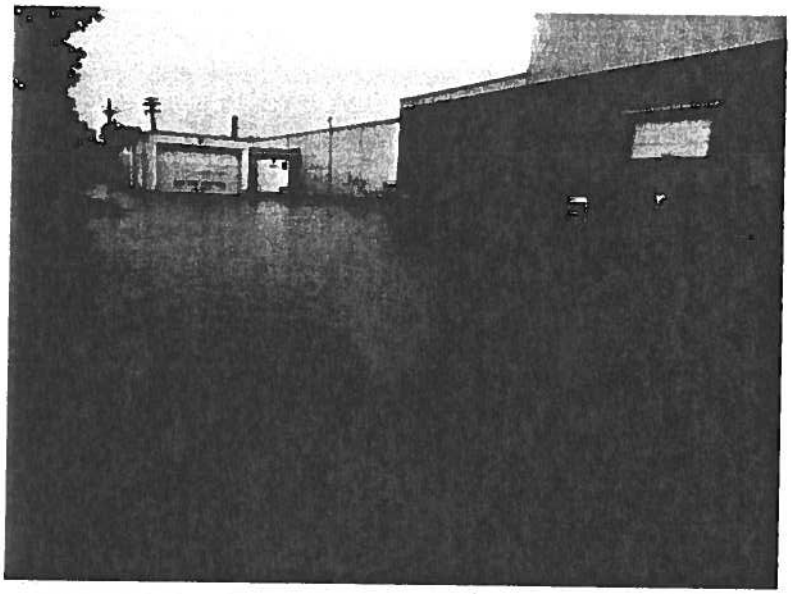
John G. Schmidt Jr.

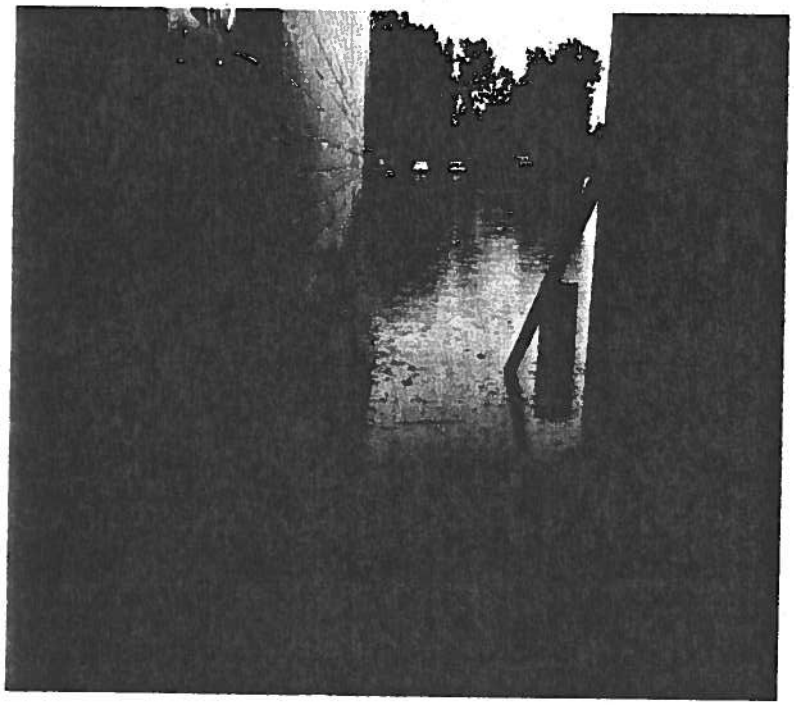
Enclosures

c: John Loffredo, Commissioner of Public Works
Matthew D. English, Superintendent of Highways, Sanitation and Buildings and Grounds
Matthew R. Neil, Vice President, WS Empire LLC

Doc #01-2777150.1

EXHIBIT A





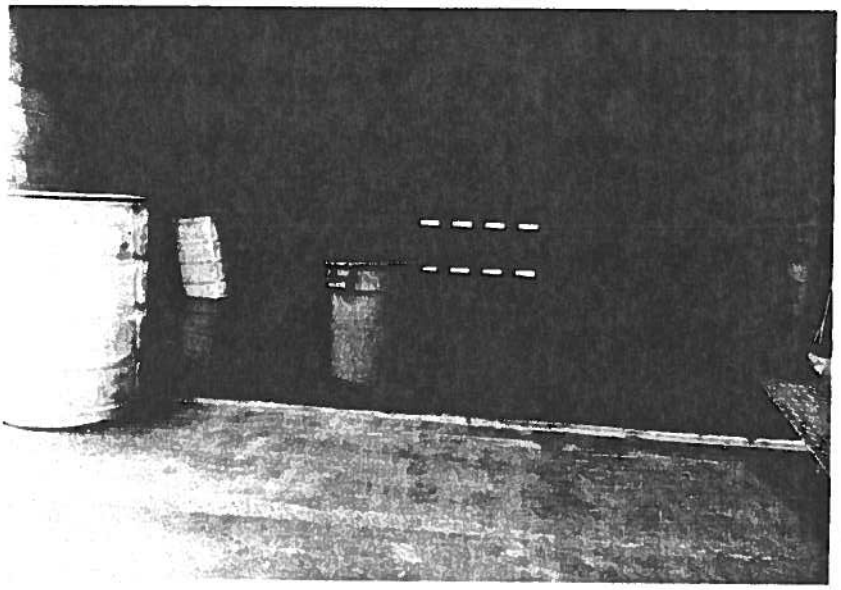
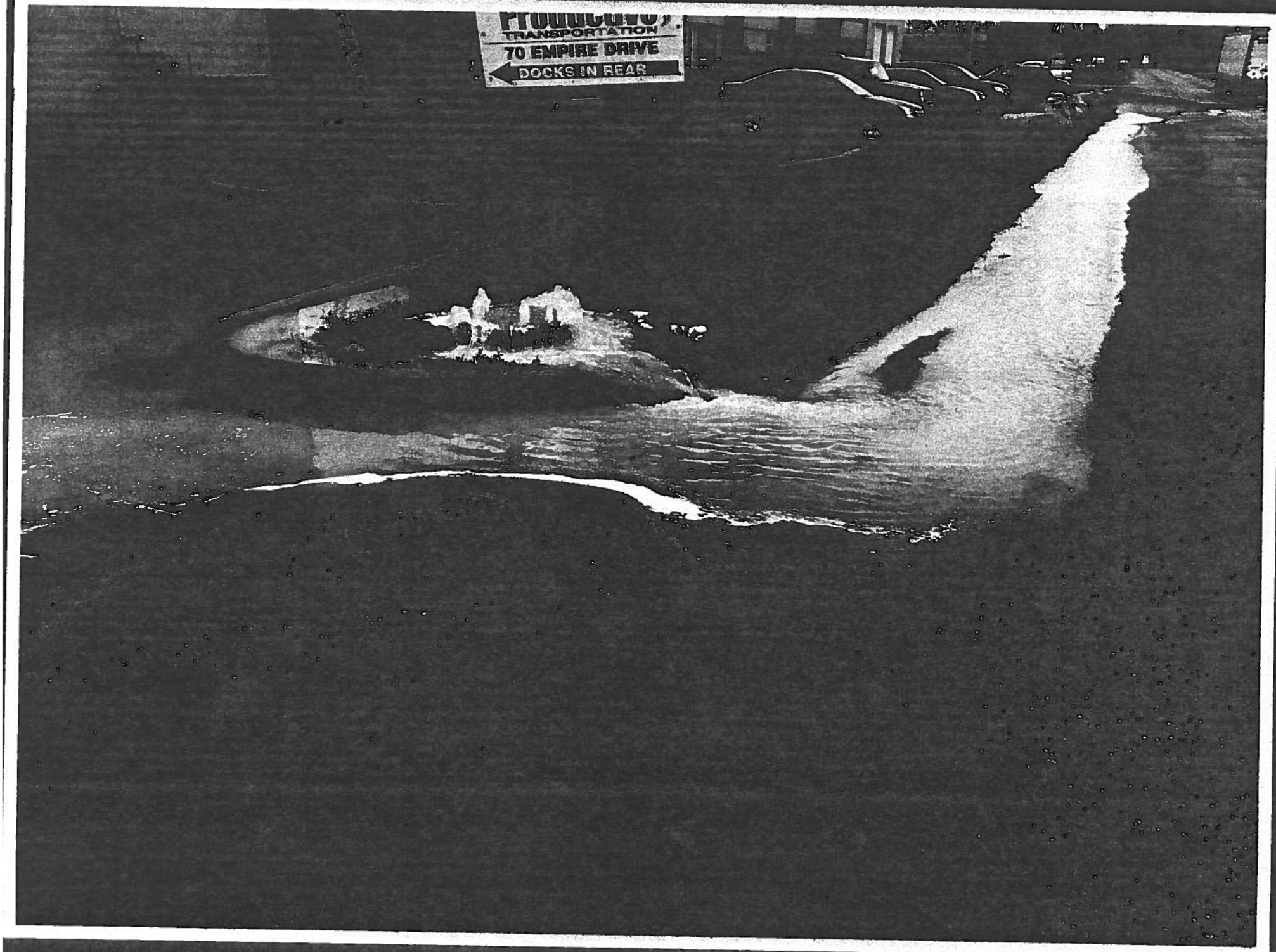
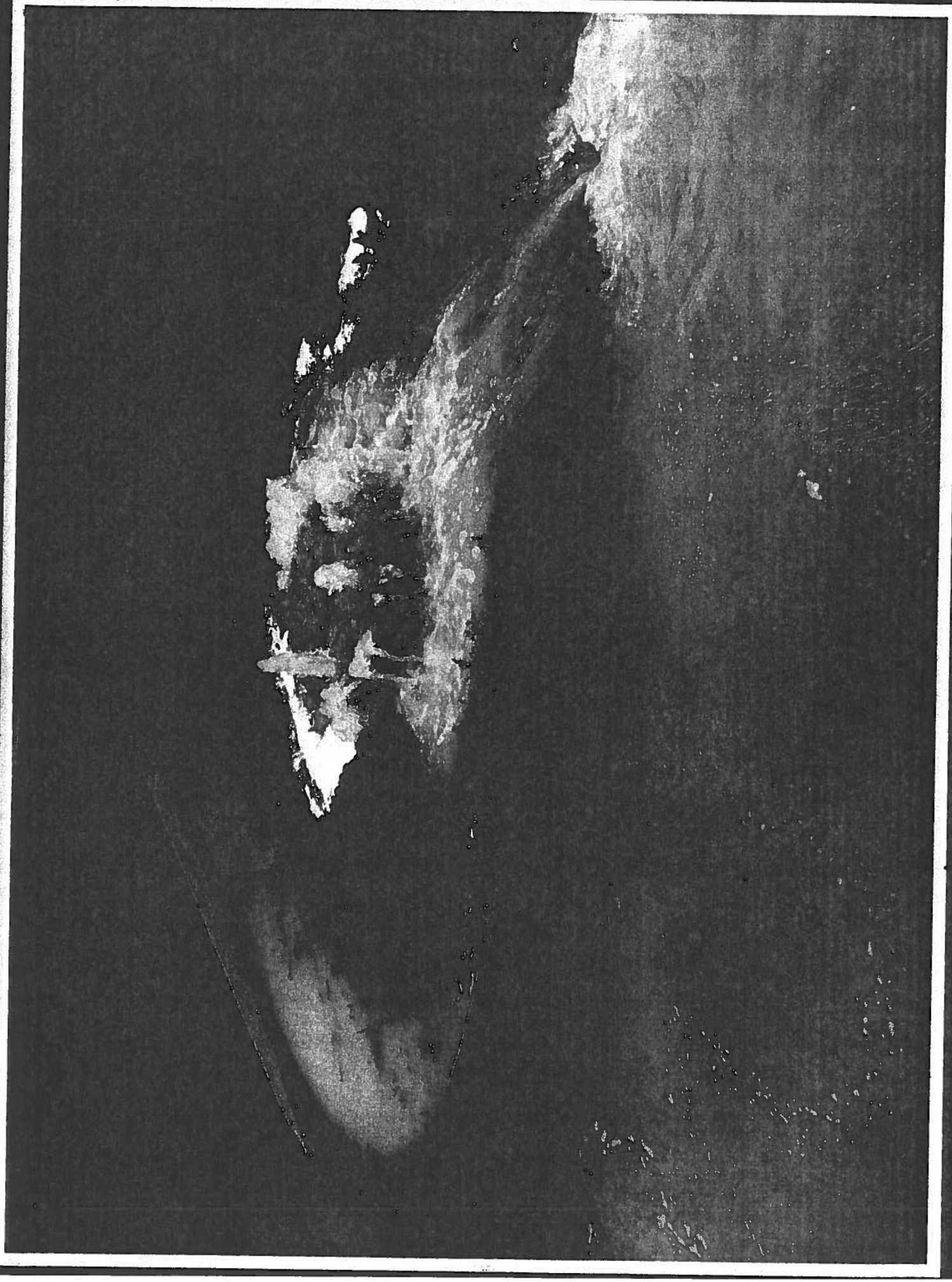


EXHIBIT B


TRANSPORTATION
70 EMPIRE DRIVE
DOCKS IN REAR



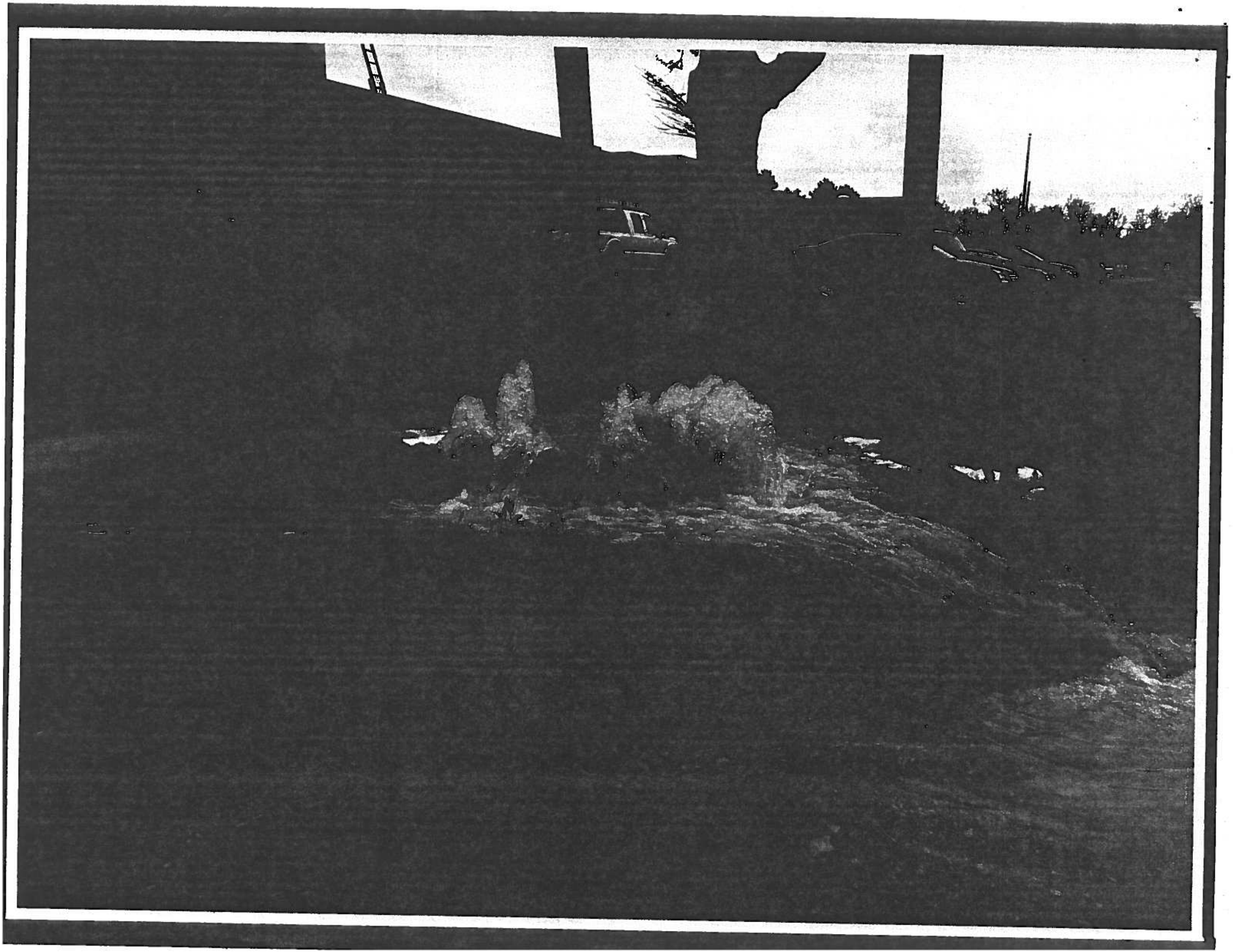


EXHIBIT C

State of New York
Supreme Court: County of Erie

NOTICE OF CLAIM

PLEASE TAKE NOTICE, that WS Empire LLC, pursuant to the statutes in such cases, made and provided, do hereby make claim against the County of Erie, New York ("County").

The name of my attorney is John G. Schmidt, Jr. of Phillips Lytle LLP and his address is One Canalside, 125 Main Street, Buffalo, New York, and in support of such claim do state as follows:

1. My post office address is P.O. Box 902, Buffalo, New York, 14225.

2. This claim is one against the County for property damage and business interruption.

3. The time when the claim arose and the time when the injuries and damages were sustained was February 20, 2014 and May 16, 2014.

4. The place where the injuries were sustained was 70 Empire Drive, West Seneca, New York ("Property").

5. The injuries and damages for which the claim is hereby made arose in the following manner: on February 20, 2014, and May 16, 2014 the claimant herein, the owner of the Property located at 70 Empire Road, experienced significant flooding at the Property due to the inadequate maintenance or failure to maintain, inadequate design and installation and general layout of the sewers, drainage ways, culverts and roadside ditches (collectively the "Drainage System") surrounding the Property. The claimant contends that the County was negligent in that they allowed the Drainage System to exist in such a condition, which caused the flooding in the area. The County also failed and neglected to design, install and properly maintain adequate drainage and the Drainage System in and along the right of way of the County highways and in the general area surrounding the Property.

6. As far as I am now able to determine the injuries and damages sustained by me for which I may claim consist of the following: the loss of materials and supplies; water

damage to the building, driveway and parking area at the Property; repair and cleanup costs related to the Property including building, driveway and parking area; business interruption, the loss of the full use of the Property and the damage to the reputation of the business. The current estimated amount of damages as a result is not less than $10,000.

7. At this time, the Property still remains in danger of flooding during average and ordinary rain occurrences. I am unable to protect my Property from the flooding caused by the inadequately designed, installed and maintained drainage ways and Drainage System, which still exists.

WHEREFORE, I respectfully request that my claim be allowed and paid by the County.

Dated: May 16, 2014

By: Matthew R. Neil

Vice President
WS Empire LLC

STATE OF NEW YORK)
) SS:
COUNTY OF)

On the 16th day of May in the year 2014, before me, the undersigned, personally appeared Matthew R. Neil in his capacity as Vice President of WS Empire LLC personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Charlene J Rees
Notary Public

CHARLENE J REES
Lic. #01RE6214267
Notary Public-State of New York
Qualified in ERIE COUNTY
My Commission Expires DECEMBER 07 2018

Doc #01-2776837.1