(15)

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

August 15, 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:	*Herzog, Sally A. and Paul T., Individually and as Husband and Wife v. County of Erie, et al.*
Document Received:	Notice of Claim
Name of Claimants:	Sally A. and Paul T. Herzog 935 West Alaura Alden, New York 14004
Claimant's attorney:	Leonard D. Zaccagnino, Esq. Shaw & Shaw, P.C. 4819 South Park Avenue Hamburg, New York 14075

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.

STATE OF NEW YORK

SALLY A. HERZOG and PAUL T. HERZOG
Individually and as husband and wife
935 West Alaura
Alden, NY 14004

Claimants,

-vs-

TOWN OF ALDEN

VILLAGE OF ALDEN

TOWN OF ALDEN RECREATION DEPARTMENT

VILLAGE OF ALDEN FIRE DEPARTMENT

MILLGROVE FIRE DEPARTMENT

CRITTENDEN VOLUNTEER FIRE DEPARTMENT

COUNTY OF ERIE

Respondents.

This paper received at
Erie County Clerk's Office
on the 13 day of Aug 2014
at a.m./2:10 p.m.
by Patricia Wunder
Deputy Clerk

NOTICE OF CLAIM

TO: Town of Alden
3311 Wende Road
Alden, NY 14004

Town of Alden Recreation Department
3311 Wende Road
Alden, NY 14004

Village of Alden
13336 Broadway
Alden, NY 14004

Village of Alden Fire Department
13336 Broadway
Alden, NY 14004

RECEIVED
AUG 14 2014
ERIE COUNTY
DEPARTMENT OF LAW

Millgrove Fire Department
11621 Genesee Street
Alden, NY 14004

Crittenden Volunteer Fire Department
13415 Genesee Street
Crittenden, NY 14038

County of Erie
25 Delaware Avenue
Buffalo, NY 14202

PLEASE TAKE NOTICE that the **claimants** claim damages against the **respondents** in accordance with the requirements of General Municipal Law § 50-e and states as follows:

1. The name and address of **claimants** are:

   Sally A. Herzog
   Paul T. Herzog
   935 West Alaura
   Alden, NY 14005

2. The **claimants** are represented herein by:

   Shaw & Shaw, P.C.
   Leonard D. Zaccagnino, Esq., of counsel
   4819 South Park Avenue
   Hamburg, NY 14075

3. This claim is founded in negligence, and is for personal injuries.

4. This is a claim for money damages for personal injuries sustained by **claimant, Sally A. Herzog** against the **respondents** when said **claimant** was caused to sustain serious injury on property more commonly known as the Town of Alden Memorial Park, Alden, Erie County, New York under the possession, custody, control and ownership of the **respondents** herein and more specifically, at the entrance/exit to the parking lot within said Town of Alden Memorial Park. See photographs attached hereto.

5. This claim arose on June 20, 2014 at approximately 10:30 p.m.

6. The incident occurred on property commonly known as Alden Memorial Park on West Main Street, Alden, New York under the possession, custody, control and ownership of the **respondents** herein.

7. The cause of action which forms the substance of this claim arose on June 20, 2014 at approximately 10:30 p.m. when the **claimant**, **Sally A. Herzog**, while an invitee to the premises herein-above referenced, was walking away from a fireworks display when, upon information and belief, she was caused to seriously injure herself when she tripped over a rope barrier across an entrance/exit area causing her to fall to the ground. See attached photographs.

8. The negligence, recklessness and wanton disregard for the safety of others of and by the respondents herein, their agents, servants and/or employees consists, ***inter alia***, of:

(1) respondents failed to properly, adequately, and safely maintain the aforesaid premises;

(2) failed to properly and adequately supervise and control the area where the **claimant, Sally A. Herzog**, injured herself;

(3) situating ropes or barriers across an area commonly used for ingress and egress to a parking area and walkway to other areas of the park;

(5) failed to properly design the area on said premises where the incident occurred;

(6) failed to take the necessary steps to keep the walkway free and clear of dangerous substances, such as ropes and/or other barriers;

(7) failed to adequately supervise the area where **claimant, Sally A. Herzog** fell;

(8) failed to take the necessary steps and make the necessary observations, which, if taken or made, would have avoided the said incident;

(9) in failing to provide sufficient and proper protection and safeguards for the individuals lawfully on the premises;

(10) in failing to have competent, skillful and experienced individuals constructing barriers;

(11) in failing to have competent, skillfull and experienced individuals supervising said area where **claimant, Sally A. Herzog**, fell;

(12) in failing to have a sufficient number of individuals present to properly supervise the area where **claimant, Sally A. Herzog**, fell;

(13) in failing to hire employees who were competent, skilled and experienced in placing barriers;

(14) in failing to provide adequate lighting to the area where **claimant, Sally A. Herzog**, fell; and

(15) in that respondents were otherwise negligent, careless and reckless.

(9) Upon information and belief, the **claimant, Sally A. Herzog**, sustained, without limitation, serious physical injury, including a fracture of her right wrist requiring surgical intervention, said injuries being severe, painful and permanent in nature, as well as shock to the nerves and nervous system, circulatory system, traumatic injury to bones, nerves, tendons, muscular and skeletal systems, with resultant impairment and/or loss of use of normal function; was otherwise rendered sick, sore, lame and disabled; was under the care of medical doctors and other healthcare professionals, and will be so under such care in the future, and was prevented from following her usual duties and activities for a period of time subsequent to this action; has incurred, or may suffer a loss of future earning potential and/or capacity; has incurred, or may incur, hospital

expenses, medical expenses, physical therapy and/or rehabilitation expenses and/or other similar to types of expenses as to the past, present or future, as will relate to the care, treatment and attempted cure of the injuries sustained and/or the residual effects thereof; has been deprived of the ability to enjoy the life and lifestyle that she was so able to participate in and enjoy prior to the happening of this accident; and has been caused to suffer emotional upset, anxiety and depression as a result of the pain and suffering associated with the injuries as to the past and present, and upon information and belief, into said future years; has or may suffer loss in excess of basic economic loss, together with any and all special and general damages as they manifest themselves subsequent to the date of this Notice of Claim.

The claim of **claimant, Paul T. Herzog**, is for the loss of services, society, companionship and consortium of his wife, the **claimant, Sally A. Herzog,** as a result of the negligence, carelessness and/or reckless disregard for the safety of **claimant, Sally A. Herzog** herein, resulting in, among other things, the acts and/or omissions of the respondents, individually and jointly and severally, as well as their agents, servants and/or employees.

Claimants also make claim for any and all medical expenses incurred as to the care, treatment and attempted cure of the injuries sustained and/or the residual effects of the same by the **claimant, Sally A. Herzog** herein as to the past, present and/or future.

(10) **Damages**

The **claimants** make claim for the following damages:

a) pain and suffering, and all physical injuries sustained;

b) emotional upset and/or injury;

c) physical disfigurement;

d) loss of earnings;

e) impairment of earning capacity and/or future earnings;

f) loss of ability to enjoy the life and lifestyle which **claimant, Sally A. Herzog** was able to participate in and enjoy prior to the happening of the accident;

g) all expenses associated with medical, hospital, nursing, physical therapy and any and all other rehabilitative and/or therapy care and treatment rendered as to the cure and/or attempted cure of the injuries sustained by the **claimant, Sally A. Herzog**, including the residual effects thereof as to the past, present and/or future;

h) loss of services, society, companionship and consortium;

i) any and all other special and general damages as they may manifest themselves subsequent to the date of this Notice; and

j) as to all of the above, the same will relate to the past to present and present to future damages.

Dated: July 24, 2014
Hamburg, New York

Sally A. Herzog

Sally A. Herzog

Paul T. Herzog

Paul T. Herzog

SHAW & SHAW, P.C.

Leonard D. Zaccagnino
Attorneys for Claimants
Office and Post Office Address
4819 South Park Avenue
Hamburg, New York 14075
(716) 648-3020 Telephone
(716) 648-3730 Fax

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF ERIE)

SALLY A. HERZOG and ***PAUL T. HERZOG***, being duly sworn, depose and says that they are the claimants in the within action; that they have read the foregoing and know the contents thereof; that the same is true to their own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, deponents believe it to be true.

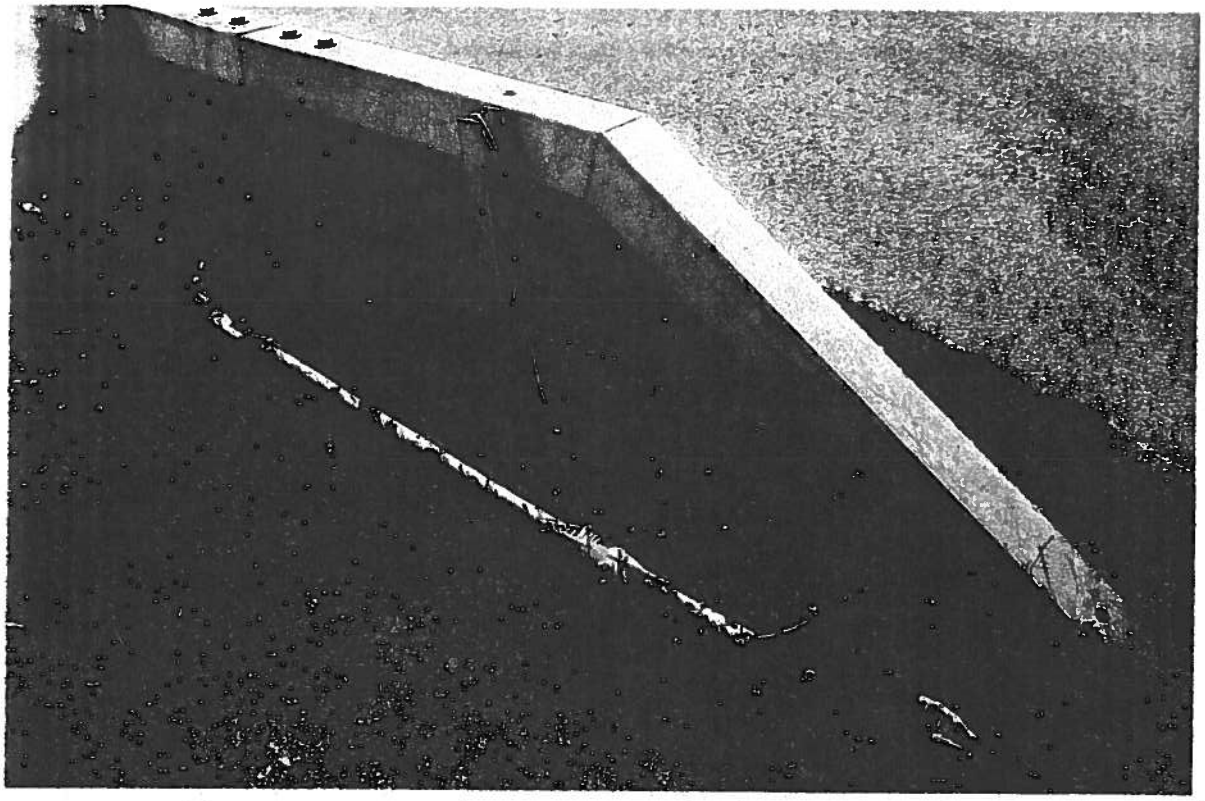
Sally A. Herzog
Sally A. Herzog

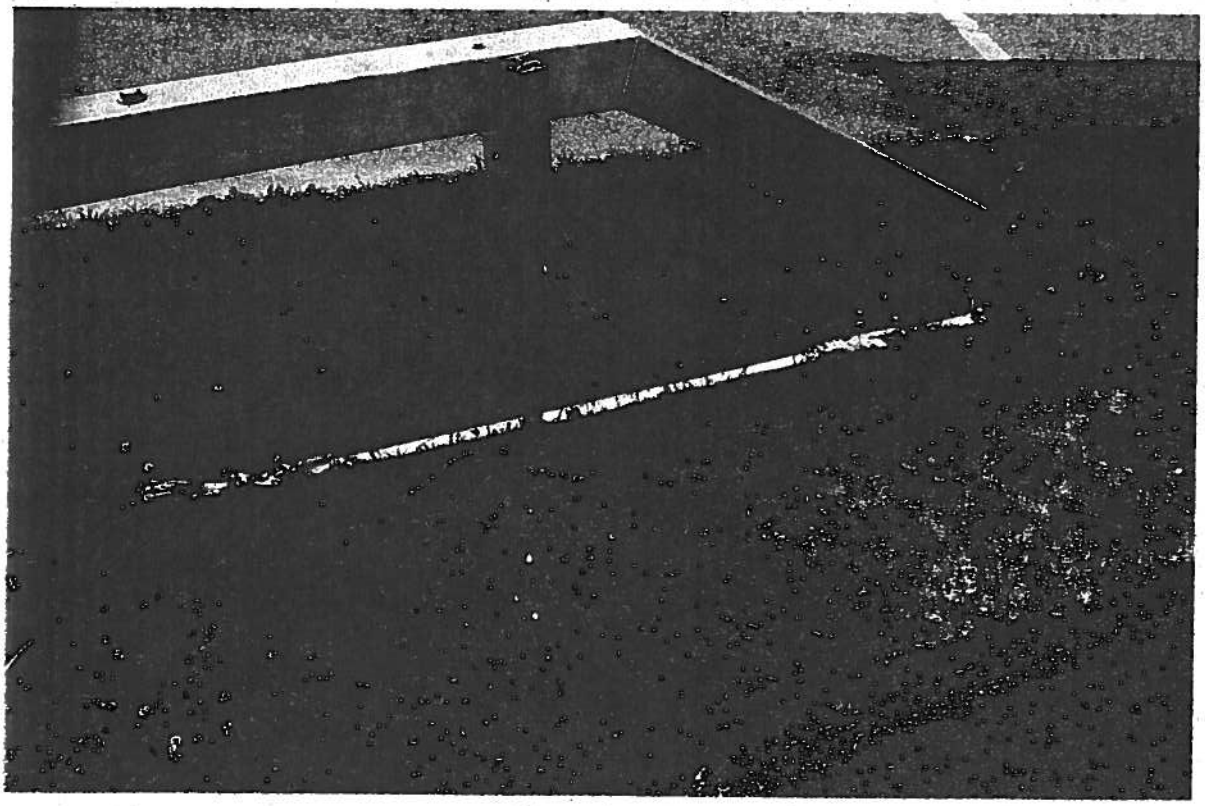
Paul T. Herzog
Paul T. Herzog

Sworn to before me this
_____ day of _____ 2014

Notary Public

Leonard R. Zaccagnino
Notary Public, State of New York
Commission Expires Feb. 28, 2015
Erie County





TOWN OF ALDEN
MEMORIAL PARK
OPEN 6AM- SUNSET
PARK RULES ENFORCED
JOE PANZA
NATURE TRAIL
REAR OF PARK