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 8, 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:	*Zielinski, Ann Marie v. County of Erie*
Document Received:	Notice of Claim
Name of Claimant:	Ann Marie Zielinski 6235 Seneca Street Elma, New York 14059
Claimant's attorney:	James P. Verrastro Spadafora & Verrastro, LLP 2 Symphony Circle Buffalo, New York 14201

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
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Claim of
ANN MARIE ZIELINSKI

Claimant,

NOTICE OF CLAIM

- vs -

COUNTY OF ERIE

Respondent.

PLEASE TAKE NOTICE, that ANN MARIE ZIELINSKI, has claims and hereby makes claims against the COUNTY OF ERIE and their agents, servants, officers, representatives and employees, for property damage, rental charges, out-of-pocket expenses, wages, medical expenses and personal injuries and other applicable damages sustained as a result of a motor vehicle crash of June 6, 2014, and in support thereof, states:

1. The address of the Claimant, ANN MARIE ZIELINSKI, is 6235 Seneca Street, Elma, New York 14059.

2. The names and addresses of the Attorneys for the Claimant are:

SPADAFORA & VERRASTRO
2 Symphony Circle
Buffalo, New York, 14201
(716) 854-1111

This paper received at the
Erie County Attorney's Office
from [illegible] on
the 26th day of August, 2014
at 12:34 a.m./p.m.

Assistant County Attorney

3. The claim of ANN MARIE ZIELINSKI is for among others, for pain and suffering, personal and emotional injuries, property damages and economic loss, suffered and or to be sustained by said Claimant, as against the COUNTY OF ERIE, together with all other damages sustained by said Claimant as a result of the negligence, carelessness and/or reckless disregard of COUNTY OF ERIE by and through its agents, servants and/or employees in general, and, F. B. CZERNIEJEWSKI, who may also be known as FREDERICK B. CZERNIEJEWSKI, JR., in particular. The claim of ANN MARIE ZIELINSKI relates to the operation, service, repair, inspection, management and/or control of a COUNTY OF ERIE vehicle by it's agent, servant and/or employee, said vehicle at all pertinent times being operated, managed and/or controlled in a negligent, careless manner with reckless disregard for the safety of others in general and, this Claimant in particular, and the failure at all pertinent times to operate, manage and/or control said vehicle with due regard for the safety of all persons in general and this Claimant in particular, and said vehicle operator was further negligent and careless and acted with reckless disregard for the safety of others as to the operation, management and/or control of said vehicle owned, used and/or under the control of the COUNTY OF ERIE, by and through its agent, servant and/or employee identified as, F. B. CZERNIEJEWSKI, who may also be known as FREDERICK B. CZERNIEJEWSKI, JR. of 108 Peter Street, Buffalo, New York 14207

4. Time, place and manner in which the claim arose:

Claim arose on or about June 6, 2014 at, near, and/or adjacent to 5730 Seneca Street, landmark location Elma Water Department, located in the Town of Elma, County of Erie and State of New York. (See attached accident information exchange form for location)

The manner in which the claim arose: The Claimant, ANN MARIE ZIELINSKI, was operating her motor vehicle legally and lawfully on or about June 6, 2014 at, near, and/or adjacent to 5730 Seneca Street, landmark location Elma Water Department, located in the Town of Elma, County of Erie and State of New York, when her vehicle was caused to be collided into, crashed and struck from behind by a 2013 dump type truck (hereinafter referred to as "truck") owned by the Respondent, COUNTY OF ERIE and being operated by its agent, servant, representative, officer and/or employee, identified on the attached accident information exchange form, as F. B. CZERNIEJEWSKI, who may also be known as FREDERICK B. CZERNIEJEWSKI, JR.

The COUNTY OF ERIE by and through its agents, servants and/or employee, F. B. CZERNIEJEWSKI, who may also be known as FREDERICK B. CZERNIEJEWSKI, JR. was negligent, careless and/or acted with reckless disregard in that, among others:

a) While proceeding over and along Seneca Street, located in the Town of Elma, he negligently and carelessly, and/or with reckless disregard for others, operated said 2013 truck.

b) Failed to have said 2013 truck under proper management and control.

c) Operated and drove the 2013 truck at a reckless and dangerous rate of speed under the circumstances and conditions then and there existing.

d) Failed to observe the vehicle being legally and lawfully operated by the Claimant ANN MARIE ZIELINSKI.

e) Failed to alter or deflect the course of the 2013 truck vehicle so as to avoid a collision as it approached and traveled in, over and along Seneca Street, located in the Town of Elma.

f) Failed to give the other vehicle being operated by Claimant, ANN MARIE ZIELINSKI, any notice or warning of the approach of his vehicle by sounding a horn or otherwise.

g) Failed to give the other vehicle being operated by Claimant any notice or warning of the rear end crash into Claimant's vehicle.

h) Failed at all times to yield the right-of-way to the vehicle being operated by Claimant.

i) In following to closely behind the vehicle being operated by Claimant.

j) In following to closely behind the vehicle being operated by Claimant.

k) In otherwise being negligent, careless and acting in reckless disregard for the safety of others and/or without due regard for the safety of others as to the operation, management and control of said truck at or near the accident site location.

l) And otherwise being negligent and careless in the operation, management and control of said vehicle at or near the aforesaid intersection where the accident happened.

The COUNTY OF ERIE by and through its agents, servants and/or employees, were negligent, careless and/or acted with reckless disregard in that, among others:

m) Negligent hiring of its agents, servants and/or employees in general, and F. B. CZERNIEJEWSKI, in particular.

n) Negligent training of its agents, servants and/or employees in general, and F. B. CZERNIEJEWSKI, in particular.

o) Negligent supervision of its agents, servants and/or employees in general, and F. B. CZERNIEJEWSKI, in particular.

p) Negligent screening of its agents, servants and/or employees in general and F. B. CZERNIEJEWSKI, in particular.

q) Negligent inspection, servicing and/or maintenance of its vehicles by their agents, servants and/or employees in general, and F. B. CZERNIEJEWSKI, in particular.

r) Negligently allowing the use of their dump truck at a time when said vehicle was not properly equipped with sufficient brakes or braking system.

s) Negligently allowing the use of their dump truck at a time when said vehicle was not properly equipped for the purpose of being used and/or driven as a dump truck.

t) In otherwise being negligent, careless and/or acting with reckless disregard for the safety of others and/or due care of others as to the hiring, training and/or instructing of its agents, servants and/or employees in general and F. B. CZERNIEJEWSKI, in particular.

u) And otherwise being negligent and/or careless.

5. Injuries sustained by the Claimant, ANN MARIE ZIELINSKI, are traumatic injuries in and to the paravertebral spinal muscles, ligaments, blood vessels and nerves; traumatic injury into and about the intervertebral discs; traumatic injury into and about various other portions of her person, including without limitation thereto, injuries/conditions involving brain, head injury; headaches; neck pain; left shoulder pain – more significant than right shoulder pain; pain, numbness and tingling down left arm into fingers – thumb not affected; left wrist pain; bruise mark at left shoulder; back pain; numbness into the right foot into the toes and underneath bottom portion of foot; left elbow pain; lump in the head was primarily on the left side – approximately 2 inches into the hairline; fluid in both ears; dizziness; unsteady on her feet; nauseous; significant sleep impairment due to pain and nightmare activities including Claimant spinning around in motor vehicle; extreme stress; extremely fearful in motor vehicle and chronic pain residuals, anxiousness and depressed state as a result of injuries and chronic pain, anxiety and fearful about being in a motor vehicle together with any and other injuries and/or conditions from said injuries which may develop after the filing of this Notice of Claim, further together with any aggravation, activation and/or exacerbation of any pre-existing conditions therein and/or thereabout said injury sites set forth above and/or other injuries which may be diagnosed by Claimant's attending physician and/or medical providers tending and caring for her.

As a result of said negligence, carelessness and/or reckless disregard for the safety of others, ANN MARIE ZIELINSKI has or may in the future suffer and sustain serious injury as defined by Article 51 of the Insurance Laws of the State of New York, as amended; has or may in the future suffer severe and/or permanent injuries including damage to spine and intervertebral discs relating thereto; has been caused to suffer and sustain non economic loss, pain and suffering as to the past to the present, and upon information and belief, into the future; has suffered shock to the nerves and nervous system, together with internal injuries and emotional upset; has suffered and sustained traumatic injury to the body; has and/or may incur medical and hospital related expenses and/or other expenses relating to care, treatment and/or attempted cure and rehabilitation of said injuries and/or the residual effects thereof; and upon information and belief, will continue to incur said injury and/or rehabilitative expenses into the future; has and/or may be caused to suffer loss in excess of basic economic loss, all as a result of said injuries sustained and/or the residual and/or permanent effects relating thereto, and all applicable economic damages which she sustained and/or in the future may sustain as a result of the aforesaid accident of June 6, 2014, all as a result of said crash and collision, injuries sustained and/or the residual and permanent effects relating thereto, resulting from the accident, above-referred.

6. The Claimant, ANN MARIE ZIELINSKI, has been and/or may be caused to expend money and to incur expenses in the care and treatment of the injuries she sustained. The exact amount of medical expenses is unknown to the Claimant as she is still undergoing treatment. Those bills will be submitted upon completion of treatment or as they are made known to the Claimant. It is believed that the Claimant, ANN MARIE ZIELINSKI, has and/or will have sustained permanent injuries and will require future care and treatment as a result of same.

7. The Claimant, ANN MARIE ZIELINSKI, makes a claim for pain and suffering, personal and emotional injuries, property damages and economic loss, suffered and or to be sustained by said Claimant which she sustained in the aforesaid accident as a result of the reckless disregard, carelessness and/or negligence of the COUNTY OF ERIE by and through its agents, servants and/or employees of aforesaid. The Claimant, ANN MARIE ZIELINSKI, also makes a claim for pain and suffering, personal and emotional injuries, property damages and economic loss, suffered and or to be sustained by said Claimant, in the aforesaid crash and collision, as a result of the negligent hiring, training and/or instruction of it's agents, servants and/or employees as to the proper and safe manner of operating their respective vehicles. The Claimant, ANN MARIE ZIELINSKI, also makes a claim for pain and suffering, personal and emotional injuries, property damages and economic loss, suffered and or to be sustained by said Claimant, in the aforesaid crash and collision, as a result of the negligent maintenance, inspection, servicing and/or repair of their respective vehicles.

8. If applicable, the Claimant, ANN MARIE ZIELINSKI, would also make claim for all property damage and out-of-pocket expenses incurred as to any losses for vehicular damage, which are in excess of the outstanding financial obligations owed on the vehicle she owned and operated on June 6, 2014, which was involved in the crash and collision of June, 6, 2014, and if applicable for any and all out-of-pocket expenses associated with a rental vehicle and/or a leased vehicle, which said expenses were incurred as a result of the out of service condition of Claimant's vehicle as a result of the damages sustained by the Claimant's vehicle in the accident

9. The Claimant, ANN MARIE ZIELINSKI, would further make claim for any and all other applicable damages which she may be entitled to receive as a result of the crash and collision that occurred on June 6, 2014.

10. The Claimant makes demand of the COUNTY OF ERIE for payment of such claim within the statutory period provided. That upon the failure of the COUNTY OF ERIE to pay such claim within the statutory period provided therein, it is the intention of the Claimant to commence an action against the COUNTY OF ERIE and such others as may be liable therefore and to recover damages sustained by this Claimant as hereinbefore set forth.

STATE OF NEW YORK)
COUNTY OF ERIE) S S . . .

I, Ann Marie Zielinski, being duly sworn, depose and say: That she is the Claimant, above-named in the within action; that she had read the foregoing NOTICE OF CLAIM and knows the contents thereof; that same is true to her own knowledge except as to those matters stated to be alleged on information and belief, and as to those matters, she believes it to be true.

Ann Marie Zielinski

Claimant – Ann Marie Zielinski

Sworn to before me this
26th day of August, 2014

RENEE C. NOODY
Notary Public, State of New York
Qualified in Erie County
My Commission Expires May 29, 2015

TO: COUNTY OF ERIE

WHEREFORE, the Claimant, Ann Marie Zielinski, respectfully requests that her Claim be adjusted and paid as provided by law.

DATED: August 26, 2014

Ann Marie Zielinski

Ann Marie Zielinski

STATE OF NEW YORK)
CITY OF BUFFALO) S S . . .

I, Ann Marie Zielinski, being duly sworn, deposes and says: That she is the Claimant above-named in the within action; that she has read the foregoing NOTICE OF CLAIM and knows the contents thereof; that same is true to her own knowledge except as to those matters stated to be alleged on information and belief, and as to those matters, she believes it to be true.

Ann Marie Zielinski

Ann Marie Zielinski

Sworn to before me this
26th day August, 2014.

RENEE C. NOODY
Notary Public, State of New York
Qualified in Erie County
My Commission Expires May 29, 2015

TO: COUNTY OF ERIE

I hereby certify that, to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the claim within or the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1 of the Rules of the Chief Administrator (22NYCRR).

James P. Verrastro, Esq.
SPADAFORA & VERRASTRO, LLP
2 Symphony Circle
Buffalo, New York 14201
(716) 854-1111

ACCIDENT INFORMATION EXCHANGE FORM

NY State Law requires that any accident resulting in a fatality, injury or damage to property of any person (including damage to your vehicle) or entity over $1000 be reported by YOU to the Department of Motor Vehicles (DMV) within 10 days after an accident. Failure to report an accident or failure to give correct information is a misdemeanor and may result in the suspension/revocation of your driver's license (or operating priviledge in NYS) and all vehicle certifications or registrations.

Report your Accident to DMV on DMV form MV-104 (Report of Motor Vehicle Accident). Police Accident Reports (DMV form MV-104A) DO NOT satisfy YOUR civilian reporting requirement.

Accident Report #	Local Codes	Date	Time	# of Veh.	Town, City, Road Name
R1EC3834MVN0	14-038124	06/06/2014	10:53 AM	2	ELMA, TOWN OF - 1562 SENECA ST

Police Agency	Officer's Name/Badge ID#
ERIE CO. SHERIFF - 01400	HIGGINS T 0181

VEHICLE # 001

Operator's Name	Date of Birth	Address
ZIELINSKI ANNMARIE	02/17/1963	6235 SENECA ST

City/State/Zip	Motorist I.D.#	Vehicle Year and Make	License Plate # and State
ELMA NY 14059	809668589	2012 CHEV	BDS2471 NY

Vehicle Type	Insurance Code and Company	Vehicle Owner
4DSD	328 - STATE FARM MUT AUTO CO	ZIELINSKI ANN M

Vehicle Towed By	Vehicle Towed To
SMOKEYS	SMOKEYS

Miscellaneous Notes

VEHICLE # 002

Operator's Name	Date of Birth	Address
CZERNIEJEWSKI F B	06/17/1968	108 PETER ST

City/State/Zip	Motorist I.D.#	Vehicle Year and Make	License Plate # and State
BUFFALO NY 14207-0000	413193711	2013 FRHT	R31784 NY

Vehicle Type	Insurance Code and Company	Vehicle Owner
DUMP	997 - SELF-INSURER	ERIE COUNTY

Vehicle Towed By	Vehicle Towed To

Miscellaneous Notes

Please wait 14 days before contacting DMV to request a copy of your accident report.

If you want to purchase a copy of the police accident report, form MV-104A,
complete DMV's "REQUEST FOR COPY OF ACCIDENT REPORT" form MV-198C and send it to DMV.
The form and instructions are available at www.dmv.ny.gov or at your local DMV office.

THE FORM MV-104A MAY ALSO BE PURCHASED BY CONTACTING THE INVESTIGATING POLICE AGENCY
ERIE COUNTY SHERIFFS DEPT., 10 DELAWARE AVE., BUFFALO, NY 14202

To obtain a blank civilian Accident Report (Form MV-104),
visit the DMV office nearest you
or
access forms online at www.dmv.ny.gov