(2)

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 7, 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:	*Gardner, Morgan, by Dave Gardner as f/n/g v. County of Erie, et al.*
Document Received:	Notice of Claim
Name of Claimant:	Dave Gardner (as f/n/g of Morgan Gardner) 18 Stonehedge Drive Lancaster, New York 14086
Claimant's attorney:	Robert J. Maranto, Jr., Esq. Andrews, Bernstein, Maranto & Nicotra, PLLC 420 Franklin Street Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: _____
Jeremy C. Toth
Second Assistant County Attorney
jeremy.toth@erie.gov

JCT:dld
Enc.

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

DAVE GARDNER, Individually and
as Father and Natural Guardian of
MORGAN GARDNER,

Claimants,

NOTICE OF CLAIM

ERIE COUNTY COMMUNITY COLLEGE
CITY CAMPUS
121 Ellicott Street
Buffalo, NY 14203

BURT FLICKINGER ATHLETIC CENTER
21 Oak Street
Buffalo, NY 14203

COUNTY of ERIE
95 Franklin Street
Room 1634
Buffalo, NY 14202

Respondents.

RECEIVED
OCT 03 2014
ERIE COUNTY
DEPARTMENT OF LAW

PLEASE TAKE NOTICE, that the Claimants, DAVE GARDNER, individually and as father and natural guardian of, MORGAN GARDNER, hereby intends to file a claim against the ERIE COUNTY COMMUNITY COLLEGE, BURT FLICKINGER ATHLETIC CENTER and COUNTY of ERIE and in support of said claim states the following:

1. The Post Office address of the Claimant is 18 Stonehedge Drive, Lancaster, NY 14086.

2. The attorneys for Claimants are Andrews, Bernstein, Maranto & Nicotra, PLLC, and their post office address is 420 Franklin Street, Buffalo, New York 14202, Telephone: (716) 842-2200.

3. This claim arose as follows: On or about July 16, 2014, at approximately 8:00 p.m., Infant Claimant MORGAN GARDNER, then age thirteen (13) (born on September 7, 2000) was competing in a swim meet at the BURT FLICKINGER ATHELTIC CENTER, located at 21 Oak Street, Buffalo, NY 14203. Infant Claimant, MORGAN GARDNER, was standing outside of the women's locker room after

competing in the meet. Infant Claimant, MORGAN GARDNER, was leaning against the wall when her left Achilles tendon was severed by a jagged edge of a glass block wall. Upon information and belief, the BURT FLICKINGER ATHLETIC CENTER is owned, controlled, operated, and maintained by ERIE COUNTY COMMUNITY COLLEGE and the COUNTY OF ERIE. Furthermore, upon information and belief, ERIE COUNTY COMMUNITY COLLEGE and the COUNTY of ERIE own, control, operate, and maintain property on and near 21 Oak Street, Buffalo, NY 14203.

4. This incident was caused by the negligence, carelessness, and recklessness on the part of ERIE COUNTY COMMUNITY COLLEGE, the BURT FLICKINGER ATHLETIC CENTER, and the COUNTY of ERIE, through their agents, servants and/or employees as follows:

a. The respondents and/or their agents, servants, or employees were negligent in failing to maintain the premises in a reasonable and safe condition;

b. The respondents and/or their agents, servants, or employees were negligent in creating and/or maintaining a dangerous and hazardous condition on the premises;

c. The respondents and/or their agents, servants, or employees were negligent in failing to remedy the aforesaid condition;

d. The respondents and/or their agents, servants, or employees were negligent in failing to warn the plaintiff of the dangerous and hazardous conditions in the subject of the premises;

e. The respondents and/or their agents, servants, or employees were negligent in failing to inspect the premises;

f. The respondents and/or their agents, servants, or employees or their agents were negligent in failing to take proper measures to correct the dangerous condition in the subject area;

g. The respondents and/or their agents, servants, or employees were negligent in failing to observe the dangerous condition in the subject area; and

h. The respondents were otherwise negligent.

5. The claim for Infant Claimant, MORGAN GARDNER, is for personal injuries, conscious physical and emotional pain and suffering, medical expenses, as well as consequential damages.

6. The claim for DAVE GARDNER is for medical expenses, emotional pain and suffering, as well as consequential damages of Infant Claimant, MORGAN GARDNER.

7. By virtue of the negligence, carelessness and recklessness of ERIE COUNTY COMMUNITY COLLEGE, the BURT FLICKINGER ATHLETIC CENTER and the COUNTY of ERIE, Infant Claimant, MORGAN GARDNER, was caused to suffer serious, significant and permanent injuries from this incident, including but not limited to left Achilles tendon. Infant Claimant, MORGAN GARDNER, also suffered other injuries and complications as yet undetermined as a result of this incident and, and by reason of the same, Infant Claimant, MORGAN GARDNER, sustained damages in an amount which cannot be reasonably calculated at this time.

8. By virtue of the negligence, carelessness, and recklessness of ERIE COUNTY COMMUNITY COLLEGE, the BURT FLICKINGER ATHLETIC CENTER, and the COUNTY of ERIE, Infant Claimant, MORGAN GARDNER, has also incurred hospital and medical expenses, as well as other necessary related expenses, the amount of which is undetermined to date.

WHEREFORE, Claimants request that ERIE COUNTY COMMUNITY COLLEGE, the BURT FLICKINGER ATHLETIC CENTER, and the COUNTY of ERIE, compensate Infant Claimant, MORGAN GARDNER, for her injuries, and Claimant, DAVE GARDNER, for his economic damages and loss.

DATED: Buffalo, New York
October 2, 2014

Yours, etc.

By: _____

Robert J. Maranto, Jr., Esq.
ANDREWS, BERNSTEIN, MARANTO & NICOTRA, PLLC
Attorney for Claimants
420 Franklin Street
Buffalo, New York 14202
(716) 842-2200

VERIFICATION

STATE OF NEW YORK :
COUNTY OF ERIE : ss.
CITY OF BUFFALO :

DAVE GARDNER, being duly sworn, depose and says that he is the Claimant in this action for; that he has read the foregoing Notice of Claim in this action and know the contents thereof; that the same is true to the knowledge of deponents; except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes them to be true.

DAVE GARDNER

Sworn to before me this 1st
day of October, 2014

Notary Public

STACIE LEIGH DUDERWICK
Notary Public, State of New York
Qualified in Erie County
My Commission Expires December 30, 2017