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

December 1, 2014

Ms. Karen McCarthy, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Ms. McCarthy:

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:	*Rojas, Minerva and Jorge D. v. Mohawk Group, Inc. and Ellicott Development Company, LLC*
Document Received:	Summons and Complaint
Name of Claimant:	Minerva and Jorge Rojas 49 Commodore Avenue Tonawanda, New York 14150
Claimant's attorney:	Mollie C. McGorry, Esq. Connors & Vilardo, LLP 1000 Liberty Building 424 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 Parker
First Assistant County Attorney

MMP:dld
Enc.

PHILADELPHIA
INSURANCE COMPANIES
A Member of the Tokio Marine Group
Claims Department
P.O. Box 950, Bala Cynwyd, Pennsylvania 19004-0950
800.765.9749 * Fax: 800.685.9238 * PHLY.com

Wesley J. Miner, SCLA
Sr. Claims Examiner
Direct Dial: (716) 541-9560
Email: wesley.miner@phly.com

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RECEIVED
NOV 24 2014
ERIE COUNTY
DEPARTMENT OF LAW

Certified Mail / RRR

November 10, 2014

Erie County Department of Social Services
Attn: Mark C. Poloncarz
95 Franklin St.
Buffalo, NY 14202

Re: **Rojas v. Mohawk Group, Inc., et al.**

Our Insured:	Ellicott Development Company; Mohawk Group, Inc.
Claim Number:	823021
Plaintiff:	Minerva Rojas
Date of Loss:	8/15/2013
Index No:	806976/2014 (Erie County Supreme)

Dear Mr. Poloncarz:

Philadelphia Indemnity Insurance Company (PIIC) issued a Commercial General Liability Insurance Policy to Ellicott Development Company; Mohawk Group, Inc. under policy number PHPK958211, bearing effective dates from 12/31/2012 to 12/31/2013.

Ellicott Development Company; Mohawk Group, Inc. (hereafter "EDC") received the enclosed lawsuit. The plaintiff, Minerva Rojas, allegedly slipped and fell, sustaining injury, while in the course and scope of her employment with Erie County Department of Social Services, located at 478 Main Street, Buffalo, New York.

This loss is alleged to have occurred on August 15th, 2013, during which time the subject premises were leased to Erie County Department of Social Services (hereafter "ECDSS").

Section 6.1 of the Lease Agreement, entitled **Indemnity**, states:

(a) Tenant hereby agrees to defend, pay, indemnify and save free and harmless Landlord, and/or any fee owner from and against any and all claims, demands, fines, suits, actions, proceedings, orders, decrees and judgments of any kind or nature by or favor of anyone whomsoever and from and against any and all costs and expenses, including attorney's fees, resulting from or in connection with loss of life, bodily or personal injury or property damage arising directly or indirectly out of or from or on account of any occurrence in, upon, about, at or from the Leased Premises occasioned through the negligent or willful misconduct in the use and occupancy of the Leased Premises… or by any act or omission of Tenant, or their respective employees, agents, contractors or invitees in, upon about at or from the Leased Premises to its appurtenances or any of Tenant Common Areas.

(b) Tenant and all those claiming by, through or under Tenant… shall occupy and use the Leased Premises… and all other portions of the Center solely at their own risk and Tenant and all those claiming by, through or under Tenant hereby release Landlord from any and all claims of every kind, including loss of life, personal or bodily injury… arising directly or indirectly out of or from or on account of such occupancy and use or resulting from any present or future condition or state of repair thereof.

(c) Landlord and Landlord's agents or employees shall not be responsible or liable at any time to Tenant, or those claiming by, through or under Tenant, for any loss of life, bodily or personal injury… that may be occasioned by or through the acts, omissions or negligence of any other persons, or any other tenants or occupants of any portion of the Center or the Entire Premises.

(d) Tenant shall give prompt notice to Landlord in case of fire or other casualty or accidents in the Leased Premises or in the building or any defects therein or in any of its fixtures, machinery or equipment.

(e) Tenant expressly acknowledges that all of the foregoing and following provisions of this section shall apply and become effective to the full extent permitted by Law. In case Landlord shall be made a part to any litigation commenced by or against Tenant, its agents, licensees, concessionaires, contractors, customers or employees, or arising out of Tenant's use or occupancy of the Leased Premises or other action of the Tenant or its agents, the Tenant shall protect and hold Landlord harmless, and in addition, shall pay all costs, expenses, and reasonable attorney's fees incurred or paid by Landlord in connection with such litigation. The Tenant shall maintain at its own expense insurance or shall act as a self-insured in such amounts and for such purposes.

On behalf of EDC, we are tendering this matter to ECDSS, and request common law and contractual indemnification, and to save harmless EDC in this matter. We request that you (or your insurance carrier) provide the rights and privileges of an Additional Insured to EDC as afforded by your general liability insurance policy, and as required by contract / agreement.

If you should require additional information, or wish to discuss this matter, please contact the undersigned at (716)541-9560. We require formal acknowledgment and acceptance of this tender demand in a timely manner.

Sincerely,

Wesley J. Miner

Wesley J. Miner, SCLA
Sr. Claims Examiner

Encl: S&C

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MINERVA ROJAS
49 Commodore Avenue
Tonawanda, New York 14150,

JORGE D. ROJAS
49 Commodore Avenue
Tonawanda, New York 14150,

Plaintiffs,

-vs-

MOHAWK GROUP, INC.
295 Main Street, Suite 210
Buffalo, New York 14203,

ELLICOTT DEVELOPMENT
COMPANY, LLC
295 Main Street, Suite 210
Buffalo, New York 14203,

Defendants.

SUMMONS

Index No. 806976/2014

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon the plaintiffs' attorneys at their address stated below, an answer to the attached complaint.

If this summons was personally delivered to you in the State of New York, the answer must be served within twenty (20) days after such service of the summons, excluding the date of service. If the summons was not personally delivered to you within the State of New York, the answer must be served within thirty (30) days after service of the summons is complete as provided by law.

If you do not serve an answer to the attached complaint within the applicable time limitation stated above, a judgment will be entered against you, by default, for the relief demanded in the complaint, without further notice to you.

The plaintiffs designate Erie County as the place of trial; the basis of venue is the residence of the plaintiffs, which is noted on the face of this summons.

This summons was filed on the date shown on the face of this summons with the Clerk of the Court in which this action is brought and assigned the Index Number on the face of this summons.

GIVE THESE PAPERS TO YOUR
INSURANCE COMPANY IMMEDIATELY.
THE FAILURE TO DO SO MAY RESULT IN THE
LOSS OF YOUR INSURANCE COVERAGE.

DATED: Buffalo, New York
June 30, 2014

Mollie C. McGorry, Esq.
CONNORS & VILARDO, LLP
Attorneys for the Plaintiffs
MINERVA ROJAS and
JORGE D. ROJAS
1000 Liberty Building
424 Main Street
Buffalo, New York 14202
(716) 852-5533

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MINERVA ROJAS and
JORGE D. ROJAS,

Plaintiffs,

COMPLAINT

Index No. 806976/2014

-vs.-

MOHAWK GROUP, INC., and
ELLICOTT DEVELOPMENT
COMPANY, LLC,

Defendants.

The plaintiffs, MINERVA ROJAS and JORGE G. ROJAS, by their attorneys, Connors & Vilardo, LLP, for their complaint alleges that:

1. At all times herein, the plaintiffs, MINERVA ROJAS and JORGE D. ROJAS, were and are residents of the Town of Tonawanda, County of Erie, and State of New York.

2. Upon information and belief, at all times herein, the defendant, MOHAWK GROUP, INC., was and is a New York corporation, duly organized and existing under the laws of the State of New York, with its principal place of business located at 295 Main Street, Suite 210, Buffalo, New York 14203.

3. Upon information and belief, at all times herein, the defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, was and is a New York corporation, duly organized and existing under the laws of the State of New York, with its principal place of business located at 295 Main Street, Suite 210, Buffalo, New York 14203.

4. Upon information and belief, on and before August 15, 2013, the defendant, MOHAWK GROUP, INC., owned the building and the property located at 478 Main Street, Buffalo, New York 14202, commonly known as the "Mohawk Building."

5. Upon information and belief, on and before August 15, 2013, the defendant, MOHAWK GROUP, INC., its agents and/or employees managed the Mohawk Building.

6. Upon information and belief, on and before August 15, 2013, the defendant, MOHAWK GROUP, INC., its agents and/or employees maintained the Mohawk Building.

7. Upon information and belief, on and before August 15, 2013, the defendant, MOHAWK GROUP, INC., its agents and/or employees operated the Mohawk Building.

8. Upon information and belief, on and before August 15, 2013, the defendant, MOHAWK GROUP, INC., its agents and/or employees controlled the Mohawk Building.

9. Upon information and belief, on and before August 15, 2013, the defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, owned the Mohawk Building.

10. Upon information and belief, on and before August 15, 2013, the defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees managed the Mohawk Building.

11. Upon information and belief, on and before August 15, 2013, the defendant, *ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or* employees maintained the Mohawk Building.

12. Upon information and belief, on and before August 15, 2013, the defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees operated the Mohawk Building.

13. Upon information and belief, on and before August 15, 2013, the defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees controlled the Mohawk Building.

14. On August 15, 2013, the Mohawk Building was open to the public and operated as a commercial office building.

15. On or about August 15, 2013, there existed on the above mentioned premises a defective and dangerous condition, including, but not limited to: pooling puddles of water or other liquid, located in the 6th floor hallway near the ladies room.

16. On or about August 15, 2013, while walking to the 6th floor ladies room, the plaintiff, MINERVA ROJAS, was caused to slip and fall as a result of the above mentioned dangerous and hazardous condition.

17. As a result of the foregoing, the plaintiff, MINERVA ROJAS, sustained serious, painful, and permanent injuries, including but not limited to: a left shoulder impingement requiring left shoulder arthroscopic intraarticular debridement followed by arthroscopic subacromial decompression; pain and discomfort in the anterior aspect of the left shoulder; loss of functioning and range of motion in the

left arm; the need for cortisone injections in her left shoulder to manage her pain; the inability to achieve restful, restorative sleep; an increased likelihood of developing arthritis; the need to seek and receive ongoing medical advice, care, and treatment; an obligation to seek and receive further medical advice, care and treatment in the future; the need to modify her activities and an inability to attend to her usual activities; and continued pain suffering and the loss of enjoyment of life.

18. This action falls within one or more of the exceptions set forth in CPLR § 1602.

FOR A FIRST CAUSE OF ACTION AGAINST
MOHAWK GROUP, INC.

19. The plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs with the same force and effect as if fully set forth herein.

20. The defendant, MOHAWK GROUP, INC., its agents and/or employees, had a duty to the public, including the plaintiff, MINERVA ROJAS, to maintain a safe premises so as to prevent the occurrence of foreseeable injuries to the public.

21. The defendant, MOHAWK GROUP, INC., its agents and/or employees, had a duty to inspect the floors in the Mohawk Building and perform necessary maintenance, cleaning, and upkeep.

22. The defendant, MOHAWK GROUP, INC., its agents and/or employees, had a duty to protect reasonably anticipated users of the Mohawk Building from foreseeable and/or known dangers.

23. The defendant, MOHAWK GROUP, INC., its agents and/or employees, had a duty to exercise reasonable care to discover any hazardous and/or dangerous conditions on its property, including on the floors of the Mohawk Building.

24. Upon information and belief, the defendant, MOHAWK GROUP, INC., its agents and/or employees, had actual knowledge and notice of the above described hazardous and dangerous condition.

25. Upon information and belief, the defendant, MOHAWK GROUP, INC., its agents and/or employees, affirmatively created the above described hazardous and dangerous condition.

26. Upon information and belief, the above described hazardous and dangerous condition existed for a sufficient length of time prior to the happening of the incident involving the plaintiff, MINERVA ROJAS, that the defendant, MOHAWK GROUP, INC., its agents and/or employees, could and should have taken steps to remedy the dangerous condition.

27. The existence of the above described hazardous and dangerous condition was a breach of the defendant, MOHAWK GROUP, INC.'s, duty to reasonably foreseeable users of the Mohawk Building.

28. Upon information and belief, the defendant, MOHAWK GROUP, INC., its agents and/or employees, were negligent, reckless, and careless in allowing the hazardous and dangerous condition to exist.

29. Upon information and belief, the negligence of the defendant, MOHAWK GROUP, INC., its agents and/or employees consisted of, but was not limited to: causing and permitting a dangerous condition to exist; in failing to

maintain, clean, and remove pools of water and other liquids from the 6th floor hallway, located in the Mohawk Building; in causing and permitting the 6th floor hallway of the Mohawk Building to remain in an unsafe and hazardous condition; in failing to warn the plaintiff in particular and the public in general of the dangerous and hazardous condition; in failing to use due care and caution under the circumstances; and being generally negligent, reckless, and careless.

30. As a result of the acts and omissions of the defendant, MOHAWK GROUP, INC., its agents and/or employees, the plaintiff, MINERVA ROJAS, was caused to suffer and sustain severe and permanent personal injuries and pain and suffering.

31. Upon information and belief, the described incident and injuries resulted solely from the negligent, reckless, and careless acts and/or omissions of the defendant, MOHAWK GROUP, INC., its agents and/or employees and is in no way attributable to any negligence or want of care on the part of the plaintiff, MINERVA ROJAS.

32. As a result of the foregoing, the plaintiff, MINERVA ROJAS, has been damaged in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, and the plaintiff will seek damages in an amount to be proven and determined at the time of trial.

FOR A SECOND CAUSE OF ACTION AGAINST
ELLICOTT DEVELOPMENT COMPANY, LLC

33. The plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs with the same force and effect as if fully set forth herein.

34. The defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees, had a duty to the public, including the plaintiff, MINERVA ROJAS, to maintain a safe premises so as to prevent the occurrence of foreseeable injuries to the public.

35. The defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees, had a duty to inspect the floors in the Mohawk Building and perform necessary maintenance, cleaning, and upkeep.

36. The defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees, had a duty to protect reasonably anticipated users of the Mohawk Building from foreseeable and/or known dangers.

37. The defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees, had a duty to exercise reasonable care to discover any hazardous and/or dangerous conditions on its property, including on the floors of the Mohawk Building.

38. Upon information and belief, the defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees, had actual knowledge and notice of the above described hazardous and dangerous condition.

39. Upon information and belief, the defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees, affirmatively created the above described hazardous and dangerous condition.

40. Upon information and belief, the above described hazardous and dangerous condition existed for a sufficient length of time prior to the happening of the incident involving the plaintiff, MINERVA ROJAS, that the defendant,

ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees, could and should have taken steps to remedy the dangerous condition.

41. The existence of the above described hazardous and dangerous condition was a breach of the defendant, ELLICOTT DEVELOPMENT COMPANY, LLC's, duty to reasonably foreseeable users of the Mohawk Building.

42. Upon information and belief, the defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees, were negligent, reckless, and careless in allowing the hazardous and dangerous condition to exist;

43. Upon information and belief, the negligence of the defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees consisted of, but was not limited to: causing and permitting a dangerous condition to exist; in failing to maintain, clean, and remove pools of water and other liquids from the 6th floor hallway, located in the Mohawk Building; in causing and permitting the 6th floor hallway of the Mohawk Building to remain in an unsafe and hazardous condition; in failing to warn the plaintiff in particular and the public in general of the dangerous and hazardous condition; in failing to use due care and caution under the circumstances; and being generally negligent, reckless, and careless.

44. As a result of the acts and omissions of the defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees, the plaintiff, MINERVA ROJAS, was caused to suffer and sustain severe and permanent personal injuries and pain and suffering.

45. Upon information and belief, the described incident and injuries resulted solely from the negligent, reckless, and careless acts and/or omissions of the

defendant, ELLICOTT DEVELOPMENT COMPANY, LLC, its agents and/or employees and is in no way attributable to any negligence or want of care on the part of the plaintiff, MINERVA ROJAS.

46. As a result of the foregoing, the plaintiff, MINERVA ROJAS, has been damaged in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, and the plaintiff will seek damages in an amount to be proven and determined at the time of trial.

FOR A THIRD CAUSE OF ACTION AGAINST
MOHWAK GROUP, INC. AND
ELLICOTT DEVELOPMENT COMPANY, LLC

47. The plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs with the same force and effect as if fully set forth herein.

48. At all times hereinafter mention, the plaintiff, JORGE D. ROJAS, was and is married to the plaintiff, MINERVA ROJAS.

49. Prior to suffering the injuries as a result of the August 15, 2013 incident, the plaintiff, MINERVA ROJAS, was in good health and capable of performing and did perform all of the usual duties and responsibilities of a wife.

50. As a result of the incident described herein, the plaintiff, JORGE D. ROJAS, has been deprived of the services of his wife and of the comfort and happiness of his wife's society.

51. As a result, the plaintiff, JORGE D. ROJAS, has been damaged an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, and the plaintiffs will seek damages in an amount to be proven and determined at the time of trial.

WHEREFORE, the plaintiffs, MINERVA ROJAS and JORGE D. ROJAS, demand judgment against the defendants jointly and/or severally in each cause of action in an amount to be proven at trial, together with the costs and disbursements of this action; and for other and further relief as this Court may deem just and proper.

DATED: Buffalo, New York
June 30, 2014

Mollie C. McGorry, Esq.
CONNORS & VILARDO, LLP
Attorneys for the Plaintiff
MINERVA ROJAS and
JORGE D. ROJAS
1000 Liberty Building
424 Main Street
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(716) 852-5533