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COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH,
SECOND ASSISTANT COUNTY ATTORNEY

MEMORANDUM

TO: Karen McCarthy, Clerk, Erie County Legislature
FROM: Michelle M. Parker, First Assistant County Attorney
DATE: June 16, 2015
RE: Transmittal of New Claims Against Erie County

Ms. McCarthy:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find six (6) new claims brought against the County of Erie. The claims are as follows:

Claim Name

Patricia Curto v. County of Erie, et al.
William Brown by Zair Fishkin, MD v. Erie County Sheriff's Office
Jennifer Benten v. Erie County Sheriff's Office
J.A.N., an Infant, by Destiny Taylor v. County of Erie
Level 3 Communications, LLC v. County of Erie, et al.
Leslie Meserole v. County of Erie, et al.

MMP:dld

Attachments

Comm. 13D-6
Page 1 of 60



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

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JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 1, 2015

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:	<i>Curto, Patricia v. County of Erie, et al.</i>
Document Received:	Notice of Claim
Name of Claimant:	Patricia J. Curto 20 Hazel Court West Seneca, New York 14224
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 

Michelle Parker
First Assistant County Attorney

MMP:dld
Enc.

Comm. 13D-6
Page 2 of 60

IN THE MATTER OF THE CLAIM OF

PATRICIA J. CURTO
20 Hazel Court,
West Seneca, New York 14224

Claimant

against

NOTICE OF CLAIM

The Town of Orchard Park, New York
4295 South Buffalo Street
Orchard Park, New York 14127

The Orchard Park Police Department
4295 South Buffalo Street
Orchard Park, New York 14127

Orchard Park Police Department Officer A. Kowalski
4295 South Buffalo Street
Orchard Park, New York 14127

Orchard Park Police Department Officer R. Simmons
4295 South Buffalo Street
Orchard Park, New York 14127

Orchard Park Police Department Officer J. Cullen
4295 South Buffalo Street
Orchard Park, New York 14127

Remy Orffeo, FOIL Appeals Officer
4295 South Buffalo Street
Orchard Park, NY 14127

The County of Erie, New York
95 Franklin Street
Buffalo, New York 14202

The Erie County Department of Social Services
95 Franklin Street
Buffalo, New York 14202

Erie County Department of Social Services
Commissioner Al Dirschberger
95 Franklin Street

This paper received at the
Erie County Attorney's Office
from *Patricia Curton*
the *28* day of *April*, 20*15*
at *3:37* a.m./p.m.
Chucky Bennett
Assistant County Attorney

Buffalo, New York 14202

Karl J. Iggers
Erie County Department of Social Services
95 Franklin Street
Buffalo, New York 14202

Jill Fowler
Erie County Department of Social Services
95 Franklin Street
Buffalo, New York 14202

Francine Amato
Erie County Department of Social Services
95 Franklin Street
Buffalo, New York 14202

Patricia Girard
Erie County Department of Social Services
95 Franklin Street
Buffalo, New York 14202

Nancy Sullivan
Erie County Department of Social Services
95 Franklin Street
Buffalo, New York 14202

Timothy Callen FOIL Appeals Officer
95 Franklin St. 16th Floor
Buffalo, NY 14202

Respondent

TO: Town of Orchard Park, New York
Town Attorney
John C. Bailey, esq
4295 South Buffalo Street
Orchard Park, New York 14127

County of Erie, New York
Erie County Attorney
Michael A. Siragusa, esq.
95 Franklin St, 16th Fl
Buffalo, New York 14202

PLEASE TAKE NOTICE that I, Patricia J Curto, pursuant to General Municipal Law 50-e and such other statutes as may be applicable in such cases made and provided, do hereby claim and demand of and from: on behalf of myself for damages sustained by me individually by and through the negligence; and/or conspiracy; and/or the malicious, and/or willful, and/or intentional, and/or wrongful and continuous acts/practices/policies and/or continuous unlawful acts/practices/policies of the Town of Orchard Park New York, Orchard Park Police Department, Orchard Park Police Department Officer A. Kowalski, Orchard Park Police Department Officer R. Simmons, Orchard Park Police Department Officer J. Cullen, Remy Orffeo, FOIL Appeals Officer, County of Erie New York, Erie County Department of Social Services, Erie County Department of Social Services Commissioner Al Dirschberger, Karl J. Iggers Erie County Department of Social Services, Jill Fowler Erie County Department of Social Services, Francine Amato Erie County Department of Social Services, Patricia Girard Erie County Department of Social Services, Nancy Sullivan Erie County Department of Social Services, Timothy Callen FOIL Appeals Officer and the various departments, agents, servants, alter egos and/or employees; knowledge of Town of Orchard Park and, County of Erie officers/officials of facts constituting claim; and in support of such claims do state the following:

I reside at No. 20 Hazel Court in the Town of Orchard Park, County of Erie and State of New York

Per Erie County Department of Social Services/ECDSS documents, ECDSS employee Jill Fowler (Adult Protection Intake worker) on February 20, 2015 at 11:42 a.m. received a report regarding claimant/Patricia Curto.

ECDSS employee Sr Welfare Examiner Karl Iggers on February 20, 2015 at 11:42 a.m. knowing willfully, maliciously and with the intent to cause injury, made a false report in bad faith and a report that is not creditable, to ECDSS Adult Protection/Jill Fowler, regarding claimant. Mr Igger's last contact with claimant was June 2012.

Intake worker Jill Fowler was required by NYS Social Services, but per ECDSS Jill Fowler's intake report, she did not obtain accurate and detailed information provide from personal observations or other first hand information. Mr Iggers had no contact with claimant in at least 3 years and so reported in ECDSS Jill Fowler's intake report. Therefore per NYS Social Services ADM, Mr Iggers is not a credibly source. Additionally the report does not describe a person with an incapacity and at risk. The report should have been rejected/denied at intake but was not.

ECDSS and it's officials/supervisors are aware of and it is well documented in ECDSS and Erie County records, Mr Iggers has severe psychological, behavioral, mental problems in addition to many other serious medical conditions/problems.

Per ECDSS records Mr Igger's falsely reported (included but not limited to) "gas service had been disconnected over the summer for non payment. Client made substantial payment within last month or two and gas company **allegedly** made several attempts to enter the home to reinstate gas service."

An Orchard Park Police/OPP phone tape recording on 2/20/2015 at 11:54 a.m. received a report/complaint from an individual claiming to be Jill Fowler an employee of

the ECDSS Adult Protection and she falsely reported gas company was trying to restore gas service and claimant was refusing.

OPP officer A. Kowalski took the (false) report from Jill Fowler and did not inquire how Jill Fowler knew the gas company was trying to restore service and etc.; if it was more than unsubstantiated hearsay.

There was no legitimate reason to dispatch police to 20 Hazel Court based on Jill Fowler's (false) report.

Jill Fowler had no personal knowledge and had not talked to the gas company or anyone who had actual knowledge, before she made the false report and even the false report from Mr Igger's it was only alleged.

Jill Fowler's false call to the OPP was made minutes after Mr Iggers false report where there was only an allegation and further more stated he had no contact for the last 3 years.

OPP immediately dispatched a police officer (R. Simmons) to claimants property/20 Hazel Ct. and he reported back: looked around residence; no gas company was there; and no one was coming to the door. OPP phone tape recording on 2/20, OPP officer A. Kowalski phoned (at 12:20 p.m.) Jill Fowler to report the above and that after some research he found claimant heats with electric. Notably New York State Electric & Gas records also establish claimant heats with electric and that she had electric service.

Jill Fowler's false report to OPP does not describe a crime; the report to OPP was not from the gas company or from someone who had observed/had personal knowledge.

Jill Fowler was not prosecuted or charged with making a false report to the police.

Per ECDSS record: intake worker Jill Fowler signed off (accepted Mr Igger's false report/complaint) at 12:36 pm on 2/20 and after being informed by OPP claimant heats with electric; Fowler's supervisor Francine Amato signed off at 2:10pm; and it was assigned to case worker Patricia Girard.

Adults have civil and constitutional rights, i.e., the right to live their lives as they wish, manage their own finances, enter into contracts, marry, etc.

Adults have the right to make decisions that do not conform with societal norms as long as these decisions do not harm others.

Adults have the right to accept or refuse services.

Claimant has been advised by a lawyer not to speak to any employee of the ECDSS Adult Protection and claimant is not required to.

Claimant's property located at 20 Hazel Court Orchard Park NY is posted with NO TRESPASSING (for any purpose) signs. The entrance of driveway has 3 posted signs and a sawhorse with 10 ft pipe resting on top (blocking entrance) and two "no trespassing" signs attached, in a further attempt to prevent illegal entry - as is claimants constitutional right.

The NY Court of Appeals has decided when property is posted with No Trespassing signs, the only person who may enter the property, is a police officer with a warrant based on imminent danger to the public and when an officer enters without such a warrant, a civil and criminal trespass is committed.

Orchard Park New York police complaint/report # 15-504567 states OP police officer Simmons entered and searched claimant's property at 20 Hazel Ct. and tried to

raise someone at the door. There is no record of a warrant and none is claimed in the complaint. Therefore officer Simmons committed a civil and criminal trespass per the NY State Court of Appeals

Town of Orchard Park/OP and OPP had prior knowledge of claimants objection to unauthorized entry and unauthorized searches, that no trespassing is allowed for any purpose, that her property was posted with No Trespassing signs, the legal requirement to obtain warrant to enter and legal requirement to obtain warrant to search the property.

Erie County and ECDSS had prior knowledge of claimants objections to unauthorized entry and unauthorized searches, that no trespassing allowed for any purpose, that property was posted with No Trespassing signs, legal requirement to obtain warrant to enter and legal requirement to obtain warrant to search the property.

OPP tape recordings establishes the police officers saw the No Trespassing signs posted on claimants property. ECDSS records establishes alleged ECDSS employee Nancy Sullivan saw the No Trespassing signs posted on claimants property.

A women who subsequently claimed to be Nancy Sullivan an ECDSS employee, on February 20, 2015 at approximately 4:00 pm, illegally entered claimants property committing a civil and criminal trespass.

A women who subsequently claimed to be Nancy Sullivan on February 20, 2015 at approximately 4:15 pm illegally re-entered claimants property committing a civil and criminal trespass. Nancy Sullivan while leaving claimant's property, she hit the claimant's truck hood with her fist 4/four times.

A women who subsequently claimed to be Nancy Sullivan on February 20, 2015 at approximately 4:45 pm illegally re-entered claimants property with a OPP officer, both committing a civil and criminal trespass.

Per ECDSS documents, on February 20,2015: Nancy Sullivan observed there are NO Trespassing signs on the claimant's property; Nancy Sullivan illegally entered the claimant's posted property committing a civil and criminal trespass; Nancy Sullivan called 911; Nancy Sullivan illegally re-entered the claimant's posted property with OPP officer Simmons both committing a civil and criminal trespass and illegal search of the property.

Per ECDSS and OPP records the reason Nancy Sullivan made a 911 call was because there was a truck in the driveway and dogs in the house barking. Therefore Nancy Sullivan made a false 911 call/report.

Per ECDSS record OPP officer R. Simmons observed Nancy Sullivan commit a criminal trespass upon claimant's property but did nothing. OPP officer R. Simmons willful failed to: enforce the law; protect claimants rights; and to perform his duties as a law enforcement officer. OPP officer aided and abetted Nancy Sullivan's criminal trespass.

Upon information and belief OPP officer J. Cullen knew of Nancy Sullivan and officer Simmons criminal trespass upon claimant's property. OPP officer J. Cullen did nothing. OPP officer J. Cullen willful failed to: enforce the law; protect claimants rights; and to perform his duties as a law enforcement officer.

Per OPP tape recordings OPP Department knew of Nancy Sullivan's criminal trespass upon claimants property but did nothing, willfully failed to enforce the law and protect claimant's rights.

Upon information and belief the OPP Department knew of OPP officer R. Simmons criminal trespass upon claimant's property but took no action.

Per OPP tape recordings officer R. Simmons on February 20, 2015 at 4:25p.m. when dispatched requested back up because he didn't know degree of resistance. There was no allegation of criminal or illegal conduct by claimant or court order or warrant for claimant, therefore OPP had no authority to take any action and there was nothing to resist.

Upon information and belief OPP officer J. Cullen entered the claimant's posted property committing a civil and criminal trespass and illegally searched claimant's property.

Upon information and belief on February 20, 2015 OPP officer R. Simmons slandered and/or defamed claimant.

Per ECDSS documents, on February 26, 2015: Nancy Sullivan illegally climbed over a barrier blocking claimant's driveway; Nancy Sullivan illegally entered the claimant's posted property committing a civil and criminal trespass; Nancy Sullivan illegally searched claimant's property. February 26, 2015 Nancy Sullivan illegally opened claimants mailbox, illegally searched claimants mailbox and illegally left material in the mailbox. Nancy Sullivan's notes "There is a pole added to the collection of debris blocking the driveway which CM climbed over." see attached picture there was/is no debris it is a sawhorse with "Posted" "No Trespassing" signs and claimant is exercising her constitutional rights and legal rights.

Nancy Sullivan's statement above establishes she makes false statements, claimants case file contains false documents and there is: bias, prejudice, discrimination, intimidation, retaliation, disparage treatment and etc against claimant.

April 27, 2015 the person claiming to be Nancy Sullivan illegally entered the claimant's posted property committing a civil and criminal trespass, illegally moved a barrier at entrance of claimants driveway, illegally searched claimant's property, illegally opened claimants mailbox, illegally searched claimants mailbox and illegally left material in the mailbox.

ECDSS record contains no warrant nor a claim of a warrant allowing (repeated) entry/search of claimant's property and/or mailbox by ECDSS.

OPP complaint/report # 15-504587 does NOT identify the person by name who called even though the OPP tape recording establish the person claimed to be a ECDSS caseworker named Nancy Sullivan.

NYS Social Services law protects the privacy of claimants information/case record.

Upon information and belief Nancy Sullivan disclosed on 2/20/2015 to David Eagan and on 2/26, 2015 to William Eagan, ECDSS information regarding claimant without her permission in violation to her privacy rights pursuant to NYS social services law.

Per ECDSS record, on 2/20/2015: intake worker Jill Fowler signed off; Fowler's supervisor Francine Amato signed off; and it was assigned to case worker Patricia Girard.

But alleged caseworker Nancy Sullivan showed up at claimants property, made false 911 call and etc. Nancy Sullivan not being the assigned case worker, violated claimants privacy rights under social services law, when she accessed claimants ECDSS information/record.

In violation of the law including but not limited to, federal/US Postal Services law and in violation of claimant's privacy rights:

- ECDSS records/documents state OPP officer Simmons on 2/20/2015 (illegally) opened and (illegally) searched claimants mailbox, the record contains no warrant nor is there a claim of a warrant;
- Nancy Sullivan on 2/26/2015 illegally opened claimant's mailbox located at 20 Hazel Ct., illegally searched and illegally placed a card/message in the mailbox, the record contains no warrant nor is there a claim of a warrant.
- Nancy Sullivan on 4/27/2015 illegally opened claimant's mailbox located at 20 Hazel Ct., illegally searched and illegally placed material/card in the mailbox, the record contains no warrant nor is there a claim of a warrant.

NYS Social Services law require ECDSS within 30 days of receiving a report, to notify the subject of the report in writing, the ECDSS determination but ECDSS has, to date, failed to notify claimant of ECDSS determination.

Claimant requested on 3/3/2015 pursuant to NY Social Service law Article 9-B Title 3 section 473-E:

"copies of reports as well as any other information obtained, including but not limited to: all documents, records; inter-office memos; reports; chronicles; letters; correspondence; computerized records; logs; requests for assistance; or writings that mention, concern, discuss, pertain to a recall either directly or indirectly to Patricia J. Curto; in the possession of the Erie County Department of Social Services

As used herein the term "document" shall include writings, notes drafts, outlines, recordings, affidavits, photos, reports, complaints, phone logs, and files regardless of storage media; they include, but are not limited to, writings contained on paper, recordable tape, celluloid, disks, hard drives, electronic servers or any other digitally stored media."

Claimant to date has not received the requested material nor a response from ECDSS.

Claimant on 2/23/2015 made a request pursuant to NYS Freedom of Information Law/FOIL to Bonnie McLaughlin ECDSS Records Access Officer and from Orchard Park Town Clerk. Claimant to date has not received all the requested material.

Claimant on February 28, 2015 made a (second) request pursuant to NYS FOIL to Bonnie McLaughlin. Claimant to date has not received all the requested material.

Claimant on March 5, 2015 and March 10, 2015 appealed ECDSS's FOIL (first and second request respectively) denial to Timothy Callen FOIL Appeals Officer.

Claimant on March 6, 2015 appealed OP's FOIL denial to Remy Orffeo FOIL Appeals Officer.

ECDSS and OP continue to fail to provide/deny access to claimant's FOIL requests and as required by law has not provide the reason for the denial, of the requested

material, in writing.

ECDSS employee Karl Iggers (Sr. Welfare Examiner), on February 20, 2015 knowing willfully, maliciously and with the intent to cause injury, made a false report in bad faith, a report that is not creditable, to ECDSS Adult Protection regarding Patricia Curto.

ECDSS and it's officials/supervisors are aware of and it is well documented in ECDSS and Erie County records, Mr Iggers has severe psychological, behavioral, mental, hygiene problems in addition to many other serious medical conditions/problems and his difficulty managing his own financial affairs.

Upon information and belief ECDSS Adult Protection has received reports for Karl Iggers including immediate family members and has taken not action and refused to accept the report(s).

February 20, 2015 ECDSS intake report:

Mr Iggers has not see claimant in **three years**. Per NYS Social Services ADM, based on the time/years of no contact alone the report is not creditable. Mr Iggers' falsely reports/complains claimant has no phone because he does not have her current phone number. Mr Iggers complains that claimant has a posted No Trespassing sign (he can't enter her property) = complaining she is exercising her constitutional right. Additionally see below.

Claimant does not pay her bills, most recently gas service had been disconnected over the summer for non-payment. This report is **not creditable** as he has no contact in three years. There is no explanation how he would know and no verification by ECDSS. This report is false. Assuming arguendo the report is true, it's irrelevant...there are many people who have gas service disconnected for non-payment.

Claimant made a substantial payment within last month or two. This report is **not creditable** as he has no contact in three years. There is no explanation how he would know and no verification by ECDSS. This report is false. Assuming arguendo the report is true, it's irrelevant and contradicts Mr Iggers false report that claimant does not pay her bills.

Since the falsely alleged substantial payment within last month or two, the gas company **allegedly** has made several attempts to enter claimant's home to reinstate gas service and she has refused. Since this is only an allegation it is irrelevant. This report is false. Assuming arguendo the report is true, it's irrelevant...claimant has a constitutional right to freedom of choice. There is no law requiring claimant to use gas, there are many energy alternatives and she has a right to chose/right of choice. Exercising one's constitutional rights can not be a basis of any ECDSS determination or etc.

Claimant **allegedly** heats with one kerosene heater. Since this is only an allegation it is irrelevant. This report is false. Assuming arguendo the report is true, it's irrelevant...many home improvement stores and major home improvement stores (such as Home Depot and Lowes) sell kerosene heaters for the purpose of heating homes. Notably neither the federal nor NY State government has banned the sale of kerosene heaters. There is no law prohibit claimant from using kerosene heater and has a right to chose/right of choice.

Claimant does not have phone service. This report is **not creditable** as he has no contact in three years. This report is false. Assuming arguendo the report is true, it's irrelevant...there is no legal requirement that claimant have phone service and has a right to chose/right of choice.

Claimant has a long standing unknown mental health diagnosis. This report is **not creditable** and false.

ADDITIONALLY

Mr Igger reported claimant's home was very cold last few days. This report is **not creditable** as he has no contact in three years. This report is false.

Mr Iggers reported **he was told** claimant's home **maybe** dirty and cluttered but has no confirmation of the state of claimnt's home at this time. This report is **not creditable** as he has no contact in three years. This report is false. Mr Iggers does not state who told him.

Mr Igger reported claimant has no family and does not know of any family who would provide assistance. Assuming arguendo claimant needs assistance this report is **not creditable** as he has no contact in three years. This report is false.

Mr Igger reported he believes claimant does not have a doctor. This report is **not creditable** as he has no contact in three years, irrelevant (many people do not have doctor, not required, many people use emergency rooms and etc). Mr Igger reported he believes claimant has not seen a doctor in several years. This report is **not creditable** as he has no contact in three years, irrelevant and etc. There is no report that claimant has any medical problem(s)/condition(s)—that she is not receiving needed medical care. Notably claimant is over the age of 18 and has a legal right to refuse medical treatment.

Claimant has a no trespassing sign on her property. It is irrelevant as claimant has a legal and constitutional right to post no trespassing signs on her property. Exercising one's rights is not a basis for a report to ECDSS or a basis for action by ECDSS.

Claimant has two dogs and two cats. It is **not credible** as Mr Iggers has no contact in last 3 years. It is irrelevant as claimant has a right to possess dog(s) and/or cat(s).

ECDSS intake worker Jill Fowler knowing willfully, maliciously, with the intent to cause injury, in bad faith and based on a report that is not creditable, false and baseless, decided claimant: has a reduced capacity for self care; neglects own basic needs, self-endangering behavior, environmental hazards; no one else is currently willing and able to provide needed assistance.

Patricia Curto is being subjected to a continuing policy/practice and/or a conspiracy to:

- illegally entry of Curto's property, trespass upon and search of Curto's property
- violate or deny Curto her constitutional rights - due process and/or equal protection and/or privacy; and/or peaceful enjoyment of her property, liberty, pursuit of happiness and etc
- Harassment, and/or retaliation, and/or intimidation;
- Discriminatory and/or disparage treatment;
- Negligent hiring, training, retention and employment;
- Violation of Curto's civil rights/human rights;

- slander and/or defamation;
- Abuse of authority/power
- Failure to enforce the law; protect Curto's rights; and to perform the duties of a law enforcement officer or public/civil servant
- Fraud and/or abuse of power/authority
- Conspiring to violate Curto's rights
- Illegally denial of access to Curto's own records
- As a result of the aforesaid the resulting or naturally occurring injuries and damages sustained

WHEREFORE, the Claimant requests that this claim be allowed and paid by the Respondents Town of Orchard Park New York, Orchard Park Police Department, Orchard Park Police Department Officer A. Kowalski, Orchard Park Police Department Officer R. Simmons, Orchard Park Police Department Officer J. Cullen, Remy Orffeo, FOIL Appeals Officer, County of Erie New York, Erie County Department of Social Services, Erie County Department of Social Services Commissioner Al Dirschberger, Karl J. Iggers Erie County Department of Social Services, Jill Fowler Erie County Department of Social Services, Francine Amato Erie County Department of Social Services, Patricia Girard Erie County Department of Social Services, Nancy Sullivan Erie County Department of Social Services, Timothy Callen FOIL Appeals Officer

PLEASE TAKE FURTHER NOTICE, that unless the claim is adjusted and paid by the respondents Town of Orchard Park New York, Orchard Park Police Department, Orchard Park Police Department Officer A. Kowalski, Orchard Park Police Department Officer R. Simmons, Orchard Park Police Department Officer J. Cullen, Remy Orffeo, FOIL Appeals Officer, County of Erie New York, Erie County Department of Social Services, Erie County Department of Social Services Commissioner Al Dirschberger, Karl J. Iggers Erie County Department of Social Services, Jill Fowler Erie County Department of Social Services, Francine Amato Erie County Department of Social Services, Patricia Girard Erie County Department of Social Services, Nancy Sullivan Erie County Department of Social Services, Timothy Callen FOIL Appeals Officer within thirty (30) days from date of service of this Notice of Claim, the claimant intends to commence an action in the Supreme Court, State of New York, County of Erie against the respondents Town of Orchard Park New York, Orchard Park Police Department, Orchard Park Police Department Officer A. Kowalski, Orchard Park Police Department Officer R. Simmons, Orchard Park Police Department Officer J. Cullen, Remy Orffeo, FOIL Appeals Officer, County of Erie New York, Erie County Department of Social Services, Erie County Department of Social Services Commissioner Al Dirschberger, Karl J. Iggers Erie County Department of Social Services, Jill Fowler Erie County Department of Social Services, Francine Amato Erie County Department of Social Services, Patricia Girard Erie County Department of Social Services, Nancy Sullivan Erie County Department of Social Services, Timothy Callen FOIL Appeals Officer

for a sum which exceeds the jurisdictional limit of all lower courts, which would otherwise

have jurisdiction, together with interest, cost and disbursements.

Dated: Buffalo, New York
April 28, 2015


Patricia J. Curto



VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

PATRICIA J. CURTO, being duly sworn, states that I am familiar with the facts and circumstances set forth in the foregoing Notice of Claim. I have read the foregoing Notice of Claim and know the factual contents thereof, the same is true to my own knowledge, except as to those matters stated upon information and belief, which are believed to be true.



Patricia J. Curto, pro se
20 Hazel Ct.
W. Seneca, NY 14224

Sworn to before me this
28th day of April, 2015

Margaret A. Martin
Notary Public

MARGARET A. MARTIN
Lic. # 01MA6318702
Notary Public, State of New York
Qualified in Erie County
Commission Expires February 2, 2019



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 13, 2015

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

Dear Ms. McCarthy:

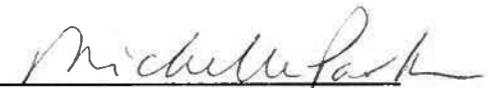
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Brown, William by Zair Fishkin, M.D. v. Erie County Sheriff's Office</i>
Document Received:	Demand for Arbitration
Name of Claimant:	William Brown/Zair Fishkin, M.D.
Claimant's attorney:	The Wright Firm 16 W. Main Street, Suite 212 Rochester, New York 14614

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enc.

Comm. 13D-6
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AMERICAN ARBITRATION ASSOCIATION®

New York Insurance Case Management Center
Maureen Kurdziel
Vice President
120 Broadway, 11th Floor, New York, NY 10271
Telephone: 917 438 1500, Facsimile: 917 438 1600

05/04/2015

Addressee(s):

✓ County of Erie
Department of Law
69 Delaware Avenue - Suite 300
Buffalo, NY 14202
By: *PRINT*

The Wright Firm, LLC
16 W. Main St., Suite 212
Rochester, NY 14614
By: *EMAIL*

AAA Case No.: 41-15-1010-3616
Old Case No.:
Applicant Name: Zair Fishkin MD/ William Brown
Applicant Representative: The Wright Firm, LLC
Case File: 15-01450
Injured Party: William Brown
Insured Party: William Brown
Accident Date: 03/17/2007
Dates of Service: 10/30/2014 TO 01/05/2015
Claim Amount: \$14,533.50
Claim Number: 7-A-66886F
Policy Number: NOne
Insurance Organization: County of Erie

RECEIVED
MAY 11 2015
ERIE COUNTY DEPARTMENT OF LAW
ment
See 31-20070032

Dear Parties,

The American Arbitration Association welcomes the opportunity to assist you with your dispute resolution needs. The Association offers the highest level of administration, together with outstanding conciliators and neutrals. We trust you will agree that alternative dispute resolution is the smartest choice.

This will confirm approval of a request for arbitration (AAA Form AR or, in the alternative, a Denial of Claim form) between the parties named in the above caption. A copy of same should have been forwarded to the respondent by the applicant party.

In accordance with the current regulations, the respondent (a/k/a the insurance company) must provide their position in writing along with supporting documentation, and a copy of same to the applicant party, by Wed Jun 03 2015. Documents received after this date will be marked "late submission" and may not be considered by the arbitrator. Parties should please notify us in writing during the conciliation period if they intend to introduce witnesses at the hearing. Such notification facilitates the scheduling of cases with additional time for witness testimony. However, failure to provide this notification does not preclude the introduction of witnesses.

Respondent must confirm by Wed Jun 03 2015, along with its position or in a separate writing, the identity of the insurance carrier responsible for defending this claim and for payment of any fees assessed in connection with the filing of this claim under 11 NYCRR 65. Unless advised otherwise by said date, all correspondence for this case will be sent to the address listed above, and we will presume that the Insurance Organization named above is the carrier of record for assessment purposes.

Respondent should also advise the Conciliation Center promptly if the applicant/applicant's attorney has not provided you with a hard copy of this submission; you have any problems obtaining from the applicant/applicant's attorney information needed to process this case; or the case has been settled. **Com. 13D-6**
applicant/applicant's attorney has agreed to withdraw case. Failure to advise the Conciliation Center of
Page 17 of 60

settlement or withdrawal may result in the file being escalated to arbitration and an unnecessary assessment fee. Please make sure that the applicant/applicant's attorney is copied on any letter to the Conciliation Center advising of settlement. We encourage the parties to interact online as much as possible in order to make the best use of our online platform, Resolution Center. Our system enables the parties to rapidly come to a resolution and monitor the progress of their dispute.

Kindly refer to the above-referenced case number when communicating with this office.

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D).

Sincerely,

American Arbitration Association
Case Management Team 3
Tel: (646) 663-3463



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 13, 2015

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

Dear Ms. McCarthy:

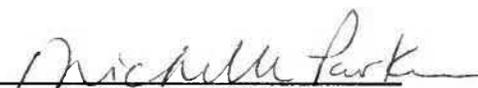
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Benten, Jennifer v. Erie County Sheriff's Office</i>
Document Received:	Notice of Charge of Discrimination
Name of Claimant:	Jennifer Benten 13340 North Road Alden, NY 14004
Claimant's attorney:	Claimant is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enc.

Comm. 13D-6
Page 19 of 60

U.S. Equal Employment Opportunity Commission

<p>Ms. Michelle Parker First Asst. County Attorney COUNTY OF ERIE, DEPT OF LAW 95 Franklin Street, Room 1634 Buffalo, NY 14202</p>	<p>PERSON FILING CHARGE</p> <p style="text-align: center;">Jennifer Benten</p> <p>THIS PERSON (check one or both)</p> <p><input checked="" type="checkbox"/> Claims To Be Aggrieved</p> <p><input type="checkbox"/> Is Filing on Behalf of Other(s)</p> <hr/> <p>EEOC CHARGE NO.</p> <p style="text-align: center;">525-2015-00454</p>
---	--

NOTICE OF CHARGE OF DISCRIMINATION
(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

- Title VII of the Civil Rights Act (Title VII) The Equal Pay Act (EPA) The Americans with Disabilities Act (ADA)
- The Age Discrimination in Employment Act (ADEA) The Genetic Information Nondiscrimination Act (GINA)

The boxes checked below apply to our handling of this charge:

1. No action is required by you at this time.
2. Please call the EEOC Representative listed below concerning the further handling of this charge.
3. Please provide by **15-MAY-15** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. Please respond fully by to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by to
 If you **DO NOT** wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Charlene Mc Kinnon,
Investigator

EEOC Representative

Telephone **(716) 551-4447**

Buffalo Local Office
6 Fountain Plaza
Suite 350
Buffalo, NY 14202
Fax: (716) 551-4387

R E C E I V E D

MAY 04 2015

ERIE COUNTY
 DEPARTMENT OF LAW

mmf

Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

Race Color Sex Religion National Origin Age Disability Retaliation Genetic Information Other

See enclosed copy of charge of discrimination.

Date	Name / Title of Authorized Official	Signature
May 1, 2015	John E. Thompson, Local Office Director	Comm. 13D-8

INFORMATION ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. Where a charge ... has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the ADA, the respondent ... shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge*, for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

NOTICE OF NON-RETALIATION REQUIREMENTS

Section 704(a) of Title VII, Section 207(f) of GINA, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

NOTICE REGARDING REPRESENTATION BY ATTORNEYS

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.

Comm. 13D-6

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COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 14, 2015

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

Dear Ms. McCarthy:

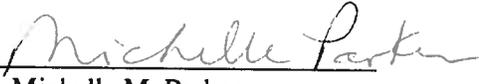
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>J.A.N., an Infant, by Destiny Taylor as png v. County of Erie</i>
Document Received:	Notice of Claim
Name of Claimant:	Destiny Taylor 525 Winslow Avenue Buffalo, New York 14211
Claimant's attorney:	Rene Juarez, Esq. The Dietrich Law Firm, P.C. 1323 North Forest Road Williamsville, New York 14221

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

Comm. 13D-6
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

**DESTINY TAYLOR, as Parent and Natural Guardian
of J.A.N, an Infant,**

Claimant,

NOTICE OF CLAIM

vs.

COUNTY OF ERIE,

Respondent.

PLEASE TAKE NOTICE that the above-named claimant claims and demands from the County of Erie, State of New York recompense for personal injuries sustained by claimant by reason of the wrongful, unlawful, negligent and careless acts and omissions of respondents, their agents, servants and/or employees, and in support thereof claimant states:

1. The address of the claimant is 525 Winslow Avenue, Buffalo, New York 14211.

2. The claimant is represented by The Dietrich Law Firm P.C., 1323 North Forest Road, Williamsville, New York 14221 (716) 839-3939.

3. The incident in which personal injuries were sustained by the claimant occurred on or about March 4, 2015, at approximately 3:00 p.m., while the claimant was being transported home from the Lil' Workers Child Development Center on a school bus operated by the County of Erie, at which time the claimant's ankle was seriously injured by another student on said bus.

4. By virtue of the recklessness and/or negligence of the employees, agents and/or servants of the City of Buffalo, the claimant has incurred medical and hospital expenses, which are to date undetermined, and will incur impairment of health and permanent injuries.

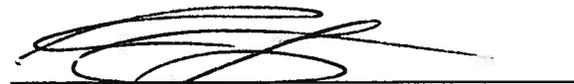
5. Upon information and belief, claimant will be obligated further medical expenses including drugs and medicines the amount of which cannot be reasonably calculated at this time.

TAKE NOTICE that claimant demands payment of her claim as set forth above.

Dated: April 23, 2015

THE DIETRICH LAW FIRM P.C.

By:



Rene Juarez, Esq.
Attorneys for Claimant
1323 North Forest Road
Williamsville, New York 14221
(716) 839-3939

STATE OF NEW YORK : SUPREME COURT
COUNTY OF ERIE

**DESTINY TAYLOR, as Parent and Natural
Guardian of J.A.N, an Infant,**

VERIFICATION

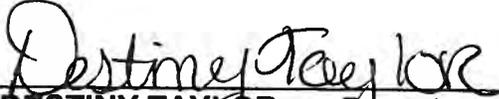
Vs.

Claimant,

COUNTY OF ERIE,

Respondent.

I, Destiny Taylor, as parent and natural guardian of J.A.N, an infant, being duly sworn, depose and say, that the deponent is the claimant in the within action; that the deponent has read the foregoing Notice of Claim and know the contents hereof; that the same is true to the deponent's knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters deponent believes them to be true.


**DESTINY TAYLOR, as Parent and
Natural Guardian of J.A.N, an Infant**

Sworn to before me this 3rd day of April 2015.


NOTARY PUBLIC

*NV: Erie: 00506304345
Exp: 5/27/18*


The Dietrich Law Firm P.C.
1323 North Forest Road
Williamsville, New York 14221

Comm. 13D-6
Page 25 of 60



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

June 11, 2015

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:	<i>Level 3 Communications, LLC, et al. v. Erie County, et al.</i>
Document Received:	Verified Petition
Names of Petitioners:	See Verified Petition
Petitioners' Attorney:	John G. Nicolich, Esq. Ingram Yuzek Gainen Carroll & Bertolotti, LLP 250 Park Avenue New York, New York 10177

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

MAS/dld

Enc.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

----- X
In the Matter of the Application of LEVEL 3
COMMUNICATIONS, LLC, BROADWING
COMMUNICATIONS, LLC, GLOBAL
CROSSING NORTH AMERICA, INC., and
GLOBAL CROSSING
TELECOMMUNICATIONS, INC.,

Index No.:

NOTICE OF PETITION

Petitioners,

-against-

ERIE COUNTY, CITY OF BUFFALO, CITY OF
LACKAWANNA, VILLAGE OF NORTH
COLLINS, CITY OF LACKAWANNA SCHOOL
DISTRICT, EDEN CENTRAL SCHOOL
DISTRICT, LAKE SHORE CENTRAL SCHOOL
DISTRICT, and NORTH COLLINS CENTRAL
SCHOOL DISTRICT,

Respondents.
----- X

PLEASE TAKE NOTICE that upon the annexed Petition of Level 3 Communications, LLC (“Level 3”), Broadwing “Communications, LLC (“Broadwing”), Global Crossing North America, Inc. (“GC North America”), and Global Crossing Telecommunications, Inc. (“GC Telecom”), verified on May 28, 2015, the exhibits annexed thereto, and the accompanying memorandum of law, the undersigned attorneys will move this Court, at the Courthouse located at the Erie County Court Building, 25 Delaware Avenue, Buffalo, New York 14202, at 9:30 A.M. on August 24, 2015, or at such place, date, and time scheduled by the justice assigned to this proceeding, for judgment, pursuant to Article 78 of the New York State Civil Practice Law and Rules (“CPLR”):

- (a) **Annuling the determinations by respondents Erie County, City of Lackawanna, Village of North Collins, Eden Central School District, Lake Shore Central School District, and**

North Collins Central School District denying Level 3's Applications for Refund and Credit of Real Property Taxes ("Refund Applications") pursuant to Section 556 of the Real Property Tax Law ("RPTL"), relating to real property tax assessments of fiber optic cables and inclosures therefor located on private rights of way in Erie County ("Fiber Optic Installations");

(b) Ordering respondents Erie County, City of Lackawanna, Village of North Collins, Eden Central School District, Lake Shore Central School District, and North Collins Central School District (1) to approve Level 3's Refund Applications, and (2) to provide refunds to Level 3 of the real property taxes that each respondent received for the 2011, 2012, and 2013 tax years based on the erroneous assessments of Level 3's Fiber Optic Installations, with interest from the dates of payments made by or on behalf of Level 3;

(c) Ordering respondents City of Buffalo and City of Lackawanna School District (1) to determine and approve Level 3's and Broadwing's Refund Applications relating to assessments of Fiber Optic Installations, and (2) to provide refunds to Level 3 and Broadwing of the real property taxes that these respondents received for the 2011, 2012, and 2013 tax years based on the erroneous assessments of Level 3's and Broadwing's Fiber Optic Installations, with interest from the dates of payments made by or on behalf of Level 3 and Broadwing;

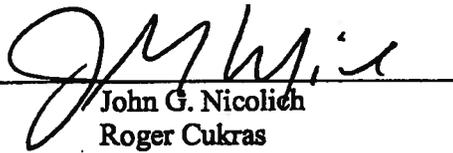
(d) Ordering respondents City of Buffalo and City of Lackawanna (1) to determine and approve Petitioners' Applications For Corrected Tax Roll ("Correction Applications") pursuant to Section 554 of the RPTL relating to the Fiber Optic Installations, and (2) to make an order setting forth corrected taxes and directing the officers having jurisdiction of the tax rolls to correct the tax rolls by removing Petitioners' Fiber Optic Installations therefrom; and

(e) For costs and disbursements of this proceeding, and such other relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 7804(c), answering papers, if any, must be served so as to be received by the undersigned at least five (5) days prior to the return date.

Dated: New York, New York
May 29, 2015

**INGRAM YUZEK GAINEN CARROLL
& BERTOLOTTI, LLP**

By: 
John G. Nicolich
Roger Cukras

Attorneys for Petitioners
Level 3 Communications, LLC,
Broadwing Communications, LLC,
Global Crossing North America, Inc.,
and Global Crossing Telecommunications,
Inc.

250 Park Avenue
New York, New York 10177
(212) 907-9600

TO: Erie County
95 Franklin Street
Buffalo, NY 14202

City of Buffalo
65 Niagara Square
Buffalo, NY 14202

City of Lackawanna
City Hall
714 Ridge Road
Lackawanna, NY 14218

Village of North Collins
City Hall
10543 Main Street
North Collins, NY 14111

City of Lackawanna School District
245 South Shore Blvd.
Lackawanna, NY 14218

Eden Central School District
3150 Schoolview Road
Eden, NY 14057

Lake Shore Central School District
959 Beach Road
Angola, NY 14006

North Collins Central School District
2045 School Street
North Collins, NY 14111

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

----- X
In the Matter of the Application of LEVEL 3
COMMUNICATIONS, LLC, BROADWING
COMMUNICATIONS, LLC, GLOBAL
CROSSING NORTH AMERICA, INC., and
GLOBAL CROSSING
TELECOMMUNICATIONS, INC.,

Index No.:

VERIFIED PETITION

Petitioners,

-against-

ERIE COUNTY, CITY OF BUFFALO, CITY OF
LACKAWANNA, VILLAGE OF NORTH
COLLINS, CITY OF LACKAWANNA SCHOOL
DISTRICT, EDEN CENTRAL SCHOOL
DISTRICT, LAKE SHORE CENTRAL SCHOOL
DISTRICT, and NORTH COLLINS CENTRAL
SCHOOL DISTRICT,

Respondents,

for a judgment pursuant to Article 78 of the Civil
Practice Law and Rules.

----- X
Petitioners, by their attorneys, Ingram Yuzek Gainen Carroll & Bertolotti, LLP, for their
Verified Petition asserting claims under Article 78 of the New York Civil Practice Law and
Rules ("CPLR"), allege as follows:

1. Petitioners Level 3 Communications, LLC, Broadwing Communications, LLC,
Global Crossing North America, Inc., and Global Crossing Telecommunications, Inc.
("Petitioners") are affiliated entities and bring this proceeding pursuant to CPLR Article 78 for
relief to address the improper and illegal assessment and collection of real property taxes
imposed with respect to Petitioners' fiber optic cables and inclosures therefor ("Fiber Optic

Installations”) at numerous locations on private rights of way in Erie County. As described below, it has been judicially determined that fiber optic cables on private property do not fall within the definition of taxable real property under Section 102(12)(i) of the New York Real Property Tax Law (“RPTL”). The real property tax assessments of Petitioners’ Fiber Optic Installations therefore are based on an “unlawful entry” under RPTL 550(7)(c), and Petitioners are entitled to correction of the tax rolls and refunds of taxes under Article 5 of the RPTL.

2. After paying real property taxes levied with respect to the Fiber Optic Installations, Petitioners submitted to the Erie County Director of Real Property Tax Services, Joseph L. Maciejewski, (a) Applications for Refund and Credit of Real Property Taxes for the 2011, 2012, and 2013 tax years pursuant to RPTL 556 (the “Refund Applications”), and (b) Applications for Corrected Tax Roll for the 2014-15 tax year pursuant to RPTL 554 (“Correction Applications”). Petitioners’ Refund Applications and Correction Applications (collectively, the “Applications”) requested correction of tax rolls and refunds of taxes with respect to real property taxes assessed on Petitioners’ Fiber Optic Installations by respondents Erie County, City of Buffalo, City of Lackawanna, Village of North Collins, City of Lackawanna School District, Eden Central School District, Lake Shore Central School District, and North Collins Central School District (“Respondents”) on the ground that Respondents’ assessments were based on an “unlawful entry” under RPTL 550(7).

3. As described below, upon information and belief, the County Director referred each of Petitioners’ Applications to the appropriate tax levying body for determination, with a recommendation to deny the Applications. As of the date of this Petition, (a) Level 3 Communications, LLC (“Level 3”) has received determinations denying its Refund Applications that were referred to respondents Erie County, City of Lackawanna, Village of North Collins,

Eden Central School District, Lake Shore Central School District, and North Collins Central School District, (b) Petitioners Level 3 and Broadwing Communications, LLC (“Broadwing”) have not yet received determinations of the Refund Applications that presumably were referred to respondents City of Buffalo and City of Lackawanna School District, and (c) all Petitioners have not yet received determinations of any of the Correction Applications that presumably were referred to respondents City of Buffalo and City of Lackawanna.

4. Petitioners accordingly bring this proceeding for the following relief:

a. For judgment, pursuant to CPLR 7806, annulling the determinations by respondents Erie County, City of Lackawanna, Village of North Collins, Eden Central School District, Lake Shore Central School District, and North Collins Central School District denying Level 3’s Refund Applications on the ground that those determinations were affected by an error of law because the assessments of Level 3’s Fiber Optic Installations, which are not taxable real property under the RPTL, were based on an unlawful entry;

b. For judgment, pursuant to CPLR 7806, ordering respondents Erie County, City of Lackawanna, Village of North Collins, Eden Central School District, Lake Shore Central School District, and North Collins Central School District to approve Level 3’s Refund Applications and to refund to Level 3 the real property taxes paid to them for the 2011, 2012, and 2013 tax years, with interest from the dates of payments made by or on behalf of Level 3;

c. For judgment, pursuant to CPLR 7806, (1) ordering respondents City of Buffalo and City of Lackawanna School District to determine and approve Level 3’s Refund Applications, (2) ordering respondent City of Buffalo to determine and approve Broadwing’s Refund Applications, and (3) ordering City of Buffalo and City of Lackawanna School District to refund to Level 3 and Broadwing the real property taxes paid to them for the 2011, 2012, and

2013 tax years, with interest from the dates of payments made by or on behalf of Level 3 and Broadwing;

d. For judgment, pursuant to CPLR 7806, ordering respondents City of Buffalo and City of Lackawanna to determine and approve Petitioners' Correction Applications and to make an order setting forth corrected taxes and directing the officers having jurisdiction of the tax rolls to correct the tax rolls by removing Petitioners' Fiber Optic Installations therefrom; and

e. For costs and disbursements of this proceeding, and such other relief as this Court may deem just and proper.

A. Parties And Background

5. Petitioners Level 3 and Broadwing are limited liability companies organized under the laws of the State of Delaware, are duly authorized to do business in the New York State, and have their executive offices at 1025 Eldorado Boulevard, Bloomfield, Colorado.

6. Petitioner Global Crossing North America, Inc. ("GC North America") is a corporation organized under the laws of the State of New York and has its executive offices at 1025 Eldorado Boulevard, Bloomfield, Colorado.

7. Petitioner Global Crossing Telecommunications, Inc. ("GC Telecom") is a corporation organized under the laws of the State of Michigan, is duly authorized to do business in New York, and has its executive offices at 1025 Eldorado Boulevard, Bloomfield, Colorado.

8. Upon information and belief, respondent Erie County is a governmental entity created under the Laws of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

9. Upon information and belief, respondent City of Buffalo is a political subdivision of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

10. Upon information and belief, respondent City of Lackawanna is a political subdivision of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

11. Upon information and belief, respondent Village of North Collins is a political subdivision of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

12. Upon information and belief, respondent City of Lackawanna School District is a school district created under the Laws of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

13. Upon information and belief, respondent Eden Central School District is a school district created under the Laws of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

14. Upon information and belief, respondent Lake Shore Central School District is a school district created under the Laws of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

15. Upon information and belief, respondent North Collins Central School District is a school district created under the Laws of the State of New York, is duly authorized to levy and collect real property taxes, and has received certain of the real property taxes at issue herein.

16. Upon information and belief, Joseph L. Maciejewski is the Director of Real Property Tax Services for the County of Erie (the "County Director").

17. As relevant herein, in *Matters of RCN N.Y. Communications, LLC and Level 3 Communications, LLC v. Tax Comm'n of the City of New York*, 95 A.D.3d 456, 457 (1st Dep't), *lv denied*, 20 N.Y.3d 855 (2012), the Appellate Division, First Judicial Department, held that Level 3's fiber optic cables on private property in the City of New York are not "for electrical conductors" and, accordingly, that Level 3's fiber optic cables on private property are not taxable real property under the RPTL 102(12)(i).

18. After the Court of Appeals denied leave to appeal in *Matter of RCN*, Petitioners sought to obtain corrections of tax rolls and refunds of taxes in other jurisdictions in the State of New York that assessed real property tax with respect to Petitioners' fiber optic properties.

19. In June 2013, Petitioners Level 3 and Broadwing filed applications for correction of tax rolls and for refunds of taxes with the county directors of real property tax services of a number of counties in the State of New York, including Erie County and Essex County. Level 3 and Broadwing in the first instance submitted applications to the county directors on Form RP-556-b, which is a form prescribed under RPTL 556-b by the commissioner of taxation and finance of the New York State Department of Taxation and Finance.

B. Level 3's And Broadwing's Original Applications On Form RP-556-b Concerning Fiber Optic Installations In Erie County

20. On or about June 3, 2013, Petitioners Level 3 and Broadwing, by undersigned counsel, mailed to County Director Maciejewski three copies each of applications for correction of errors and for refunds on Form RP-556-b concerning Fiber Optic Installations in Erie County that had been assessed by Respondents (the "Original Applications").

21. The Original Applications, each titled "Application for Correction of Multiple-Parcel Errors," sought correction of the tax roll and refunds of taxes paid for the 2010, 2011, and 2012 tax years on grounds that the challenged tax assessments were made upon personal

property — *i.e.*, fiber optic cables and inclosures therefor located on private rights of way in Erie County. The Original Applications also alleged that the assessments were based on an “unlawful entry” under RPTL 550(7)(c) because the assessor had no authority to assess personal property.

22. On or about January 30, 2014, the County Director mailed to undersigned counsel determinations of tax levying bodies denying virtually all of the Original Applications that Petitioners Level 3 and Broadwing had filed with the County Director. Petitioners Level 3 and Broadwing never received written determinations of the remaining Original Applications.

23. On May 14, 2014, Petitioners Level 3 and Broadwing commenced a proceeding in this Court under Article 78 of the CPLR, captioned *Matter of Level 3 Communications, LLC, et al., v. Erie County, et al.*, Index No. 2014-00064, which was assigned to Honorable Timothy J. Walker (the “Prior Proceeding”). In the Prior Proceeding, Petitioners Level 3 and Broadwing requested, *inter alia*, an order (a) annulling the determinations denying the Original Applications, and (b) requiring the tax levying bodies to grant the Original Applications.

24. In a Decision and Order dated November 3, 2014, this Court dismissed Level 3’s and Broadwing’s petition in the Prior Proceeding on two grounds: (a) the Fiber Optic Installations are taxable as “equipment for the distribution of ... light” under RPTL 102(12)(f); and (b) Level 3 and Broadwing had not paid the taxes in issue under protest. Level 3 and Broadwing have appealed this Court’s Decision and Order dated November 3, 2014 to the Appellate Division, Fourth Judicial Department, which has scheduled oral argument of the appeal on September 10, 2015.

C. The Essex County Proceeding

25. In October 2013, Petitioner Level 3 had commenced a separate Article 78 proceeding in Supreme Court, Essex County, captioned *Matter of Level 3 Communications, LLC*

v. Essex County, et al., Index No. 603-13 (the “Essex County Proceeding”). In that proceeding, Level requested, *inter alia*, an order annulling determinations denying applications by Level 3 for correction of the tax roll and refunds on Form RP-556-b with respect to real property taxes assessed by tax levying bodies on Level 3’s Fiber Optic Installations in Essex County.

26. In a decision, order and judgment dated May 29, 2014, the Supreme Court, Essex County, denied Level 3’s applications for refunds in the Essex County Proceeding. The Supreme Court, Essex County, denied refunds to Level 3 on two grounds: (a) Level 3’s applications were untimely because RPTL 554(2) requires applications under RPTL 554 to have been filed before the expiration of the tax warrant, whereas Level 3’s applications under RPTL 556-b had been filed more than three months after the warrants expired, and (b) Level 3 had not paid the taxes in issue under protest. Level 3 has appealed judgment in the Essex County Proceeding to the Appellate Division, Third Judicial Department. The Appellate Division heard argument on Level 3’s appeal on April 20, 2015, and decision is pending.

D. Level 3’s And Broadwing’s Refund Applications On Form RP-556 Concerning Fiber Optic Installations In Erie County

27. On June 23, 2014, not long after Petitioners’ receipt of the May 29, 2014 decision, order and judgment of the Supreme Court, Essex County, Petitioners Level 3 and Broadwing sent Refund Applications on Form RP-556 to County Director Maciejewski in Erie County. Copies of those Refund Applications, with counsel’s transmittal letter dated June 23, 2014, are annexed as Exhibit A.

28. Level 3’s Refund Applications requested refunds of taxes assessed by and paid to Respondents Erie County, City of Buffalo, City of Lackawanna, Village of North Collins, City of Lackawanna School District, Eden Central School District, Lake Shore Central School District,

and North Collins Central School District. Broadwing's Refund Applications requested refunds of taxes assessed by and paid to City of Buffalo.

29. The Refund Applications were signed on behalf of Level 3 and Broadwing by Lisa Akins, Petitioners' Director of Tax, and the addendum to each Form RP-556 Refund Application represented that "the assessments in issue were made on Applicant's fiber optic cables and inclosures therefor located on private right of way," that "Applicant's fiber optic cables and the inclosures therefor are not taxable as real property under New York law," and that taxes "were assessed on the properties in issue based on an 'unlawful entry.' "

30. As detailed on Exhibit B to this Petition, and as set forth in the Refund Applications, Level 3 and Broadwing paid more than \$135,000 in real property taxes with respect to the Fiber Optic Installations for the 2011, 2012, and 2013 tax years.

31. Petitioners Level 3 and Broadwing submitted the Refund Applications to County Director Maciejewski pursuant to RPTL 556, which provides that tax levying bodies may provide refunds of taxes where an application for refunds "is made within three years from the annexation of the warrant for such tax."

32. By letter dated June 26, 2014, the County Director returned Level 3's and Broadwing's Refund Applications to Petitioners' counsel, stating that "Erie County does not handle corrections" for "city or city school taxes" and that the remaining Refund Applications "are duplicates of the petitions submitted and acted on based on your prior submission." A copy of the County Director's letter dated June 26, 2014 is annexed as Exhibit C.

33. By letter dated and sent on July 1, 2014, counsel for Petitioners returned Level 3's and Broadwing's Refund Applications to the County Director and stated to the County Director that (a) Level 3 and Broadwing had submitted the Refund Applications "without prejudice to

their rights based on their prior submission of applications on Form RP-556-b”; and (b) “pursuant to Section 556 [of the RPTL], all such applications on Form RP-556 are to be filed with the county director, who is to investigate and make a determination thereon to the tax levying body (including tax levying bodies that levy city and school taxes).” A copy of the letter sent to the County Director on July 1, 2014 is annexed as Exhibit D.

34. The last sentence of the July 1, 2014 letter sent to the County Director stated as follows (Exh. D, p. 2):

Please make your recommendations and send these applications to the appropriate tax levying bodies, as provided in Section 556 of the Real Property Tax Law.

35. On October 31, 2014, Level 3 and Broadwing commenced a proceeding in this Court under CPLR Article 78, captioned *Matter of Level 3 Communications, LLC, et al. v. Maciejewski*, Index No. 2014/000195, which sought to compel County Director Maciejewski to issue written reports and recommendations on the Refund Applications to the appropriate tax levying bodies. In that proceeding, the County Director filed a Supplemental Affidavit, sworn to February 26, 2015, a copy of which is annexed as Exhibit E. The County Director therein stated that he transmitted his written reports and recommendations on the Refund Applications filed by Level 3 and Broadwing under RPTL 556 to the appropriate tax levying bodies on or about February 10 and February 19, 2015 (Exhibit E, ¶¶ 8-9, 12, and 16).

36. On March 12, 2015, Level 3 received a mailing from the County Director that enclosed Refund Applications that had been denied on February 27, 2015 by Erie County, City of Lackawanna, Village of North Collins, Eden Central School District, Lake Shore Central School District, and North Collins Central School District on the ground that “Fiber optic cable is taxable.” Copies of those denied Refund Applications are annexed as Exhibit F.

37. As of the date of this Petition, Level 3 has not received determinations of its Refund Applications on Form RP-556 that were submitted to the County Director for taxes assessed by City of Buffalo and City of Lackawanna School District, and Broadwing has not received determinations of its Refund Applications on Form RP-556 that were submitted to the County Director for taxes assessed by the City of Buffalo.

**E. Petitioners' Correction Applications On Form RP-554
Concerning City Of Buffalo Taxes**

38. The City of Buffalo has rendered 2014-15 bills to Petitioners Level 3, Broadwing, GC North America, and GC Telecom for taxes assessed on Petitioners' Fiber Optic Installations in the City of Buffalo (*see* tax bills included in Exhibit G hereto).

39. By letter dated July 29, 2014, pursuant to RPTL 554, Petitioners Level 3, Broadwing, GC North America, and GC Telecom sent to County Director Maciejewski Correction Applications on Form RP-554 for the correction of the 2014-15 tax roll of the City of Buffalo ("Buffalo Correction Applications"). Copies of the Buffalo Correction Applications and the July 29, 2014 letter accompanying the Buffalo Correction Applications are annexed as Exhibit G.

40. Petitioners' Buffalo Correction Applications sent to the County Director requested correction of the 2014-15 tax roll for the City of Buffalo with respect to Petitioners' Fiber Optic Installations assessed by the City of Buffalo.

41. The Buffalo Correction Applications were signed on behalf of Petitioners by Lisa Akins, Petitioners' Director of Tax, and the addendum to each Form RP-554 Buffalo Correction Application represented that "the assessments in issue were made on Applicant's fiber optic cables and inclosures therefor located on private right of way," that "Applicant's fiber optic

cables and the inclosures therefor are not taxable as real property under New York law,” and that taxes “were assessed on the properties in issue based on an ‘unlawful entry.’ ”

42. Petitioners submitted the Buffalo Correction Applications to the County Director pursuant to RPTL 554, which provides that tax levying bodies may correct unlawful entries on the tax rolls when an application is filed “at any time prior to the expiration of the warrant.”

43. In the County Director’s Supplemental Affidavit annexed as Exhibit E, the County Director stated that he transmitted written reports and recommendations on Petitioners’ Buffalo Correction Applications on Form RP-554 to the City of Buffalo on or about February 10, 2015 (Exhibit E, ¶ 10).

44. As of the date of this Petition, Petitioners have not received determinations of the Buffalo Correction Applications on Form RP-554 that were submitted to the County Director for correction of the 2014-2015 tax roll of the City of Buffalo.

**F. Level 3’s Correction Application On Form RP-554
Concerning City Of Lackawanna Taxes**

45. The City of Lackawanna has rendered a 2014-15 bill to Petitioner Level 3 for taxes assessed on Level 3’s Fiber Optic Installations in the City of Lackawanna (*see* tax bill included in Exhibit H hereto).

46. On or about August 11, 2014, Petitioner Level 3 sent to County Director Maciejewski a Correction Application on Form RP-554 for the correction of the 2014-15 tax roll of the City of Lackawanna (“Lackawanna Correction Application”). A copy of the Lackawanna Correction Application is annexed as Exhibit H.

47. Level 3’s Lackawanna Correction Application sent to the County Director requested correction of the 2014-15 tax roll for the City of Lackawanna with respect to Level 3’s Fiber Optic Installations assessed by the City of Lackawanna.

48. The Lackawanna Correction Application was signed on behalf of Level 3 by Lisa Akins, Level 3's Director of Tax, and the addendum to the Form RP-554 Lackawanna Correction Application represented that "the assessments in issue were made on Applicant's fiber optic cables and inclosures therefor located on private right of way," that "Applicant's fiber optic cables and the inclosures therefor are not taxable as real property under New York law," and that taxes "were assessed on the properties in issue based on an 'unlawful entry.' "

49. Level 3 submitted the Lackawanna Correction Application to the County Director pursuant to RPTL 554, which provides that tax levying bodies may correct unlawful entries on the tax rolls when an application is filed "at any time prior to the expiration of the warrant."

50. In the County Director's Supplemental Affidavit annexed as Exhibit E, the County Director stated that he transmitted a written report and recommendation on Level 3's Lackawanna Correction Application on Form RP-554 to the City of Lackawanna on or about February 10, 2015 (Exhibit E, ¶ 14).

51. As of the date of this Petition, Level 3 has not received a determination of the Lackawanna Correction Application on Form RP-554 that was submitted to the County Director for correction of the 2014-2015 tax roll of the City of Lackawanna.

FIRST CAUSE OF ACTION

(Annulling Determinations Denying Refund Applications)

52. Petitioners repeat and reallege the preceding paragraphs of this Petition as if fully set forth herein.

53. The Fiber Optic Installations do not constitute real property under RPTL 102(12), and the Fiber Optic Installations are accordingly excluded from taxation as real property under New York law.

54. Respondents Erie County, City of Lackawanna, Village of North Collins, Eden Central School District, Lake Shore Central School District, and North Collins Central School District have wrongfully denied Level 3's Refund Applications with respect to the assessments of the Fiber Optic Installations for the 2011, 2012, and 2013 tax years.

55. The determinations denying Level 3's Refund Applications should be annulled on the ground that those determinations were affected by an error of law because Level 3's Fiber Optic Installations are not real property that is taxable under the RPTL 102(12).

SECOND CAUSE OF ACTION

(Writ of Mandamus Compelling Erie County, City of Lackawanna, Village Of North Collins, Eden Central School District, Lake Shore Central School District, And North Collins Central School District To Approve Refund Applications And To Refund Taxes)

56. Petitioners repeat and reallege the preceding paragraphs of this Petition as if fully set forth herein.

57. The Fiber Optic Installations do not constitute real property within the meaning of RPTL 102(12), and the Fiber Optic Installations are accordingly excluded from taxation as real property under New York law.

58. Respondents Erie County, City of Lackawanna, Village of North Collins, Eden Central School District, Lake Shore Central School District, and North Collins Central School District have wrongfully denied Level 3's Refund Applications with respect to the assessments of the Fiber Optic Installations for the 2011, 2012, and 2013 tax years.

59. The determinations denying Level 3's Refund Applications were affected by an error of law because the Fiber Optic Installations are personal property, and are not taxable real property.

60. Level 3 is entitled to a writ of mandamus ordering respondents Erie County, City of Lackawanna, Village of North Collins, Eden Central School District, Lake Shore Central School District, and North Collins Central School District to comply with their statutory obligations by (a) approving Level 3's Refund Applications, and (b) providing for refunds to Level 3 of the real property taxes assessed against Level 3's Fiber Optic Installations for the 2011, 2012, and 2013 tax years.

THIRD CAUSE OF ACTION

**(Writ Of Mandamus Compelling City of Buffalo
And City of Lackawanna School District To
Determine And Approve Level 3's And
Broadwing's Refund Applications And To Refund Taxes)**

61. Petitioners repeat and reallege the preceding paragraphs of this Petition as if fully set forth herein.

62. The Fiber Optic Installations do not constitute real property within the meaning of RPTL 102(12), and the Fiber Optic Installations are therefore excluded from taxation as real property under New York law.

63. Upon information and belief, respondents City of Buffalo and City of Lackawanna School District have not yet issued any determinations either approving or rejecting the Refund Applications that Level 3 filed with the County Director seeking refunds of taxes assessed on Level 3's Fiber Optic Installations by City of Buffalo and City of Lackawanna School District, and City of Buffalo has not yet issued determinations either approving or rejecting the Refund Applications that Broadwing filed with the County Director seeking refunds of taxes assessed on Broadwing's Fiber Optic Installations by City of Buffalo.

64. Under RPTL 556, following receipt of a written report from the County Director concerning Level 3's and Broadwing's Refund Applications, respondents City of Buffalo and

City of Lackawanna School District were required to take action thereon by (a) either approving or rejecting the Refund Applications, (b) providing Level 3 and Broadwing with mailed notice of the rejection of any of the Refund Applications, and (c) providing for refunds of real property taxes to Level 3 and Broadwing with respect to approved Refund Applications.

65. Respondents City of Buffalo and City of Lackawanna School District failed to comply with duties enjoined upon them by RPTL 556 because these respondents (a) have not taken action to either approve or reject Level 3's and Broadwing's Refund Applications; (b) have not approved Level 3's and Broadwing's Refund Applications; and (c) have failed to provide refunds to Level 3 and Broadwing for the real property taxes assessed against Level 3's Fiber Optics Installations for the 2011 and 2012 tax years.

66. Level 3 and Broadwing are entitled to a writ of mandamus (a) compelling City of Buffalo and City of Lackawanna School District to determine and approve Level 3's Refund Applications, (b) compelling City of Buffalo to determine and approve Broadwing's Refund Applications and (c) compelling City of Buffalo and City of Lackawanna School District to provide for refunds to Level 3 and Broadwing of the real property taxes assessed against Level 3's and Broadwing's Fiber Optic Installations for the 2011 and 2012 tax years.

FOURTH CAUSE OF ACTION

**(Writ Of Mandamus Compelling City of Buffalo
And City of Lackawanna To
Determine And Approve Correction Applications and Correct Tax Rolls)**

67. Petitioners repeat and reallege the preceding paragraphs of this Petition as if fully set forth herein.

68. The Fiber Optic Installations do not constitute real property within the meaning of RPTL 102(12), and the Fiber Optic Installations are therefore excluded from taxation as real property under New York law.

69. Upon information and belief, respondents City of Buffalo and City of Lackawanna have not yet issued any determinations either approving or rejecting the Correction Applications that Petitioners filed with the County Director seeking correction of the tax rolls of City of Buffalo and City of Lackawanna.

70. Under RPTL 554, following receipt of a written report from the County Director concerning Petitioners' Correction Applications, respondents City of Buffalo and City of Lackawanna were required to take action thereon by (a) either approving or rejecting the Correction Applications, (b) providing Petitioners with mailed notice of the approval or rejection of any of the Correction Applications, and (c) making an order setting forth corrected taxes and directing the officer having jurisdiction of the tax roll to correct such roll.

71. Respondents City of Buffalo and City of Lackawanna failed to comply with duties enjoined upon them by RPTL 554 because these respondents (a) have not taken action to either approve or reject Petitioners' Correction Applications; (b) have not approved Petitioners' Correction Applications; and (c) have failed to make an order setting forth corrected taxes and directing the officer having jurisdiction of the tax roll to correct such roll.

72. Petitioners are entitled to a writ of mandamus compelling City of Buffalo and City of Lackawanna (a) to determine and approve Petitioners' Correction Applications, and (b) make an order setting forth corrected taxes and directing the officer having jurisdiction of the tax roll to correct such roll.

WHEREFORE, Petitioners respectfully request that this Court award judgment as follows:

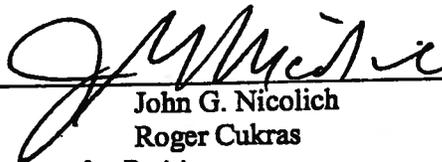
- (a) Annuling the determinations by respondents Erie County, City of Lackawanna, Village of North Collins, Eden Central School District, Lake Shore Central School District, and North Collins Central School District denying Level 3's Refund Applications;
- (b) Ordering respondents Erie County, City of Lackawanna, Village of North Collins, Eden Central School District, Lake Shore Central School District, and North Collins Central School District (1) to approve Level 3's Refund Applications, and (2) to provide refunds to Level 3 of the real property taxes that each respondent received for the 2011, 2012, and 2013 tax years based on the erroneous assessments of Level 3's Fiber Optic Installations, with interest from the dates of payments made by or on behalf of Level 3;
- (c) Ordering respondents City of Buffalo and City of Lackawanna School District (1) to determine and approve Level 3's and Broadwing's Refund Applications, and (2) to provide refunds to Level 3 and Broadwing of the real property taxes that these respondents received for the 2011, 2012, and 2013 tax years based on the erroneous assessments of Level 3's and Broadwing's Fiber Optic Installations, with interest from the dates of payments made by or on behalf of Level 3 and Broadwing.
- (d) Ordering respondents City of Buffalo and City of Lackawanna (1) to determine and approve Petitioners' Correction Applications, and (2) to make an order setting forth

corrected taxes and directing the officers having jurisdiction of the tax rolls to correct the tax rolls by removing Petitioners' Fiber Optic Installations therefrom; and

(e) For costs and disbursements of this proceeding, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 28, 2015

**INGRAM YUZEK GAINEN CARROLL
& BERTOLOTTI, LLP**

By: 
John G. Nicolich
Roger Cukras

Attorneys for Petitioners
Level 3 Communications, LLC,
Broadwing Communications, LLC,
Global Crossing North America, Inc., and
Global Crossing Telecommunications, Inc.
250 Park Avenue
New York, New York 10177
(212) 907-9600
jnicolich@ingramllp.com

VERIFICATION

STATE OF COLORADO)
)ss.:
COUNTY OF BROOMFIELD)

The undersigned, Lisa Akins, being duly sworn, states that she is the Director, Tax, for the Petitioners in the above-entitled proceeding; that she has read the foregoing Petition; and that the contents are true to her knowledge, except as to those matters which are alleged upon information and belief, which she believes to be true.



LISA AKINS

Sworn to before me this
28th day of May, 2015

SHIRLEY WELCH
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 07/10/18



Notary Public



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

June 16, 2015

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:	<i>Meserole, Leslie v. County of Erie and Michael A. Siragusa -- Application Arising Out of FOIL Denial</i>
Document Received:	Verified Petition
Name of Petitioner:	Leslie Meserole 27 Maple Street Tonawanda, New York 14150
Petitioner's Attorney:	Petitioner is proceeding <i>pro se</i> .

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle Parker
First Assistant County Attorney

MMP/dld

Enc.

Comm. 13D-6
Page 51 of 60

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

FILED
ACTIONS & PROCEEDINGS

JUN 12 2015

**ERIE COUNTY
CLERK'S OFFICE**

In the Matter of,

PAID
CHECK _____ CASH _____

LESLIE MESEROLE,

JUN 12 2015

Index No.

2015000104

Petitioner,

**ERIE COUNTY
CLERK'S OFFICE**

-against-

VERIFIED PETITION

ERIE COUNTY; and MICHAEL A. SIRAGUSA, ESQ., County
Attorney for Erie County,

Respondents

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

This paper received at
Erie County Clerk's Office
on the 12th day of Jun 2015
at _____ a.m. / _____ p.m.
by Pragya Kaper
Deputy Clerk

PRELIMINARY STATEMENT

1. This Article 78 proceeding pursuant to the Freedom of Information Law ("FOIL"), Article 6 of the Public Officer's Law, seeks to vindicate the Petitioner, Leslie Meserole, and the public at large to access records pertaining to a former inmate at the Erie County Holding Center, Antoine Garner.

2. Respondents have refused to produce public records in response to a FOIL request by the Petitioner Leslie Meserole and responded with vague language in direct contradiction to its statutory obligation without any particular discussion about how its denial pertains to the records sought.

3. Moreover, the County invoked plainly inapplicable exemptions in its attempt to circumvent FOIL's principles of open government and public accountability.

4. Having exhausted its administrative remedies, the Petitioner Leslie Meserole now asks the Court to order Erie County and County Attorney MICHAELA. SIRAGUSA, ESQ., to comply with their obligations under FOIL and provide the Petitioner with these records. Because of the patent inadequacy of the County's response, Petitioner also requests that the Court award Petitioner its fees for pursuing this action.

VENUE

5. Pursuant to CPLR 7804(b) and 506(b), venue in this proceeding lies in Erie County, in the judicial district in which the respondent took the action challenged and where the offices of the Respondent are located.

PARTIES

6. Petitioner, Leslie Meserole, is a resident of Erie County, New York.

7. Respondent, Erie County, is a state agency subject to the requirements of the Freedom of Information Law ("FOIL"), Article 6 of the Public Officers Law.

8. Respondent, MICHAELA. SIRAGUSA, ESQ. is the Erie County Attorney. He is responsible for the County's compliance with the Freedom of Information Law ("FOIL"). Article 6 of the Public Officers Law and directed the actions of the County alleged herein.

FACTS

9. Erie County maintains two correctional facilities administered by the Erie County Sheriffs Department - the Erie County Holding Center ("ECHC") and the Erie County Correctional Facility ("ECCF").

10. In the daily operations of these two facilities, routine records are kept of inmates including when they arrive and leave, logs of visitors and phone call logs and recordings and commissary records.

11. On April 7, 2015, Leslie Meserole filed a Freedom of Information Law ("FOIL") request via certified U.S. mail to FOIL officer John Greenan seeking records related to the daily intake sheets of Antoine Garner (DIN 13B1460), 2008 to present, visitor log books, phone call logs and recordings, and commissary records for the same period. (Petitioner's Exhibit A).

12. On April 9, 2015, Erie County Sheriff's Department Foil officer, John Greenan, emailed petitioner Leslie Meserole and informed her that releasing such records would be an unwarranted invasion of Mr. Garner's privacy. Petitioner emailed John Greenan that day in response, disagreeing with his decision and included Committee on Open Government advisory decisions. (Petitioner's Exhibit B).

13. On April 13, 2015, Petitioner Leslie Meserole appealed this decision to Undersheriff Mark Wiperman, the FOIL appeals officer for the Erie County Sheriff's Office, via certified U.S. mail. (Petitioner's Exhibit C).

14. On April 21, 2015, Petitioner Leslie Meserole received an email from the Undersheriff's office denying her request in full, no reason for denial stated in the email.

15. On April 28, 2015, Petitioner received a letter from Undersheriff Mark Wiperman, dated also April 28, 2105, denying Petitioner's appeal as an unwarranted invasion of privacy. (Petitioner's Exhibit D).

CAUSE OF ACTION: ARTICLE 78 REVIEW OF WRONGFUL DENIAL OF FOIL RE-

QUEST

16. Article 78 is the appropriate method for review of agency determinations concerning FOIL requests.

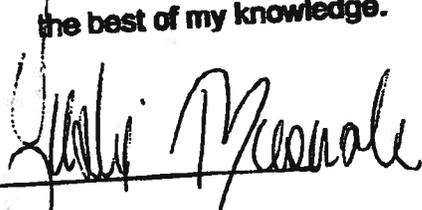
17. Petitioner Leslie Meserole and the public at large have a right to the records requested.

18. Respondents have not produced the information sought by the Petitioner.

disclosure under FOIL.

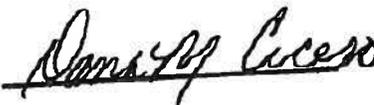
VERIFICATION

2. Petitioner is proceeding pro se. All information in the Petition is true and accurate to the best of my knowledge.



Leslie Meserole

Sworn and subscribed to me
this 8th day of June 2015.



Notary Public

DANA M. CICERO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Feb. 14, 2018

From: leslie meserole <momofalot0307@yahoo.com>
Date: April 7, 2015 at 10:12:54 PM EDT
To: "John.Greenan@erie.gov" <John.Greenan@erie.gov>
Subject: Antoine Gardner
Reply-To: leslie meserole <momofalot0307@yahoo.com>

4/7/2014

1. Visitor logs from 08- through May 2013 for Antoine Garner (DOB 6-5-86; DIN 13B1460) when he was incarcerated at Erie Co. Holding Center, both downtown Buffalo and Alden.

I will come to your facility and review them myself as I understand they are voluminous.

2. Antoine Garner intake sheets from each arrest and admission to the holding center, whether downtown Buffalo or Alden Facility.

3. Outgoing call logs for accounts Antoine Garner used to make phone calls from 2008 to present while at Erie Co. Holding Center, both downtown Buffalo and Alden Facility.

Sincerely yours
Leslie Brill
PO Box 192
City of Tonawanda Ny 14151

(716)344-0307

TONAWANDA POST OFFICE
TONAWANDA, New York
141509988
3510280150-0098
04/14/2015 (718)693-4560 12:19:01 PM

===== Sales Receipt =====
Product Sale Unit Final
Description Qty Price Price

BUFFALO NY 14202-3913 Zone-1 \$0.91
First-Class Mail Letter
2.70 oz.
Expected Delivery: Thu 04/16/15
Nonmach First-Class \$0.21
@@ Certified \$3.30
USPS Certified Mail #:
70143490000144925940

Issue Postage: \$4.42

Total: \$4.42

Paid by: 4-13-
Cash 10:04 AM \$4.42

@@ For tracking or inquiries go to
USPS.com or call 1-800-222-1811.

Order stamps at usps.com/shop or
call 1-800-Stamp24. Go to
usps.com/clicknship to print
shipping labels with postage. For
other information call
1-800-ASK-USPS.

Get your mail when and where you
want it with a secure Post Office
Box. Sign up for a box online at
usps.com/poboxes.

TIMOTHY B. HOWARD
SHERIFF

MARK N. WIPPERMAN
UNDERSHERIFF



SHERIFF OF ERIE COUNTY

ADMINISTRATIVE OFFICES
TEN DELAWARE AVENUE
BUFFALO, NEW YORK 14202-3913
(716) 858-7818
FAX: (716) 858-7880

POLICE SERVICES
ONE SHERIFF'S DRIVE
ORCHARD PARK, NEW YORK 14127-3700
(716) 682-5554
FAX: (716) 682-8477
WEBSITE: <http://www.erie.gov/sheriff>

April 28, 2015

Leslie Brill Meserole
27 Maple Street
Tonawanda, New York 14150

Dear Leslie,

I have been designated as the appeals officer in this matter. I am in receipt of your letter dated 4/13/15 in which you appeal access to certain records for inmate Antoine Garner from 2008 to present.

FOIL is based on a presumption of access, stating that all records are accessible, except records or portions of records that fall within one of eleven categories of deniable records (§87(2)).

With regard to your appeal of the denial, please be advised that your appeal is hereby denied as the records you seek are exempt from disclosure under Public Officers Law (§87(2)) (b) "unwarranted invasion of personal privacy;

Sincerely,

Mark N. Wiperman
Undersheriff of Erie County

Cc: Chief John Greenan
Jeremy Toth, 2nd Asst. County Attorney