

# COUNTY OF ERIE

**MARK C. POLONCARZ**  
COUNTY EXECUTIVE

MICHAEL A. SIRAGUSA  
COUNTY ATTORNEY

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 29, 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 eight (8) new claims brought against the County of Erie. The claims are as follows:

**Claim Name**

- Gary Zawodzinski v. County of Erie, et al.
- Sean Williams v. Superintendent Rodriguez, et al.
- Actalee Slade v. Villa Maria College (Medicaid lien issue)
- Deborah Buczek v. Patricia Fulwiler, et al.
- Roderick Wright v. County of Erie, et al.
- Jessie R. Molak v. County of Erie, et al.
- Donald E. Kill v. County of Erie, et al.
- Kandice Drayton, et al. v. County of Erie, et al. (Medicaid lien issue)

MMP:dld

Attachments

Comm. 14D-9



# 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 17, 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: *Zawodzinski, Gary v. County of Erie,  
Mark Poloncarz, Erie County  
Executive, and John Loffredo, Erie  
County Department of Public Works  
Commissioner*

Document Received: Notice of Claim

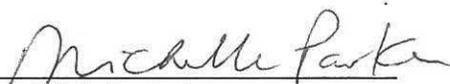
Name of Claimant: Gary Zawodzinski  
55 Pamela Court  
West Seneca, New York 14224

Claimant's attorney: Patricia Gillen, Esq.  
Duke Holzman Photiadis & Gresens LLP  
701 Seneca Street, Suite 750  
Buffalo, New York 14210

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. 14D-9  
Page 2 of 64

This paper received at the  
Erie County Attorney's Office  
from Dan Harwood  
the 11<sup>th</sup> day of June, 20    
at 12<sup>12</sup> a.m./p.m.

Kevin R. Kelly  
Assistant County Attorney

STATE OF NEW YORK  
SUPREME COURT : ERIE COUNTY

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In the Matter of  
GARY ZAWODZINSKI

**VERIFIED  
NOTICE OF CLAIM**

-against-

COUNTY OF ERIE,  
MARK POLONCARZ, ERIE COUNTY EXECUTIVE,  
and JOHN LOFFREDO, ERIE COUNTY DEPT. OF PUBLIC  
WORKS COMMISSIONER

---

TO: County of Erie  
Department of Law  
95 Franklin Street, Room 1634  
Buffalo, New York 14202

Mark Poloncarsz  
Erie County Executive's Office  
Edward A. Rath County Office Building  
95 Franklin Street, 16th Floor  
Buffalo, New York 14202

Erie County Department of Public Works  
Commissioner John Loffredo  
95 Franklin Street, 14<sup>th</sup> Floor  
Buffalo, New York 14202

PLEASE TAKE NOTICE, that GARY ZAWODZINSKI ("Mr. Zawodzinski") hereby makes claim and demand against the County of Erie, its County Executive, the County of Erie Public Works Department, Highway Division, and Commissioner John Loffredo (the "Respondents") for tortious acts,

violations of law, retaliation, wrongful and discriminatory acts and omissions, wrongful termination, and related acts and damages as follows:

1. The name and address of claimant and his attorney are:

Gary Zawodzinski  
55 Pamela Court  
West Seneca, New York 14224

Patricia Gillen, Esq.  
Duke, Holzman, Photiadis & Gresens LLP  
701 Seneca Street, Suite 750  
Buffalo, New York 14210

2. This is a claim against the Respondents for damages sustained by Mr. Zawodzinski arising from and relating to:

- (a) Respondents' wrongful termination of employment from the Erie County Department of Public Works Highway Department which was the culmination of Respondents' pattern of discrimination against Mr. Zawodzinski;

- (b) Respondents' discriminatory actions against Mr. Zawodzinski, due to his disability and veterans' status, which include failing to provide him a reasonable accommodation, personal attacks made against him as a result of his disability, differential treatment against him because of his disability, arising under both federal and state laws;

(c) Respondents' discriminatory actions against Mr. Zawodzinski due to his having exercised his rights under the collective bargaining agreement and the National Labor Relations Act;

(d) Respondents' failure to provide Mr. Zawodzinski with the protections of the Family and Medical Leave Act.

3. Mr. Zawodzinski has been damaged by the Respondents' tortious acts, violations of law, retaliation, wrongful and discriminatory acts and omissions, and wrongful termination. Respondents engaged in a pattern of harassment aimed at Mr. Zawodzinski due to his disability, made threats against him, made false allegations of criminal conduct against him defaming his reputation, forced him into a medical leave, and then denied him the protections under the Family and Medical Leave Act, and culminated in an unlawful and retaliatory termination despite the lack of any evidence against him.

4. The damages herein described were sustained as a result of the Respondents' tortious acts, violations of law, retaliation, wrongful and discriminatory acts and omissions, wrongful termination, and related acts and damages, which occurred during Mr. Zawodzinski's period of employment with the Erie County Department of Public Works and which have continued in

certain respects through the current period of time. Mr. Zawodzinski's claim accrued upon his wrongful termination date of March 13, 2015.

5. By reason of the aforesaid tortious acts, violations of law, retaliation, wrongful and discriminatory acts and omissions, wrongful termination, and related acts and damages, Mr. Zawodzinski has incurred damages in the form of lost wages, medical and pension benefits, emotional distress and anxiety. Mr. Zawodzinski may seek punitive damages against the Respondents based upon their intentional and malicious conduct.

6. Mr. Zawodzinski's damages set forth in paragraph 5, incurred by reason of the Respondents' wrongful conduct, are continuing to accrue, and will continue to accrue so long as Respondents continue their pattern of harassment and retaliatory actions against him. Accordingly, Mr. Zawodzinski reserves the right to amend this claim and the statement of damages as necessary to properly reflect the losses he has incurred as result of the Respondents' tortious acts, violations of law, retaliation, wrongful and discriminatory acts and omissions, wrongful termination, and related acts and damages.

WHEREFORE, GARY ZAWODZINSKI, hereby makes claim and demand against the Respondents, for damages, and all related costs and expenses, including attorneys' fees, together with appropriate interest.

Dated: June 10, 2015

**DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP**  
*Attorneys for Claimant, Gary Zawodzinski*

By   
Patricia Gillen  
701 Seneca Street, Suite 750  
Buffalo, New York 14210  
(716) 855-1111

VERIFICATION OF NOTICE OF CLAIM

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

Gary Zawodzinski, being duly sworn, deposes and says that he is the claimant in the aforesaid Notice of Claim, he has read the foregoing Notice of Claim and knows the contents thereof; that the same are true to his own knowledge, except as to matters therein stated to be alleged upon information and belief, and to those matters he believes it to be true.

Gary Zawodzinski  
Gary Zawodzinski

Sworn to before me this  
16<sup>th</sup> day of June, 2015.

Cortney W. Gale  
Notary Public

**CORTNEY W. GALE**  
Notary Public, State of New York  
Commission # 01GA6125865  
Qualified in Genesee County  
My Commission Expires April 25, 2017



# 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 18, 2015

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

Dear Ms. McCarthy:

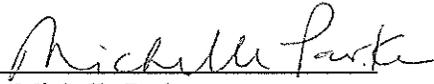
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Williams, Sean v. Superintendent John Rodriguez, Deputy Sheriff J. Ball, Nurse Laura Lay, Nurse Cindy, Deputy Sheriff Purcell and Deputy Sheriff Douglas</i>
Document Received:	Summons and Complaint
Name of Plaintiff:	Sean Williams 12-B-3718 Orleans Correctional Facility 35-31 Gaines Basin Road Albion, New York 14411-9199
Plaintiff's Attorney:	Plaintiff 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. 14D-9

Page 9 of 64

Revised 03/06 WDNV

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

**AMENDED**  
FORM TO BE USED IN FILING A COMPLAINT  
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983  
(Prisoner Complaint Form)

1201111

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

**1. CAPTION OF ACTION**

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

- 1. Sean Williams
- 2.

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

- 1. John Rodriques
- 2. Nurse Laura Lay
- 3. Nurse Cindy
- 4. Deputy Sheriff Douglas
- 5. Deputy Sheriff Ball
- 6. Deputy Sheriff Purcell

**2. STATEMENT OF JURISDICTION**

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

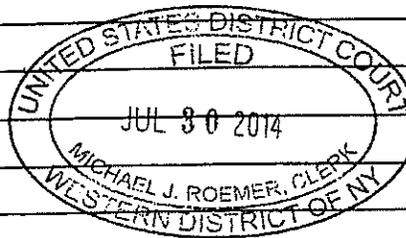
RECEIVED  
2015 JUN -2 AM 10:50  
U.S. MARSHAL SERVICE  
WESTERN NEW YORK

**3. PARTIES TO THIS ACTION**

**PLAINTIFF'S INFORMATION** NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: Sean Williams  
Present Place of Confinement & Address: Erie Ct Corr. Fac., 11581 Walden Avenue,  
Alden, New York 14004

Name and Prisoner Number of Plaintiff:  
Present Place of Confinement & Address:



**DEFENDANT'S INFORMATION NOTE:** *To provide information about more defendants than there is room for here, use this format on another sheet of paper.*

Name of Defendant: John Rodrigues  
(If applicable) Official Position of Defendant: Superintendent  
(If applicable) Defendant is Sued in  Individual and/or  Official Capacity  
Address of Defendant: Erie Ct Corr. fac., 11581 Walden Avenue, Alden,  
New York 14004

Name of Defendant: Nurse Laura Lay  
(If applicable) Official Position of Defendant: Nurse practitioner  
(If applicable) Defendant is Sued in  Individual and/or  Official Capacity  
Address of Defendant: Erie Ct Corr. fac., 11581 Walden Avenue, Alden,  
New York 14004

Name of Defendant: Nurse Cindy  
(If applicable) Official Position of Defendant: Nurse  
(If applicable) Defendant is Sued in  Individual and/or  Official Capacity  
Address of Defendant: Erie County Corr. Fac., 11581 Walden Avenue, Alden,  
New York 14004

**4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT**

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?  
Yes \_\_\_ No x

*If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:  
 Plaintiff(s): \_\_\_\_\_  
 Defendant(s): \_\_\_\_\_
2. Court (if federal court, name the district; if state court, name the county): \_\_\_\_\_
3. Docket or Index Number: \_\_\_\_\_
4. Name of Judge to whom case was assigned: \_\_\_\_\_

**DEFENDANT'S INFORMATION NOTE:** *To provide information about more defendants than there is room for here, use this format on another sheet of paper.*

Name of Defendant: Deputy Sheriff Douglas

(If applicable) Official Position of Defendants: Deputy Sheriff Guard

(If applicable) Defendant is Sued in  Individual and/or  Official Capacity

Address of Defendants: Erie County Corr. Fac., 11581 Walden Avenue,  
Alden, New York 14004

Name of Defendant: Deputy Sheriff Ball

(If applicable) Official Position of Defendants: Deputy Sheriff Guard

(If applicable) Defendant is Sued in  Individual and/or  Official Capacity

Address of Defendants: Erie Ct Corr. Fac. 11581 Walden Avenue,  
Alden, New York 14004

Name of Defendant: Deputy Sheriff Burgell

(If applicable) Official Position of Defendants: Deputy Sheriff Guard

(If applicable) Defendant is Sued in  Individual and/or  Official Capacity

Address of Defendants: Erie County Corr. Fac., 11581 Walden Avenue,  
Alden, New York 14004

5. The approximate date the action was filed: \_\_\_\_\_

6. What was the disposition of the case?

Is it still pending? Yes \_\_\_ No \_\_\_

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the statements which apply):

\_\_\_ Dismissed (check the box which indicates why it was dismissed):

\_\_\_ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

\_\_\_ By court for failure to exhaust administrative remedies;

\_\_\_ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

\_\_\_ By court due to your voluntary withdrawal of claim;

\_\_\_ Judgment upon motion or after trial entered for

\_\_\_ plaintiff

\_\_\_ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes \_\_\_ No X

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): \_\_\_\_\_

Defendant(s): \_\_\_\_\_

2. District Court: \_\_\_\_\_

3. Docket Number: \_\_\_\_\_

4. Name of District or Magistrate Judge to whom case was assigned: \_\_\_\_\_

5. The approximate date the action was filed: \_\_\_\_\_

6. What was the disposition of the case?

Is it still pending? Yes \_\_\_ No \_\_\_

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the statements which apply):

Dismissed (check the box which indicates why it was dismissed):

- By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- By court for failure to exhaust administrative remedies;
- By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

- plaintiff
- defendant.

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### 5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- |                    |                        |                               |
|--------------------|------------------------|-------------------------------|
| • Religion         | • Access to the Courts | • Search & Seizure            |
| • Free Speech      | • False Arrest         | • Malicious Prosecution       |
| • Due Process      | • Excessive Force      | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect   | • Right to Counsel            |

Please note that it is not enough to just list the ground(s) for your action. You must include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

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### Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

**A. FIRST CLAIM:** On (date of the incident) See attached sheets  
defendant (give the name and position held of each defendant involved in this incident) \_\_\_\_\_

did the following to me (briefly state what each defendant named above did): \_\_\_\_\_

The constitutional basis for this claim under 42 U.S.C. § 1983 is: violation of Americans with disabilities Act

The relief I am seeking for this claim is (briefly state the relief sought): \$50,000.00 punitive and \$50,000.00 compensatory damages

**Exhaustion of Your Administrative Remedies for this Claim:**

Did you grieve or appeal this claim?  Yes \_\_\_\_\_ No If yes, what was the result? Denied

Did you appeal that decision?  Yes \_\_\_\_\_ No If yes, what was the result? Denied

Appeal papers misplaced when moved from County Jail to State Prison

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: \_\_\_\_\_

**A. SECOND CLAIM:** On (date of the incident) \_\_\_\_\_  
defendant (give the name and position held of each defendant involved in this incident) \_\_\_\_\_

FRIST CLAIM:

Plaintiff filed a complaint with the defendant Superintendent of the Erie County Correctional Facility, Mr. John Rodriques, about the conduct, mistreatment and humiliation that he receiving and experiencing at the hands of several members of his staff, to wit: Nurse Cindy, Nurse Laura Lay, Deputy Sheriff Guard Ball, Deputy Sheriff Guard Purcell and Deputy Sheriff Guard Purcell and Deputy Sheriff Guard Douglas. That he (plaintiff) was being discriminated and mistreated due to his disability as a paraplegic. Further, his complaint was that the facility willfully refused to accommodate his disability as the law required. Since plaintiff is wheelchair bound, he needed access to a trained mobile assistant, aid to assist with cleaning his cage. An aid to assist him with access to the shower. The shower was not designed to accommodate wheelchair bound persons. Furthermore, the cell was too small to accommodate a wheelchair bound paraplegic. There was inadequate heating in his cell and the lack of adequate heat during cold weather contributed to his enormous pain.

Defendant Rodriques took no action to correct or abate problems.

Defendant Nurse Cindy deliberately refused to change plaintiff's dressing on a daily basis as directed by the physician and she also refused to assist him with taking his shower since the shower was not designed to accommodate a wheel chair bound paraplegic. Nurse Cindy violated his rights by discussing and revealing his private medical condition and information to non-medical personnel. Such as the fact that he had to wear "depends". Further Nurse Cindy put his nutrient drink into a dirty cup thus forcing him to drink it because he needed the add nutrition to due his medical condition.

On or about September 20th, 2012, defendant Deputy Sheriff Guard Ball made the following statement while in the medical area: "I want all of you inmates to stand against the wall. Williams that means you also". Defendant Deputy Sheriff Guard Ball from August 11th, 2012 until October 2012 has gone beyond the scope of his official duties to humiliate, degrade, discriminate against and portray plaintiff's disability in a demeaning manner with no respect or regards for plaintiff's right of privacy. Further, defendant Ball has repeatedly embarrassed him with jokes about his being wheelchair bound.

Also, Defendant Ball has conspired with Defendant Nurse Laura Lay to deprive him of timely dressing changes for his bed sores.

On or about September 22, 2012, at about 8:00pm Defendant Laura Lay called for medication distribution. Plaintiff approached the medical line and due to him being confined to a wheelchair and needing to use one hand to push his wheelchair and needing to use on hand to push his wheelchair and the other one to take the medication, he placed his cup of water on the top of the medication cart and attempted to reach for the

FIRST CLAIM (continues)

medication being offered to him by the Defendant Laura Lay. Suddenly, Defendant Lay smacked the cup of water off of the cart onto the floor and immediately became hostile and abusive to plaintiff stating: "Noboby wants your germs and diseases".

Deputy Sheriff Guard Purcell gave plaintiff a misbehavior report because he attempted to speak in private to the nurse about his medical problems notwithstanding the fact that he (defendant) did not need to have access to confidential medical information and sought it in violation of Federal law. Defendant Purcell would take the information which he obtained in violation of Federal law and use it to ridicule and expose plaintiff to humiliation amongst his fellow pre-trial detainees.

SECOND CLAIM

Defendant Deputy Sheriff Guard Douglas conducted a disciplinary Hearing for Plaintiff and he found him guilty, but would not allow him to call any witnesses and would not provide him with a staff assistant to interview his witnesses about the incident which lead up to the misbehaviour report. Through the actions of Hearing Officer Douglas, he was denied "due process" at the disciplinary hearing. Plaintiff appealed to Erie County Correctional facility Superintendent John Rodriques about the lack of "due process" at the hearing and no action was taken to address the issue or the punishment meted out or even to modify it.

did the following to me (briefly state what each defendant named above did): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The constitutional basis for this claim under 42 U.S.C. § 1983 is: violation of Americans with disabilities Act.

The relief I am seeking for this claim is (briefly state the relief sought): Compensatory and punitive damages of \$100,000.00

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? XX Yes \_\_\_\_\_ No If yes, what was the result? \_\_\_\_\_

Did you appeal that decision? XX Yes \_\_\_\_\_ No If yes, what was the result? \_\_\_\_\_

Appeal papers misplaced when from County Facility to State Prison

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: \_\_\_\_\_

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

*Summarize the relief requested by you in each statement of claim above.*

Compensatory and punitive damages against each defendant in the form of monetary damages

Do you want a jury trial? Yes \_\_\_\_\_ No XX

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 7-28-14  
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

Sean Williams  
Signature(s) of Plaintiff(s)

Sean Williams  
#12B3718  
Orleans Correctional Facility  
3531 Gaines-Basin Road  
Albion, New York 14411

July 27, 2014

Michael J. Roemer  
Clerk  
U.S. District Court  
Western District Of New York  
U.S. Courthouse  
2 Niagara Square  
Buffalo, NY 14202

Re: Sean Williams v. John Rodrigues  
12-CV-1111Sr

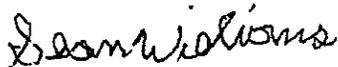
Dear Sir:

Pursuant to my most recent letter to the Court, I asked the Court until July 28, 2014, to file my amended complaint. I was instructed in an order dated January 21, 2013, to file the amended complaint since my original one was deficient in form.

I submit this amended complaint. I have enclosed a new civil cover sheet. However, I have not filed a new "in forma pauperis" motion since the Court already has granted me that status.

Thanks for your court's patience and forbearance.

Respectfully submitted,



Sean Williams



# 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 18, 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>Slade, Actalee (DSS Lien) v. Villa Maria College - COE named due to Medicaid Lien</i>
Document Received:	Summons and Complaint
Name of Claimant:	Actalee C. Slade 563 Sycamore Street Buffalo, New York 14212
Claimant's attorney:	J. Michael Hayes, Esq. 69 Delaware Avenue Suite 1111 Buffalo, New York 14202

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. 14D-9  
Page 21 of 64

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

ACTALEE C. SLADE  
563 Sycamore Street  
Buffalo, New York 14212

Plaintiff,

SUMMONS

vs.

VILLA MARIA COLLEGE  
240 Pine Ridge Road  
Buffalo, New York 14225

Index No:  
Filed in the Erie *6/9/2015*  
County Clerk's  
Office on.: *807031/2015*

COUNTY OF ERIE  
Rath Building  
95 Franklin Street  
Buffalo, New York 14202

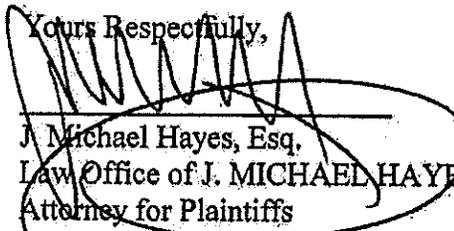
Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED, to answer the complaint in this action, and to serve a copy of your answer, or, if the summons is not served with a complaint, to serve a notice of appearance, on the Plaintiff's attorney within twenty (20) days after service of this summons, exclusive of the day of service, or within thirty (30) days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Erie County is designated as the place of trial on the basis of the residence of the Plaintiff who resides in Erie County, New York.

DATED: BUFFALO, NEW YORK  
June 9, 2015

Yours Respectfully,  
  
J. Michael Hayes, Esq.  
Law Office of J. MICHAEL HAYES  
Attorney for Plaintiffs  
Office and P.O. Address:  
69 Delaware Avenue - Suite 1111  
Buffalo, New York 14202  
(716) 852-1111

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

ACTALEE C. SLADE,

Plaintiff,

vs.

VILLA MARIA COLLEGE and  
COUNTY OF ERIE

Defendants.

---

**COMPLAINT**

Index No.: 807031/2015

The Plaintiff, ACTALEE C. SLADE, by her attorney, J. MICHAEL HAYES, for her complaint against the Defendants, VILLA MARIA COLLEGE and COUNTY OF ERIE, herein alleges:

1. Presently and at all times hereinafter mentioned, Plaintiff, ACTALEE C. SLADE, was a resident of the City of Buffalo, County of Erie and State of New York.
2. Upon information and belief, presently and at all times hereinafter mentioned, the Defendant, VILLA MARIA COLLEGE, was domestic not-for-profit company operating and conducting business in the State of New York with an office for the transaction of business located in Erie County.
3. Upon information and belief, on or about January 19, 2015 and prior thereto, Defendant, VILLA MARIA COLLEGE, their officers, agents, servants and/or employees, were the owners of and responsible for the maintenance, upkeep, control, snow/ice removal, lighting and inspection of the aforesaid premises generally, including but not limited to the parking lot, its approaches, walkways, entrances and exits thereto and/or a part thereof located at or around 240 Pine Ridge Road, Buffalo, New York.

4. Upon information and belief, Defendant, COUNTY OF ERIE, is a municipal corporation existing by virtue of the Laws of the State of New York with offices for the transaction of business located in the count of Erie, State of New York.

5. Upon information and belief, the aforementioned premises, the parking lot, approaches and walkways were negligently, improperly lighted or inadequately maintained, inspected, shoveled and salted causing and permitting them to be covered with snow and ice which was inadequately and/or improperly removed, disposed and/or placed, thereby permitting the continuance and/or causing and creating dangerous and hazardous conditions.

6. Upon information and belief, Defendant, VILLA MARIA COLLEGE, their officers, agents, servants and/or employees, had actual and/or constructive notice of the aforesaid conditions and failed to remedy same within a reasonable period of time.

7. Upon information and belief, on or about January 19, 2015, Plaintiff, ACTALEE C. SLADE, was caused to fall in the aforementioned parking lot, approaches, walkways and sustain severe and serious personal injuries.

8. Upon information and belief, the aforementioned incident was caused and/or contributed to due to the negligence and careless conduct on the part of the Defendant, VILLA MARIA COLLEGE, their officers, agents, servants and/or employees.

9. Upon information and belief, Defendant, COUNTY OF ERIE, claims a recovery right and/or "lien" out of any resolution in the above matter by virtue of medical expenses it claims to have incurred.

10. Upon information and belief, the Defendant, COUNTY OF ERIE, is a necessary party to this action in that, for and before complete recovery may be accorded, the Defendant, COUNTY OF ERIE's, claims for medical reimbursement must be considered, finalized, allocated and

determined by way of compromise, settlement and/or Court determination and said Defendant has refused to join as a party plaintiff.

11. Upon information and belief, this action falls within one or more of the exceptions enumerated in Article 16 of the CPLR and/or said article is inapplicable to the within action.

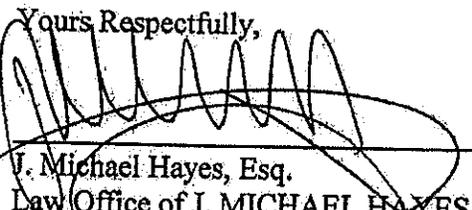
12. As a result of the foregoing, Plaintiff, ACTALEE C. SLADE, sustained severe and serious personal injuries all to her damage in a sum in excess of the jurisdictional limits of the lower courts of the State of New York.

13 Plaintiff, ACTALEE C. SLADE, hereby demands that a Jury Trial be held.

WHEREFORE, Plaintiff, ACTALEE C. SLADE, demands judgment against the Defendants, VILLA MARIA COLLEGE and COUNTY OF ERIE, in a sum in excess of the jurisdictional limits of all lower courts in the State of New York together with the costs and disbursements.

DATED: BUFFALO, NEW YORK  
June 9, 2015

Yours Respectfully,



J. Michael Hayes, Esq.  
Law Office of J. MICHAEL HAYES  
Attorney for Plaintiffs  
Office and P.O. Address:  
69 Delaware Avenue - Suite 11.11  
Buffalo, New York 14202  
(716) 852-1111

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF Erie

Actalee C. Slade

Plaintiff/Petitioner,

- against -

Index No. 807031/2015

Villa Maria College  
County of Erie

Defendant/Respondent.

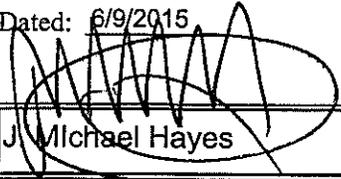
**NOTICE OF COMMENCEMENT OF ACTION  
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) or contact the NYSCEF Resource Center at 646-386-3033 or [efile@courts.state.ny.us](mailto:efile@courts.state.ny.us).

Dated: 6/9/2015

  
J. Michael Hayes

(Signature)

(Name)

J. Michael Hayes

(Firm Name)

69 Delaware Avenue, Suite 1111 (Address)  
Buffalo, NY 14202

716-851-1111 (Phone)

jmh@jmhayes.com (E-Mail)

To: Villa Marie College  
County of Erie



# 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 22, 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>Buczek, Deborah Ann v. Patricia L. Fulwiler, et al.</i>
Document Received:	Summons & Writ of Replevin
Name of Plaintiff:	Deborah Ann Buczek PO Box 93 7335 Derby Road Derby, New York 14047
Plaintiff's Attorney:	Plaintiff 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. 14D-9  
Page 27 of 64

UNITED STATES DISTRICT COURT

for the

Western District of New York

Deborah Ann Buczek

Plaintiff(s)

v.

Gasper A. Tirone and Elaine Tirone, John G. Schmidt Jr. Steven W. Wells, William F. Savino, Scott Janasa owner American Eagle, Gilbert Reyes

Defendant(s)

Civil Action No. 1:15-cv-00028-WMS

RECEIVED 2015 JUN 15 AM 11:39 US MARSHALS SERVICE WESTERN NEW YORK

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Gasper & Elaine Tirone 632 Edgewater Drive # 731 Duneden, Florida [34698] John G. Schmidt Jr. 125 Main Street Buffalo New York [14203-2887] P716- 847-7095 Steven W. Wells 140 Pearl Street Suite 100 Buffalo, New York [14202] P-716-848-1233 William F. Savino 200 Delaware Avenue Buffalo New York [14202] P716-248-3210 Patricia L. Fulwiler, American Eagle Abstract owner Scott Janasa

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Deborah Ann Buczek Postal Office 43 Lake View New York near [14085] & Lake View General Delivery 6550 Southwestern Lake View, New York near [14085]

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Michael J. Roemer

Signature of Clerk or Deputy Clerk

Date: JUN 12 2015

Civil Action No. 1:15-cv-00028-WMS

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Attachment AO 440 Summons in a Civil Action

Gilbert Reyes- DOB: 6-6-1960

Office Address:

Internal Revenue Service  
130 South Elmwood Avenue  
Buffalo New York [14202]

Gilbert Reyes Home Address:

67 Altruria Street  
Buffalo, New York [14220]

Patricia L. Fulwiler

92 Franklin Street  
Buffalo, New York [14202]

Phone 716-858-6348

Fax 716-858-6550

E-Mail [patricia.fulwiler@erie.gov](mailto:patricia.fulwiler@erie.gov)

American Eagle Abstract, Inc

Scott Janasa

6 North Pearl Street

Buffalo New York [14202]

Steven W. Wells

140 Pearl Street Suite 100

Buffalo, New York [14202]

United State District Court  
For the Western District of New York  
(Buffalo Division)

Deborah- Ann: Buczek  
Real party interest Rule 17a  
SECURED PARTY  
Uniform Commercial Code  
FILING ACKNOWLEDGMENT NY DEPT. OF STATE  
201405120259837/201405290292729  
Plaintiff,

15 CV0028-S

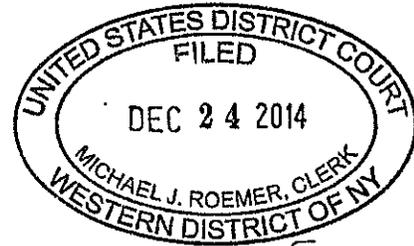
Case Number:

WRIT OF REPLEVIN  
[F.R.C.P. Rule 64]  
"RICO Act"

-v-

GASPER A. TIRONE and ELAINE E.  
TIRONE Co-Trustees of Gasper A. Tirone  
and Elaine E. Trust U/A dated February 9.2011  
632 Edgewater Drive, # 731  
Dunedin, Florida 34598

American Eagle Abstract, Inc. Scott Janasa  
John E. Schmidt, Jr. Private Capacity  
Steven W. Wells, Private Capacity  
Timothy J. Walker, Private Capacity  
William F. Savino, Private Capacity  
Gilbert Reyes, Private Capacity  
Patricia L. Fulwiler, Private Capacity  
Defendants'



RECEIVED  
2015 JUN 15 AM 11:39  
US MARSHALS SERVICE  
WESTERN NEW YORK

Writ in Replevin

JURISDICTION

1.) Jurisdiction is invoked pursuant to 28 U.S.C. § 1651, Rule 62 Stay of Proceedings to Enforce a Judgment and Rule 64 Seizure of Person or Property and the remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action.

That right to foreclose belongs ONLY to the person who has legitimate POSSESSION OF THE ORIGINAL NOTE - not a copy, not an electronic entry, but the original note itself with the original signature of the person(s) who allegedly owes the money along with appropriate raised notary seal and signature

**Federal Rules of Civil Procedure Rule 7 and the amount in controversy in this action exceed \$75,000.00, exclusive of interest, attorneys' fees and costs.**

**VENUE**

2.) Venue of this action is properly in the Western District of New York (Buffalo New York Division) pursuant to 28 U.S.C. Section 1391 (b) as the real party of interest, plaintiff's claims arose in this district on July ,2014 in the State of New York Supreme Court County of Erie Index No. 807348/2014. See Attachment (1)

3.) Plaintiff Deborah Ann Buczek is the **owner** and is the lawfully entitled to possession of the following property at 6841-6853, Erie Road, Derby, New York (Town of Evans). Article 71 ("Replevin"), In General Article 71 of the CPLR has its roots in the common law action of replevin, the primary purpose of which was to restore possession of a chattel to the person from whom it was wrongfully taken. See generally *Sinnott v. Feiock*, 1901, 165 N.Y. 444, 445-46, 59 N.E. 265, 265; *Joseph A. Koffler & Alison Reppy*, *Common Law Pleading* § 127 (1969) [hereinafter cited as *Koffler & Reppy*]. Replevin was typically invoked as a remedy against a creditor, such as a landlord, who had wrongfully taken possession of his debtor's goods or livestock as security for an unpaid debt. Such a taking was known as a "distrain" or "distress." The plaintiff's suit in replevin sought to regain possession of the chattels together with compensatory damages. Eventually, replevin merged with detinue, which was an action to regain possession of a chattel that originally came into defendant's possession lawfully but was wrongfully withheld. See *Koffler & Reppy*, *supra*, at § 127. Today, the purpose of the action in replevin is simply to determine "which party has the 'superior possessory right' to the chattels." *Christie's Inc. v. Davis*, S.D.N.Y.2002, 247 F.Supp.2d 414, 419.

Attachment (2)

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- 4.) The property is wrongfully detained by defendant received William F. Savino GASPER A. TIRONE and ELAINE E.TIRONE Co-Trustees of Gasper A. Tirone and Elaine E. Trust U/A dated February 9.2011 632 Edgewater Drive, # 731 Dunedin, Florida 34598 Docket Index 807348/2014 where the record shows that William F. Savino GASPER A. TIRONE and ELAINE E.TIRONE Co-Trustees of Gasper A. Tirone and Elaine E. Trust U/A dated February 9.2011 no liens or security interest filed in the department of state.(NY DEPT OF STATE)
- 5.) The property has not been taken for any tax, assessment, or fine levied by virtue of any law of this State against the property of plaintiff, or against me individually, nor seized under any lawful process or against the goods and chattels of plaintiff subject to such lawful process, nor held by virtue of any order of replevin against plaintiff.
- 6.) The property was appraised for \$675,000.00, assessed by Northeastern Appraisal Associates, on February 19<sup>th</sup>, 2013. Attachment (2)
- 7.) Plaintiff claims the value of property not delivered to the officer under the order for replevin entered by the court.
- 8.) Plaintiff asks that an Order of Replevin be issued and judgment against defendant for:
  - a.) possession of the property
  - b.) the value of property not delivered; and,
  - c.) damages for the detention
  - d.) wrongfully detained by defendants
- 9.) FACTS PERTINENT TO THE WRIT OF REPLEVIN
- 10.) It is my, Deborah Buczek, intent to show the facts pertaining to this motion will

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thoroughly detail a just and warranted intention, to secure immediate vacation of the summary judgment that was ordered against me with respect to the index number 807348/2014, and furthermore to secure immediate dismissal of the action against me entirely.

11.) The primary grounds for the granting of the writ of replevin stands upon the fact that proper service of the hearing, after which summary judgment was so granted against me, was never affected, and valid evidence of proper service of that hearing does not exist.

12.) As a fundamental right to due process of law is guaranteed to all free people, notice is the first action which is required as a fundamental point of due process of law.

13.) Notice of said hearing was never duly presented nor properly served upon myself.

14.) There are standards which have been set as for the definition of proper service with respect to notice. I, Deborah Buczek, hereby affirm and declares under penalty of perjury that I did not receive any form of notice regarding this hearing having been scheduled.

15.) Furthermore, there is no evidence whatsoever proving that notice of this hearing was properly served upon me as required by N.Y. CVP. LAW § 306 : NY Code - Section 306.

“Proof of service shall be in the form of a certificate if the service is made by a sheriff or other authorized public officer, in the form of an affidavit if made by any other person, or in the form of a signed acknowledgement of receipt of a summons and complaint, or summons and notice or notice of petition as provided for in section 312-a of this article.”

16.) There is no evidence of a signature given by myself verifying receipt of this notice, nor is there an affidavit of service attested to by an individual who has claimed to have personally placed this notice in my possession. Email, and Fed Ex deliveries which do not bear signatures, do not constitute proper service and do not satisfy the requirements of the fundamental right to due process of law with respect to notice. The lowest standard of proper service requires

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certified mail return receipt which would contain the signature of the receiving party. Had I received proper notice of this scheduled hearing I would have appeared to argue the case.

17.) The second grounds for granting this writ requiring no further digression, also warrant dismissal of this entire case. The clearest and most simple fact in this matter is that the party bringing suit does not have standing in this case to bring this action. It is a clear fact that the original note is not in possession of the plaintiff. As the plaintiff cannot produce an original liability generating instrument, it has no evidence to prove the existence of any such liability. Even if I, Deborah Buczek may have been manipulated into acting in the past as if I had a genuine liability, that action in and of itself does not thereby create genuine liability going forward.

18.) I hope that it is not the case that there is an effort underway to protect the entity that has committed obvious fraud and an egregious breach of duties with respect to the loss of this note and subsequent failure to take any action to correct such loss or give sufficient explanation as to the cause of the loss of the original note. It is my belief that the original note was in fact sold, and therefore along with it, any and all right to collect upon this alleged debt. Only the party that possesses that original note would have standing to bring suit against myself with respect to this matter.

19.) This matter of the lack of existence of an original liability generating instrument is believed to be the root cause as to why the notice of hearing was never properly served together with the baseless and false allegations listed in the plaintiff's affidavit in support of motion for summary judgment. The third and final grounds for granting the writ of replevin regards the essential fact that due process of law has been circumvented in this case entirely. There did so exist a duty upon the judge to so inform me that I have a fundamental right to have a jury hear and determine

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this case considering the value in controversy exceeds twenty dollars (\$20.00). It is with all due respect, not the proper place for a judge to determine a matter such as this, but the duty of a jury, to review the facts and make a decision in this matter. Had I been so informed of my right to have a jury decide this matter that option would have been chosen and summary judgment would not have then been possible. With the oversight of a jury, I believe I would have received notice via proper form of service of the hearing that was scheduled and missed which thereby prompted this summary judgment improperly.

20.) Rule 62 (Stay of Proceedings to Enforce a Judgment) and Rule 64 (Seizure of Person or Property) at the commencement of and during the course of an action. All remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the state in which the district court is held, existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted or, if removed from a state court, shall be prosecuted after removal, pursuant to these rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether by state procedure the remedy is ancillary to an action or must be obtained by an independent action. New York Lien Law 190 – Corporate mortgages against real and personal property § 190. Corporate mortgages against real and personal property. 1. A mortgage creating a lien upon real and personal property, executed by a corporation as security for the payment of bonds, notes or other evidences of indebtedness, issued by such corporation or any other corporation, or executed by any telegraph, telephone,

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electric light, railroad, street railway or omnibus corporation, and recorded as a mortgage of real property in each county where such real property is located or through which the line or route of such telegraph, telephone, electric light, railroad, street railway or omnibus corporation runs, need not be filed or refiled as a chattel mortgage or perfected by filing in accordance with part five of article nine of the uniform commercial code in any county where the mortgage is recorded, but filing in accordance with that part in the department of state only is required to perfect a security interest in the personal property or fixtures covered by such a mortgage hereafter recorded. Affidavit of Deborah Ann Buczek: I, Deborah- Ann: Buczek the real party of interest hereby affirms all of the following under penalties of perjury 28 USC Section 1746 (1):

21.) Deborah-Ann: Buczek, the original issue and holder in due course Third Party Plaintiff, by special appearance, and not appearing generally, before this court seeking a remedy in Common Law or in Maritime Admiralty equity as is provided by "The Saving to the Suitors Clause" at USC 28 -1333(1). I respectfully request the indulgence of this court as I am not schooled in admiralty law. This is provided by the precedent set by Haines vs. Kerner at 404 U.S. 519. And the COMMON LAW of the State of New York [http://en.wikipedia.org/wiki/Law\\_of\\_New\\_York](http://en.wikipedia.org/wiki/Law_of_New_York) The Constitution of New York is the foremost source of state law. The legislation of the New York State Legislature is published in the official Laws of New York State and codified in the Consolidated Laws of New York State agency rules and regulations are promulgated in the New York State Register and compiled in the New York State Codes, Rules and Regulations. New York State is a common law state, every opinion, memorandum, and motion sent by the Court of Appeals and the Appellate Division of the Supreme Court is published in the New York State Reports and Appellate Division Reports, respectively, and selected opinions of the trial courts

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and Supreme Court appellate terms are published in the Miscellaneous Reports. Each local government may also adopt local laws, and counties, cities, and towns may promulgate ordinances.

22.) N.Y. CVR. LAW § 2: NY Code - Section 2: Supreme sovereignty in the people Search  
N.Y. CVR. LAW § 2 : NY Code - Section 2: Supreme sovereignty in the people: No authority can, on any presence whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state.

23.) The Erie County Sheriff's Office is Erie County's oldest law enforcement agency.

24.) The Office of the Sheriff is the oldest office under the system of common law in the United States and is an integral part of government in the State of New York.

25.) As the oldest constitutional law enforcement officer of the county, the Sheriff is charged with maintaining the peace in all municipalities, villages, and towns within his jurisdiction and the care and custody of persons pending court action. The Sheriff also serves as the Chief Executive Officer of the Courts. **See Attachment (3)** served by Sheriff's on December 10, 2014 with no answer from John G. Schmidt Jr.

26.) The powers and the duties of the Sheriff are embodied in the constitution of each state and, as such, the Sheriff of Erie County heads the largest Sheriff's Office in New York State and the fourteenth largest in the nation.

27.) I make this affirmation in further support of Third party Plaintiff's WRIT OF ERROR  
DECLARATORY JUDGMENT AND QUIT CLAIM DEED VACANT SUMMARY  
JUDGEMENT ON SEPTEMBER 18, 2014.

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28.) In closing, the truth is simple in this matter. Property has been unlawfully removed from my possession and my rights have been violated under color of law. The purpose of this writ of replevin exists to secure and protect rights and property secured by law, where property has been removed unlawfully, to recover that property. The remedy being sought is the entire value of the property in question as well as punitive damages of \$1,000,000.00 for the fraud and lawless actions taken against me intended to make me believe that there is a lawful cause for the removal of this property. The attached exhibits support and prove the facts of this case. This brief lays out the facts as briefly and concisely as possible.

29.) Silence constitutes an implied representation of the existence of the state of facts in question and will operate as estoppels. "Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading."

30.) **DEMAND FOR JURY TRIAL** Pursuant to F.R.C.P. Rule 38b, the Plaintiff herein demand a jury trial on each and every issue and action in this matter plaintiff's re-alleges paragraphs 1 through 29.

**WHEREFORE**, Plaintiff demands judgment against the defendant as follows:

1. That the writ of replevin is granted and the property in question returned to the Rightful owner, Deborah Buczek, or that the value of the property in question off \$ 685,000.00 is ordered as just compensation.
2. That punitive damages in the amount of \$1,000,000.00 should be ordered to be paid to Deborah Ann Buczek for the crimes committed against her throughout prior proceedings.

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(a) judgment for possession of the property, a prejudgment writ of possession with a break order directing the Sheriff to physically enter the property and enclosures of the Defendants, including locked gates and garages, to recover the vehicles, parts and accessories described in attachments;

(b) The Court to Grant it an Order and injunction enjoining the Defendants, or its agents, employee or assigns, from selling or disposing of any collateral securing DEBORAH A. BUCZEK private property outside the ordinary of business;

(c) Ordering and enjoining the Guarantor Defendants from interfering with the replevin of Deborah Ann Buczek collateral, and from damaging, destroying or disposing of Deborah Ann Buczek collateral of vehicles, parts and accessories herein attach;

(d) This Court to grant an Order in favor of Deborah Ann Buczek requiring Defendants to comply with the terms of the agreements with Deborah Ann Buczek pending the issuance of a Writ of Replevin to the end and effect that if the Defendant's sells or disposes of any of the collateral that is subject to Deborah A. Buczek security interest In the ordinary course of business, that Deborah Ann Buczek be immediately paid the costs plus interest for such collateral;

(e) an award of attorney's fees and costs pursuant to the loan documents, and the applicable sections of New York Statutes; and

(f) such further relief as the Court deems just and appropriate.

(g) hereby moves this Court for an Order (a) pursuant to Fed. R. Civ. P. 64(b) and issuing a prejudgment Writ of Replevin directing and authorizing the United States Marshals Service

("USMS") to return all private property back to Deborah Ann Buczek Pursuant to Fed. R. Civ. P.

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64 (b) plaintiff is entitled to the immediate possession of the property wrongfully detained by defendants.

**CONCLUSION:**

Each of the statutory prerequisites to the replevin of the Property has been satisfied. The Court should grant the application.

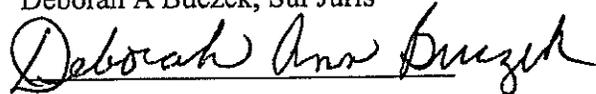
**ACKNOWLEDGMENT**

In Compliance with Title 28 U.S.C. Sec. 1746 (1) & executed, I affirm under the penalties of perjury, & to the laws of the De Jure united States of America, that the foregoing is true, correct & complete to the best of my belief & informed knowledge, & Further the Deponent Saith Not. I now affix my seal and Autograph & Official Seal to the above Document with EXPLICIT RESERVATION OF ALL MY UNALIENABLE RIGHTS, WITHOUT PREJUDICE TO ANY OF THOSE RIGHTS, in compliance with UCC Section 1-308:

Dated: December 24th, 2014

Respectfully,

Deborah A Buczek, Sui Juris



By: Deborah A Buczek  
PO Box 93  
7335 Derby Road  
Derby, New York near [14047]  
Non -domestic/non-assumpsit  
(716)-947-5384

That right to foreclose belongs ONLY to the person who has legitimate POSSESSION OF THE ORIGINAL NOTE - not a copy, not an electronic entry, but the original note itself with the original signature of the person(s) who allegedly owes the money along with appropriate raised notary seal and signature



# 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 26, 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>Wright, Roderick v. County of Erie, Erie Community College, Erie County Auto Bureau</i>
Document Received:	Notice of Claim
Name of Claimant:	Roderick Wright 4050 Lake Shore Road Hamburg, New York 14075
Claimant's attorney:	Sara T. Wallitt, Esq. William K. Mattar, P.C. 6720 Main Street, Suite 100 Williamsville, New York 14221-5986

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. 14D-9  
Page 42 of 64

This paper received at  
Erie County Clerk's Office  
on the 27<sup>th</sup> day of Jun 2015  
at 2:00 p.m.  
by James J. Walker  
Deputy Clerk

---

**IN THE MATTER OF THE CLAIM OF:**

**RODERICK WRIGHT**  
4050 Lake Shore Road  
Hamburg, New York 14075

Claimant,

-against-

**NOTICE OF CLAIM**

**COUNTY OF ERIE**  
25 Delaware Avenue  
Buffalo, NY 14202

**ERIE COMMUNITY COLLEGE**  
4041 Southwestern Boulevard  
Orchard Park, New York 14224

**ERIE COUNTY AUTO BUREAU**  
4041 Southwestern Boulevard  
Building 7  
Orchard Park, New York 14224

Respondents.

---

**PLEASE TAKE NOTICE** that **RODERICK WRIGHT**, hereby makes claim against **COUNTY OF ERIE, NEW YORK** and **ERIE COMMUNITY COLLEGE** and **ERIE COUNTY AUTO BUREAU** and in support thereof Claimant alleges:

1. That the undersigned Claimant, **RODERICK WRIGHT**, residing at 4050 Lake Shore Road, Hamburg, New York 14075, by and through his attorney, **WILLIAM MATTAR, P.C.** (**SARA T. WALLITT, Esq., Of Counsel**), 6720 Main Street, Suite 100, Williamsville, NY 14221-5986, claims damages against the **COUNTY OF ERIE, NEW YORK** and **ERIE COUNTY**

COMMUNITY COLLEGE and ERIE COUNTY AUTO BUREAU, for personal injuries, pain and suffering, general and special damages, medical expenses, and property damages sustained by him.

2. That the said injuries were sustained by RODERICK WRIGHT on June 1, 2015 in the afternoon, when exiting the Erie County Auto Bureau located on the campus of Erie Community College at 4041 Southwestern Boulevard, Building 7.

3. On that date, the Claimant was caused to fall due to the defective condition of the staircase at the location. Photographs of the stairs are **attached as Exhibit A**.

4. Upon information and belief, the stairs at the location are owned, controlled, designed, constructed and maintained by agents, servants and/or employees of Respondents.

6. That the Claimant's damages and injuries occurred as a result of the negligence, carelessness, and reckless disregard for the safety of others including Claimant, RODERICK WRIGHT, by the Respondents, their servants, agents or employees in failing to adequately maintain, repair, and design the stairs.

7. That the aforesaid COUNTY OF ERIE and ERIE COMMUNITY COLLEGE and ERIE COUNTY AUTO BUREAU by and through their agents, servants and employees had actual or constructive notice of the dangerous condition and hazard caused by said activity.

8. That as a result of the foregoing, the Claimant, RODERICK WRIGHT, sustained severe bodily injuries and was painfully and seriously injured; was rendered sick, sore, lame and disabled; and more particularly, claimant RODERICK WRIGHT sustained a fractured right arm. The full extent of these injuries is unknown at this time. Upon information and belief,

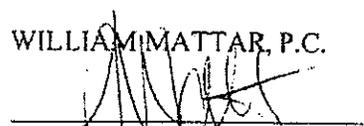
the aforementioned injuries are permanent and progressive in nature, and may require further medical treatment with all risks attendant thereto.

9. That as a result of the foregoing, the Claimant, RODERICK WRIGHT, sustained severe and serious permanent injuries and will seek damages for pain and suffering, mental and emotional distress, unreimbursed or uncompensated medical expenses, and every other item of like general damages as may properly be proven at a trial of this action.

10. That the said injuries were occasioned as a result of the negligence of the Respondents and through their agents, servants and employees and without any negligence on the part of the Claimant contributing thereto.

DATED:           Williamsville, New York  
                    June 8, 2015

WILLIAM MATTAR, P.C.

  
Sara T. Walitt, Esq.

Attorney for Claimant  
Office and P.O. Address  
6720 Main Street, Suite 100  
Williamsville, NY 14221-5986  
(716)633-3535

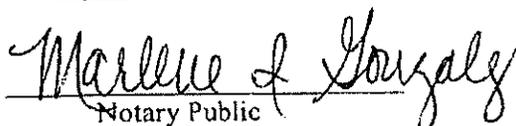
VERIFICATION

STATE OF NEW YORK     )  
COUNTY OF ERIE        ) ss:

RODERICK WRIGHT, being duly sworn, deposes and says that he is the Claimant in the above-titled action, that he has read the foregoing Notice of Claim and knows the contents thereof, that the same is true to the knowledge of your deponent, except as to those matters alleged to be stated upon information and belief, and as to those matters, he believes them to be true.

  
\_\_\_\_\_  
RODERICK WRIGHT

Subscribed and sworn before me  
this 11 day of June, 2015.

  
\_\_\_\_\_  
Notary Public

Marlene Gonzalez  
01G06007242  
Notary Public, State of New York  
Qualified in Erie County  
My commission expires MAY 18th, 2018



# 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 26, 2015

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

Dear Ms. McCarthy:

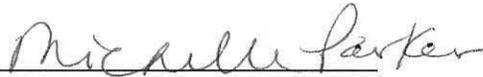
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Molak, Jessie R. v. County of Erie, et al.</i>
Document Received:	Notice of Claim
Name of Claimant:	Jessie R. Molak 1135 Escarpment Drive Lewiston, New York 14092
Claimant's attorney:	Thomas M. Mercure, Esq. Lipsitz Green Scime Cambria LLP 42 Delaware Avenue, Suite 120 Buffalo, New York 14202-3924

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. 14D-9  
Page 47 of 64

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In the Matter of the Claim of  
JESSIE R. MOLAK,

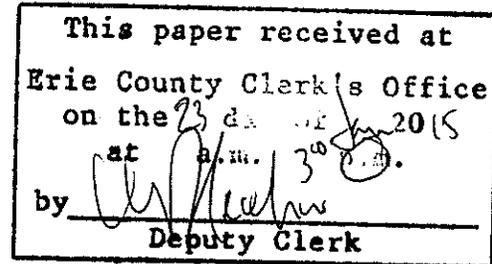
Claimant,

- against -

CITY OF BUFFALO,  
BUFFALO WATER BOARD,  
BUFFALO SEWER AUTHORITY,  
CITY OF BUFFALO DEPARTMENT OF  
PUBLIC WORKS, PARKS & STREETS,  
ERIE COUNTY, and  
ERIE COUNTY WATER AUTHORITY

---

**NOTICE OF CLAIM**



TO: CITY OF BUFFALO,  
BUFFALO WATER BOARD,  
BUFFALO SEWER AUTHORITY,  
CITY OF BUFFALO DEPARTMENT OF  
PUBLIC WORKS, PARKS & STREETS,  
ERIE COUNTY, and  
ERIE COUNTY WATER AUTHORITY

PLEASE TAKE NOTICE, that JESSIE R. MOLAK has and hereby makes claim against the CITY OF BUFFALO, BUFFALO WATER BOARD, BUFFALO SEWER AUTHORITY, CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS & STREETS, ERIE COUNTY and ERIE COUNTY WATER AUTHORITY, and in support of said claim states the following:

1. The Post Office address of the claimant is 1135 Escarpment Drive, Lewiston, New York 14092.
2. The attorneys for the claimant are LIPSITZ GREEN SCIME CAMBRIA LLP, and their Post Office address is 42 Delaware Avenue, Suite 120, Buffalo, New York 14202-3924.

3. The claim of JESSIE R. MOLAK is for personal injuries, including without limitation, medical expenses, and for consequential damages generally.

4. The claim arose on Breckenridge Street near Elmwood Avenue, located in the City of Buffalo, County of Erie and State of New York.

5. The claim arose in substance as follows: On the 3rd day of June, 2015, the claimant, JESSIE R. MOLAK, was lawfully and properly traversing the aforesaid premises and was caused to trip and fall on a pipe coming out of the ground between the sidewalk and the grass, resulting in serious injuries to the claimant.

6. Upon information and belief, the incident herein described and the resultant injuries and damages sustained were caused as a result of the negligence, carelessness, recklessness and/or unlawful conduct on the part of the agents, servants and/or employees of the CITY OF BUFFALO, BUFFALO WATER BOARD, BUFFALO SEWER AUTHORITY, CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS & STREETS, ERIE COUNTY and ERIE COUNTY WATER AUTHORITY, and more particularly, among other things, in failing and omitting to maintain, block-off and/or remove the aforesaid pipe in the aforesaid area and furthermore, the incident and resultant injuries and damages were caused by those acts and omissions of the agents, servants and/or employees of the CITY OF BUFFALO, BUFFALO WATER BOARD, BUFFALO SEWER AUTHORITY, CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS & STREETS, ERIE COUNTY and ERIE COUNTY WATER AUTHORITY, in violation of the regulations, rules and standards promulgated thereunder.

7. Upon information and belief, as a result of the aforesaid incident, the claimant, JESSIE R. MOLAK, sustained severe bodily injuries and was painfully and seriously injured;

was rendered sick, sore, lame and disabled; sustained pain and suffering and shock to her nerves and nervous system; and more particularly, JESSIE R. MOLAK, sustained injuries in the nature of a foot injury. Upon information and belief, these injuries will result in permanent defects.

WHEREFORE, claimant requests that CITY OF BUFFALO, BUFFALO WATER BOARD, BUFFALO SEWER AUTHORITY, CITY OF BUFFALO DEPARTMENT OF PUBLIC WORKS, PARKS & STREETS, ERIE COUNTY and ERIE COUNTY WATER AUTHORITY, honor and pay the claim on behalf of JESSIE R. MOLAK.

DATED: Buffalo, New York  
June 16, 2015

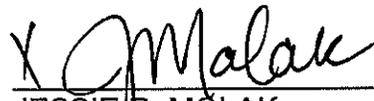
LIPSITZ GREEN SCIME CAMBRIA LLP

By:   
THOMAS M. MERCURE, ESQ.

Attorneys for Claimant  
Office and P.O. Address  
42 Delaware Avenue, Suite 120  
Buffalo, New York 14202-3924  
(716) 849-1333  
[TMM: #99283.0007]

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

JESSIE R. MOLAK, being duly sworn deposes and says that she is the claimant above named; and makes this claim on behalf of self; she has read the foregoing claim and knows the contents thereof; the same is true to the knowledge of the claimant except for the matters herein alleged upon information and belief, and as to those matters, she believes them to be true.

  
\_\_\_\_\_  
JESSIE R. MOLAK

Sworn to before me on this  
15<sup>th</sup> day of JUNE, 2015.

  
\_\_\_\_\_  
Notary Public

THOMAS M. MERCURE  
Notary Public State of New York  
Qualified in Erie County  
My Commission Expires March 17, 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

June 26, 2015

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

Dear Ms. McCarthy:

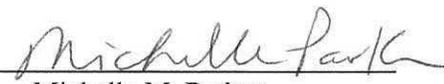
In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	<i>Kill, Donald E. v. County of Erie, et al.</i>
Document Received:	Notice of Claim
Name of Claimant:	Donald E. Kill 55 Winstead Road Lackawanna, New York 14218
Claimant's attorney:	Edward C. Cosgrove, Esq. 525 Delaware Avenue Buffalo, New York 14202

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. 14D-9  
Page 52 of 64

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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**DONALD E. KILL,**

Claimant,

v.

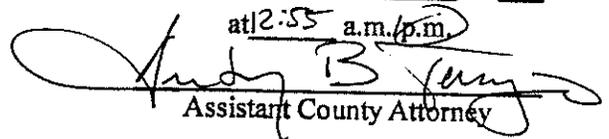
**NOTICE OF CLAIM**

**COUNTY OF ERIE, TIMOTHY B. HOWARD, Erie County Sheriff, in his Individual and Official Capacities, THOMAS J. DINA, Superintendent of the Erie County Holding Center, in his Individual and Official Capacities and OTHER JOHN DOES, Erie County Sherriff's Deputies,**

Defendants.

---

This paper received at the  
Erie County Attorney's Office  
from James Caspave on  
the 25<sup>th</sup> day of June, 2015  
at 2:55 a.m./p.m.

  
Assistant County Attorney

**PLEASE TAKE NOTICE** that, Donald E. Kill, who resides at 55 Winstead Road in the City of Lackawanna, County of Erie and State of New York, hereby makes a claim for damages against the County of Erie ("County"), Timothy B. Howard, Erie County Sherriff, Thomas J. Dina, Superintendent of the Erie County Holding Center and Other John Does, Erie County Sherriff's Deputies for personal injuries sustained by Donald E. Kill when he was a prisoner at the Erie County Holding Center ("ECHC") by reason of the negligent, reckless and/or careless conduct, and lack of proper training and supervision of employees of the County and its Sherriff's Department. The negligence of the defendants, their agents, servants and/or employees consisted of the following: (1) in allowing another inmate who was known to be dangerous, hostile and unstable to be seated next to the claimant without supervision or restraints; (2) in allowing said inmate to attack the claimant and continue his assault without immediate interference; (3) in failing to provide the necessary medical care to the Claimant; and

(4) in such other acts of negligence and carelessness in the care, supervision and custody of the claimant and the inmate who attacked, causing injuries, medical and dental expenses.

**THE NATURE OF THE CLAIM:** Donald E. Kill was injured on April 2, 2015 at the ECHC at or about 9:00 a.m.. County employees charged with his custody, supervision and care seated him in a waiting area for the ECHC Medical Unit. He was seated next to another prisoner who, upon information and relief, was named Sonny Biasez, and known by County employees to be dangerous, hostile and unstable. Despite this knowledge, the County employees did not restrain Mr. Biasez or provide officers or personnel to supervise him. As a result, Mr. Biasez attacked Donald E. Kill and continued his assault, causing severe injuries to Mr. Kill's face, nose, mouth, jaw and teeth.

**PLEASE TAKE FURTHER NOTICE,** that the failure to adjust and pay this claim within the time limit provided by law will result in the commencement of an action by the claimant against the County of Erie.

Dated: Buffalo, New York  
June 25, 2015

Respectfully Submitted,



EDWARD C. COSGROVE  
Attorney for Claimant Donald E. Kill  
525 Delaware Avenue  
Buffalo, New York 14202  
(716) 854-2211

To: Mark C. Poloncarz  
Erie County Executive  
95 Franklin Street, 16<sup>th</sup> Floor  
Buffalo, New York 14202

Michael A. Siragusa  
Erie County Attorney  
95 Franklin Street, Room 1634  
Buffalo, New York 14202

Timothy B. Howard  
Erie County Sherriff  
10 Delaware Avenue  
Buffalo, New York 14202

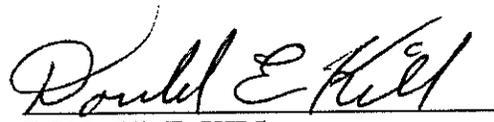
Thomas J. Dina  
Superintendent of the Erie County Holding Center  
40 Delaware Avenue  
Buffalo, New York 14202

Other John Does  
Erie County Sherriff's Deputies  
40 Delaware Avenue  
Buffalo, New York 14202

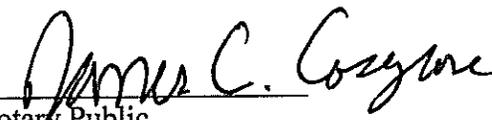
**VERIFICATION**

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

DONALD E. KILL, being duly sworn, deposes and says: that he is a party in the within entitled action; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to the knowledge of the deponent expect as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

  
DONALD E. KILL

Sworn to before me this  
25 day of June 2015

  
Notary Public

JAMES C. COSGROVE  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires April 16, 20 19



# COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE  
DEPARTMENT OF LAW

MICHAEL A. SIRAGUSA  
ERIE COUNTY ATTORNEY

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH  
SECOND ASSISTANT COUNTY ATTORNEY

June 29, 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>Drayton, Kandice and Gerald v. Darnell L. Coston, Jr., Janine D. Ricks, County of Erie (Medicaid Lien)</i>
Document Received:	Summons and Complaint
Name of Claimant:	Kandice and Gerald Drayton 38 Midvale Avenue Buffalo, New York 14215
Claimant's attorney:	J. Michael Hayes, Esq. 69 Delaware Avenue, Suite 1111 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:  (dtd)

Michelle M. Parker  
First Assistant County Attorney

MMP/dld  
Enc.

Comm. 14D-9  
Page 57 of 64

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

KANDICE V. DRAYTON and  
GERALD DRAYTON, her husband  
38 Midvale Avenue  
Buffalo, New York 14215

Plaintiffs,

**SUMMONS**

vs.

DARNELL L. COLSTON, JR.  
102 Poultney Avenue  
Buffalo, New York 14215

Index No:  
Filed in the Erie  
County Clerk's  
Office on.: \_\_\_\_\_

JANINE D. RICKS  
102 Poultney Avenue  
Buffalo, New York 14215

COUNTY OF ERIE  
Rath Building  
95 Franklin Street  
Buffalo, New York 14202

Defendants.

---

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED, to answer the complaint in this action, and to serve a copy of your answer, or, if the summons is not served with a complaint, to serve a notice of appearance, on the Plaintiff's attorney within twenty (20) days after service of this summons, exclusive of the day of service, or within thirty (30) days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

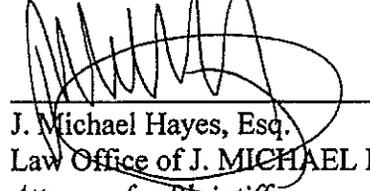
Erie County is designated as the place of trial on the basis of the residence of the Plaintiffs who reside in Erie County, New York.

This document recieved at  
**ECDSS OFFICE OF COUNSEL**  
from \_\_\_\_\_ on the \_\_\_\_\_  
22<sup>nd</sup> day of JUNE, 2015  
at \_\_\_\_\_ a.m. 12:30 p.m.  
J. W. [Signature]  
RECIEVED BY

Comm. 14D-9

DATED: BUFFALO, NEW YORK  
June 18, 2015

Yours Respectfully,

A handwritten signature in black ink, appearing to read "J. Michael Hayes", is written over a horizontal line. The signature is stylized with loops and flourishes.

J. Michael Hayes, Esq.  
Law Office of J. MICHAEL HAYES  
*Attorney for Plaintiffs*

Office and P.O. Address:  
69 Delaware Avenue - Suite 1111  
Buffalo, New York 14202  
(716) 852-1111

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

KANDICE V. DRAYTON and  
GERALD DRAYTON, her husband,

Plaintiffs,

vs.

DARNELL L. COLSTON, JR.,  
JANINE D. RICKS and  
COUNTY OF ERIE,

Defendants.

---

**COMPLAINT**

Index No.:

The Plaintiffs, KANDICE V. DRAYTON and GERALD DRAYTON, her husband, by their attorney, J. MICHAEL HAYES, for their complaint against the Defendants, DARNELL L. COLSTON, JR. and JANINE D. RICKS, herein alleges:

1. Presently and at all times hereinafter mentioned, Plaintiffs, KANDICE V. DRAYTON and GERALD DRAYTON, were residents of the City of Buffalo, County of Erie and State of New York.
2. Upon information and belief, presently and at all times hereinafter mentioned, the Defendant, DARNELL L. COLSTON, JR., was a resident of the City of Buffalo, County of Erie and State of New York.
3. Upon information and belief, presently and at all times hereinafter mentioned, the Defendant, JANINE D. RICKS, was a resident of the City of Buffalo, County of Erie and State of New York.
4. Upon information and belief, Defendant, COUNTY OF ERIE, is a municipal corporation existing by virtue of the Laws of the State of New York with offices for the transaction

of business located in the County of Erie, State of New York.

5. Upon information and belief, at all times hereinafter mentioned, on or about April 9, 2015, the Defendant, JANINE D. RICKS, was the owner of the 2002 Ford motor vehicle bearing New York State license plate number FRD9005.

6. Upon information and belief, at all times hereinafter mentioned, on or about April 9, 2015, Defendant, DARNELL L. COLSTON, JR., was operating the aforementioned 2002 Ford motor vehicle with the permission and consent of the owner, Defendant, JANINE D. RICKS.

7. Upon information and belief, it will be claimed that on April 9, 2015 at approximately 5:59 p.m., at the intersection of Roosevelt Avenue and Bailey Avenue in the City of Buffalo, County of Erie and State of New York, a motor vehicle owned by the Defendant, JANINE D. RICKS and operated by the Defendant, DARNELL L. COLSTON, JR., came into contact with the vehicle in which Plaintiff, KANDICE V. DRAYTON was the owner and operator.

8. Upon information and belief, it will be claimed that the aforesaid incident was caused and contributed to due to the negligence of the Defendants, DARNELL L. COLSTON, JR. and JANINE D. RICKS.

9. Upon information and belief, Defendant, COUNTY OF ERIE claims a recovery right and/or "lien" out of any resolution in the above matter by virtue of medical expenses it claims to have incurred.

10. Upon information and belief, Defendant, COUNTY OF ERIE, is a necessary party to this action in that, for and before complete recovery may be accorded, the Defendant, COUNTY OF ERIE's claims for medical reimbursement must be considered, finalized, allocated and determined by way of compromise, settlement and/or Court determination and said Defendant has refused to join as a party plaintiff.

11. Upon information and belief, this action falls within one or more of the exceptions enumerated in Article 16 of the CPLR and/or said article is inapplicable to the within action.

12. As a result of the foregoing, the Plaintiff, KANDICE V. DRAYTON, sustained severe and serious personal injuries including a “serious injury” and economic loss in excess of “basic economic loss” as defined by Article 51 of the New York Insurance Reparations Law all to her damage in a sum in excess of the jurisdictional limits of the lower courts of this state.

**AS AND FOR A SECOND  
CAUSE OF ACTION, PLAINTIFFS ALLEGE:**

13. The Plaintiffs repeat and reallege those allegations set forth in Paragraphs “1” through “12” of the Complaint with the same force and effect as fully set forth herein at length.

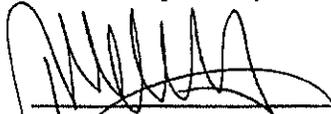
14. Presently and at all times herein mentioned, the Plaintiff, GERALD DRAYTON, spouse of Plaintiff, KANDICE V. DRAYTON, and as such was and is entitled to her services, society, companionship and consortium.

15. As a result of the aforesaid incident, the Plaintiff, GERALD DRAYTON, has been deprived of the services, society, and companionship and consortium of his spouse.

WHEREFORE, Plaintiffs, KANDICE V. DRAYTON and GERALD DRAYTON, her husband, demand judgment against the Defendants, DARNELL L. COLSTON, JR., JANINE D. RICKS and COUNTY OF ERIE, in a sum in excess of the jurisdictional limits of all lower courts in the State of New York together with the costs and disbursements, and such other and further relief as this Court deems just, proper and equitable.

DATED: BUFFALO, NEW YORK  
June 18, 2015

Yours Respectfully,



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J. Michael Hayes, Esq.  
Law Office of J. MICHAEL HAYES  
*Attorney for Plaintiffs*  
Office and P.O. Address:  
69 Delaware Avenue - Suite 1111  
Buffalo, New York 14202  
(716) 852-1111

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

Kandice V. Drayton and  
Gerald Drayton, her husband

Plaintiff/Petitioner,

- against -

Index No. 807421/2015

Darnell L. Colston, Jr.,  
Janine D. Ricks and  
County of Erie

Defendant/Respondent.

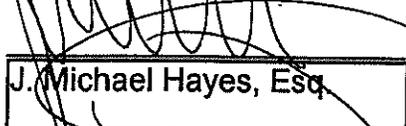
**NOTICE OF COMMENCEMENT OF ACTION  
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) or contact the NYSCEF Resource Center at 646-386-3033 or [efile@courts.state.ny.us](mailto:efile@courts.state.ny.us).

Dated: 10/18/2015

  
(Signature)  
J. Michael Hayes, Esq.  
(Name)  
Law Office of J. Michael Hayes  
(Firm Name)

69 Delaware Avenue, Suite 1111 (Address)  
Buffalo, New York 14202

(716) 852-1111 (Phone)

jmh@jmhayes.com (E-Mail)

To: Darnell L. Colston, Jr.  
Janine D. Ricks  
County of Erie