



## COUNTY OF ERIE

MICHAEL A. SIRAGUSA  
COUNTY ATTORNEY

MARK C. POLONCARZ  
COUNTY EXECUTIVE

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH.  
SECOND ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

### MEMORANDUM

TO: Robert M. Graber, Clerk, Erie County Legislature  
FROM: Michelle M. Parker, First Assistant County Attorney  
DATE: June 29, 2012  
RE: Transmittal of New Claims Against Erie County

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Mr. Graber:

In accordance with the Resolution passed by the Erie County Legislature on June 25, 1987 (Int. 13-14), attached please find seven (7) new claims brought against the County of Erie. The claims are as follows:

#### Claim Name

Ruth Ando v. City of Buffalo and County of Erie  
Alice B. Slisz & Richard Slisz v. County of Erie, et al.  
Melissa Locking as p/n/g of Summer Locking v. County of Erie  
Brendagay Norwood v. County of Erie, City of Buffalo  
Arthur Holmes v. County of Erie, et al.  
Linda Waters v. County of Erie  
Carlo Harris v. County of Erie, et al.

MMP/dld  
Attachments  
cc: Michael A. Siragusa, County Attorney



MICHAEL A. SIRAGUSA  
ERIE COUNTY ATTORNEY

## COUNTY OF ERIE

**MARK C. POLONCARZ**  
~~COUNTY EXECUTIVE~~  
DEPARTMENT OF LAW

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH  
SECOND ASSISTANT COUNTY ATTORNEY

May 24, 2012

Mr. Robert M. Graber, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Mr. Graber:

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>Ando, Ruth v. City of Buffalo and County of Erie</i>
Document Received:	Notice of Motion with Motion
Name of Claimant:	Ruth Ando 100 Whitfield Avenue Buffalo, NY 14220
Claimant's attorney:	Leonard D. Zaccagnino, Esq. Shaw & Shaw, P.C. 4819 South Park Avenue Hamburg, New York 14075

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By: *Michelle Parker*  
Michelle Parker

MMP/dld  
Enc.

cc: Michael A. Siragusa, Erie County Attorney

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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RUTH ANDO,

Claimant,

-vs-

CITY OF BUFFALO and  
COUNTY OF ERIE

Respondents

---

MOTION MADE BY:

Shaw & Shaw, P.C.  
Leonard D. Zaccagnino, Esq., of counsel  
Office and Post Office Address  
4819 South Park Avenue  
Hamburg, New York 14075  
(716) 648-3020 Telephone  
(716) 648-3730 Fax

DATE AND TIME OF HEARING:

To be determined by the Court

LOCATION OF HEARING:

Honorable  
New York State Supreme Court  
  
Buffalo, NY 14202

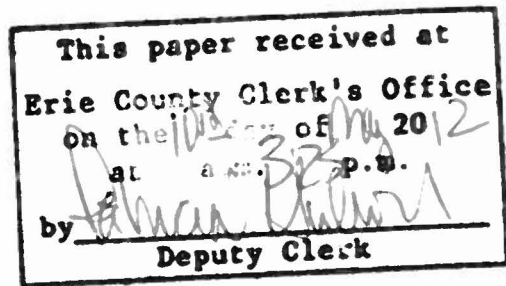
SUPPORTING PAPERS

Affidavit of Leonard D. Zaccagnino, Esq.  
and attached exhibits

RELIEF REQUESTED:

An Order pursuant to §50-e(5) of the General Municipal Law  
allowing claimant to serve a late Notice of Claim.

Pursuant to CPLR §2214, answering Affidavits and Memorandums, if any, must be  
served no less than seven (7) days prior to the return date hereof.



SHAW SHAW, P.C.  
ATTORNEYS AND COUNSELORS AT LAW

**PAID**  
DECK CASH  
  
APR 30 2012  
  
ERIE COUNTY  
CLERK'S OFFICE

Dated: April 18, 2012  
Hamburg, New York

SHAW & SHAW, P.C.

---

Leonard D. Zaccagnino  
Attorneys for Claimant  
Office and Post Office Address  
4819 South Park Avenue  
Hamburg, New York 14075  
(716) 648-3020 Telephone  
(716) 648-3730 Fax

TO: COUNTY OF ERIE  
69 Delaware Avenue, Suite 300  
Buffalo, New York 14202

CITY OF BUFFALO  
65 Niagara Square  
Buffalo, New York 14202

cc: The Attorney General of the State of New York  
Attn: Richard B. Friedfertig, Esq.  
Assistant Attorney General  
Main Place Tower  
350 Main Street, Suite 300A  
Buffalo, NY 14202

State of New York  
Mental Retardation & Developmental Disabilities Office  
211 Crossways Park Drive  
Woodbury, NY 11797  
Woodbury, NY 11797

West Seneca Developmental Center  
1769 South Park Avenue  
Buffalo, NY 14220





injuries and damages including, but not limited to, a fractured right ankle that has rendered the claimant unable to participate in her daily activities since the date of the occurrence.

(4) The claimant has also incurred medical and hospital expenses, including expenses for medications, which are undetermined as of this date. The claimant anticipates undergoing further medical care and treatment, and incurring further medical expenses including, but not limited to, expenses for physicians, rehabilitation, physical therapy and medications.

(5) On September 28, 2011, the claimant retained the offices of Cellino & Barnes, P.C., who undertook the task of serving the Verified Notice of Claim on the State of New York and other entities. A copy of the verified notice of claim, cover letter and certified mail receipts are attached hereto as **Exhibit B**.

(6) Thereafter, and on or about March 13, 2012, deponent's firm was retained to represent the interests of the claimant herein, and the Consent to Change Attorney was forwarded to the Clerk of the Court on March 21, 2012. A copy of the Retainer Agreement and Consent to Change Attorney are attached hereto as **Exhibit C**.

(7) Once deponent had the opportunity to review the matter more thoroughly, it was determined that the City of Buffalo may bear some responsibility for the maintenance and repair of the area where claimant fell, i.e., the sidewalk adjacent to 1769 South Park Avenue.

(8) The claimant now brings the instant motion for leave to file a late notice of claim against the City of Buffalo.

(9) In determining whether to grant a motion allowing a claimant to serve a late Notice of Claim pursuant to General Municipal Law §50-e(5), the primary criteria for the Court to

consider is whether the public entity in question against whom the claim is to be brought, had knowledge of the essential facts and circumstances constituting the claim within the aforesaid ninety (90) day period or a reasonable time thereafter. *See* General Municipal Law §50-e(5); *Suave v. City of Buffalo*, 177 A.D.2d 934, 577 N.Y.S.2d 979 (4<sup>th</sup> Dept. 1991); *McAdams v. Police Dept. Town of Clarkson*, 184 A.D.2d 847, 584 N.Y.S.2d 343 (3<sup>rd</sup> Dept. 1992); and *Darmstedter v. Buffalo Sewer Authority*, 96 A.D.2d 1148, 467 N.Y.S.2d 460 (4<sup>th</sup> Dept. 1983).

(10) Because the personal injuries sustained by the claimant were on a sidewalk located within the City of Buffalo, the City may have had actual knowledge of the essential facts constituting the claim within the ninety days from its accrual in satisfaction of the requirements of §50-e(5).

(11) The Court is also required, pursuant to §50-e(5), to consider all other relevant factors. In this case, it was not until the facts of the matter became known to your deponent that a decision to include the City of Buffalo and County of Erie in this matter was made.

(12) That it is your deponent's belief that any work performed on sidewalks must first have the consent of the City of Buffalo and/or County of Erie, depending on a sidewalk's location and work to be performed.

(13) In addition to the issues of actual knowledge and prejudice, the Court must also consider all other pertinent circumstances such as claimant's disabling physical condition.

(14) in this case, the Claimant required extensive medical treatment as a result of the fractured ankle she sustained on August 30, 2011.

(15) Further, the fact that it has only been approximately 45 days since the claimant retained us should be taken into consideration.

(16) If this application is denied, a grave injustice may occur to the Claimant, who has sustained grievous and serious injuries.

(17) No previous application for the relief sought herein has been made.

**WHEREFORE**, your deponent respectfully request that an Order be entered permitting the service of a late Notice of Claim on the City of Buffalo and County of Erie, and for such other and further relief as the Court may deem just and proper.

\_\_\_\_\_  
Leonard D. Zaccagnino

Sworn to before me on  
the 24<sup>th</sup> day of April 2012.

*Garrett*  
Notary Public

Garrett  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 12/31/2015

# EXHIBIT A

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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RUTH ANDO,

Claimant

**NOTICE OF CLAIM**

vs.

CITY OF BUFFALO  
and COUNTY OF ERIE

*Respondents*

---

TO: CITY OF BUFFALO  
65 Niagara Square  
Buffalo, NY 14202

CITY OF BUFFALO  
Clerk  
65 Niagara Square  
Buffalo, NY 14202

COUNTY OF ERIE  
25 Delaware Avenue  
Buffalo, NY 14202

**PLEASE TAKE NOTE** that Claimant hereby claims damages against respondents in accordance with the requirements of General Municipal Law Section 50-e, and states as follows:

(1) **CLAIMANT'S NAME AND ADDRESS**

Ruth Ando  
100 Whitfield Avenue  
Buffalo, NY 14220

(2) **NAME AND ADDRESS OF CLAIMANT'S ATTORNEYS**

SHAW & SHAW, P.C.  
Leonard D. Zaccagnino, Esq., of counsel  
4819 South Park Avenue  
Hamburg, New York 14075

(3) The claim is one founded in negligence, and is for personal injuries.

(4) This is a claim for money damages for personal injuries sustained by the claimant against the respondents when said claimant was caused to fall on the sidewalk adjacent to property located at 1769 South Park Avenue in the City of Buffalo, County of Erie and State of New York which is under the possession, control and ownership of the respondents. A copy of the area where claimant fell is attached hereto.

(5) The time when the claim arose and the time when injuries and damages herein alleged were sustained was August 30, 2011 at approximately 2:00 p.m.

(6) The incident occurred on the sidewalk adjacent to the building commonly known as 1769 South Park Avenue in the City of Buffalo, County of Erie and State of New York which, upon information and belief, is under the possession, control and ownership of the respondents.

(7) That the cause of action which forms the substance of this claim arose in the following manner:

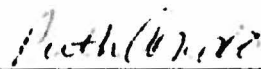
On or about August 30, 2011, the Claimant was on the sidewalk adjacent to 1769 South Park Avenue in Buffalo, Erie County, New York when she was caused to fall as the result of a dangerous condition, causing claimant to come into contact with the ground, and seriously injuring herself.

(8) That the aforesaid incident and the injuries and damages resulting therefrom occurred by reason of the fault, neglect, and carelessness of the respondents, their agents, servants and/or employees, and that said respondents failed to properly, adequately, and safely maintain the aforesaid premises; failed to properly and adequately supervise and control the area where claimant fell on the date of the incident; carelessly and negligently designed the area on said premises where the incident occurred; failed to take the necessary steps to fill in holes and/or indentations made, upon information and belief, by the respondents' agents, servants and/or employees; failed to take the necessary steps and make the necessary observations, which, if taken or made, would have avoided the said incident; and in that the respondents, their agents, servants and/or employees were otherwise careless and negligent.

(9) By reason of the aforesaid, the claimant sustained severe, painful and permanent injuries in and about her body including, but not limited to, a fractured right ankle, and was otherwise rendered sick, sore, lame and disabled; was caused to incur and spend large sums of money for hospital care, surgical care, physicians' services, nursing care, X-rays and medical supplies, for which the exact amount of such expenses cannot be determined at the present time.

**WHEREFORE**, the Claimant respectfully prays and requests that these claims, as set forth herein, be paid and allowed by the respondents.

DATED: April 19, 2012  
Hamburg, New York

  
\_\_\_\_\_  
Ruth Ando



VERIFICATION

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

**RUTH ANDO**, being duly sworn, deposes and says that she is the claimant in the within action; that she has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes it to be true.

Ruth Ando  
Ruth Ando

Sworn to before me this  
27 day of June 2012.

GAIL GALLAGHER  
Notary Public

GAIL GALLAGHER  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires Mar 9, 2015



# EXHIBIT B

STATE OF NEW YORK: COURT OF CLAIMS

\*\*\*\*\*

RUTH ANDO,

Claimant,

vs.

**VERIFIED CLAIM**

STATE OF NEW YORK  
STATE OF NEW YORK – OFFICE OF MENTAL  
RETARDATION & DEVELOPMENTAL  
DISABILITIES  
WEST SENECA DEVELOPMENTAL CENTER

Respondents.

\*\*\*\*\*

**PLEASE TAKE NOTICE**, that Claimant Ruth Ando hereby files a Verified Claim against the State of New York and State of New York – Office of Mental Retardation & Developmental Disabilities and demands from the Respondents recompense for personal injuries and damages she sustained, and in support thereof, Claimant states the, following:

1. Claimant's name is Ruth Ando and her post office address is 100 Whitfield Avenue, Buffalo, New York 14220.
2. Claimant is represented by Cellino & Barnes, P.C. with offices located at 451 Grider Street, Buffalo, New York 14215, telephone (716) 854-2020.
3. That the Respondents are the owners of certain real property known as West Seneca Development Center Community Residence Hostel #301 which is located at 1769 South Park Avenue in the City of Buffalo in Erie County in the State of New York.
4. That all times herein relevant, it was the duty of Respondents to maintain the real property identified in Paragraph 3 herein in a reasonably safe and suitable condition for students, faculty, pedestrians, foreseeable users and guest.

5. The incident in which the Claimant suffered personal injuries occurred on or about August 30, 2011, at approximately 2:00 p.m. while Claimant was proceeding down a sidewalk in front of 1769 South Park Avenue in the City of Buffalo in Erie County in the State of New York.

6. By virtue of the negligence of Respondents' employees, agents or servants Claimant Ruth Ando was injured when Claimant was caused to trip and fall over a hole in the sidewalk in front of 1769 South Park Avenue in the City of Buffalo in Erie County in the State of New York and as a result of the trip and fall incident identified and described herein, Claimant suffered personal injuries and damages including, but not limited to, a fractured right ankle; that Claimant has been unable to participate in her daily activities since she was injured on August 30, 2011, as identified and described herein; that Claimant has incurred medical and hospital expenses, including expenses for medications, which are to date undetermined; that Claimant will undergo further medical care and treatment and incur further expenses including, but not limited to, expenses for physicians, rehabilitation, physical therapy, medications, the amount of which cannot be reasonably calculated at this time.

7. That the Claimant's trip and fall injury incident identified and described herein was caused solely by the wrongful, negligent, careless and inadvertent acts and omissions of the Respondent, and its agents, servants and/or employees, who while in the course and scope of their employment for Respondents, failed to properly maintain and inspect the area of the Respondents' real property where Claimant fell and was injured and failed to repair, correct and/or place appropriate and sufficient safeguards

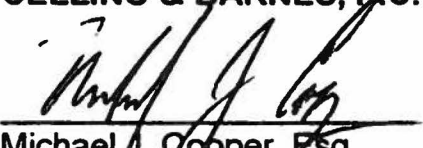
and protection around, the hole in the concrete sidewalk in front of 1769 South Park Avenue in the City of Buffalo in Erie County in the State of New York where Claimant fell, that respondents either knew, or should have known existed and/or failed to properly warn Claimant of said dangerous condition.

8. That as a result of the injury incident identified and described herein, Claimant was injured and suffered permanent and serious injuries including but not limited to her right ankle fracture.

9. By reason of the foregoing, Claimant was damaged in the amount of One Million Dollars (\$1,000,000.00).and Claimant demands judgment against the Respondents for said amount.

Dated: Buffalo, New York  
October 5, 2011

**CELLINO & BARNES, P.C.**



---

Michael J. Cooper, Esq.  
Attorneys for Claimant  
451 Grider Street  
Buffalo, New York 14215  
(716) 854-2020

**VERIFICATION**

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

Ruth E. Ando, being duly sworn, deposes and says that she is the plaintiff in the within action; that she has read the foregoing Verified Claim and knows the contents thereof; that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes them to be true.

\_\_\_\_\_  
Ruth E. Ando

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

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2012 before me, the undersigned, personally appeared Ruth E. Ando, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in her capacity and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public/Commissioner of Deeds

Stephen F. Barnes  
Doris M. Cellino  
Richard P. Amico  
Richard J. Barnes  
James J. Battista  
Richard M. Borrelli  
Clyde J. Brennan  
Charles F. Burkwalter  
Joseph J. Caputo  
Stephen C. Ciccioli  
Michael J. Cooper  
Christopher D. D'Amato  
Nicholas B. Davis  
Sandy A. Fazio  
Brian A. Goldstein, M.D., J.D.  
David M. Goodman  
George R. Grudelli  
Timothy R. Hedges  
Sean P. Kelley  
Lisa F. King  
Agustin Latorre, Jr.

# Cellino & Barnes, P.C.

ATTORNEYS AT LAW

John W. Lodi  
Michael J. Lovett  
William J. Lodi  
Brett L. Man  
James E. Mat  
Michael T. Mu  
John C. Murrell  
Christian R. Ol  
Gregory V. Pa  
Scott K. Rohr  
Stephen A. Salzman  
Robert A. Scalise  
Robert J. Schre  
Jeffrey C. Sandz  
Douglas E. Shay  
John A. Sheeh  
Ellen B. Stu  
Peter J. Sween  
Robert L. Vo  
Michael J. Willia  
K. John Wrig

Daryl P. Ciambra  
Chief Operating Officer

October 5, 2011

## Certified Mail Return Receipt Requested

The Attorney General of the State of New York  
New York State Law Department  
Claims Bureau  
120 Broadway, 25<sup>th</sup> floor  
New York, NY 10271

State of New York – Office of Mental  
Retardation & Development  
220 Delaware Avenue  
Buffalo, NY 14202

The Attorney General of the State of New York  
Main Place Tower, Suite 300A  
350 Main Street  
Buffalo, NY 14202

West Seneca Developmental Center  
1769 South Park Avenue  
Buffalo, NY 14220

The Attorney General of the State of New York  
Justice Building  
State Street, 7<sup>th</sup> Floor  
Albany, NY 12224

**RE: Ruth Ando vs. State of New York**

Dear Sir and/or Madam:

Served upon you herewith please find a copy of the Verified Notice of Claim with regard to the above-referenced matter.

Thank you for your attention to the above matter.

Very truly yours,

Michael J. Cooper  
(716) 566-2272

MJC/ksb  
Enclosure

A Professional Corporation

Offices in Buffalo, Rochester, Long Island, and New York, New York  
451 Grider Street • Buffalo, New York 14215 • Tel: (716) 854-2020 • Fax: (716) 854-6291  
(800) 621-2020

Comm. 13D-3  
Page 20 of 55



Attorney General of the State  
of NY  
Main Place Tower, 300A  
350 Main St  
Buffalo NY 14203  
MJC Ando

**SENDER: COMPLETE THIS SECTION**

1. Article Addressed to:

2. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.

3. Print your name and address on the reverse so that we can return the card to you.

4. Attach this card to the back of the mailpiece, or on the front if space permits.

**COMPLETE THIS SECTION ON DELIVERY**

3. Service Type

4. Restricted Delivery? (Extra Fee)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

West Seneca Developmental  
Center  
1769 South Park Avenue  
Buffalo NY 14222  
MJC Ando

**SENDER: COMPLETE THIS SECTION**

1. Article Addressed to:

2. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.

3. Print your name and address on the reverse so that we can return the card to you.

4. Attach this card to the back of the mailpiece, or on the front if space permits.

**COMPLETE THIS SECTION ON DELIVERY**

3. Service Type

4. Restricted Delivery? (Extra Fee)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

**SENDER: COMPLETE THIS SECTION**

1. Article Addressed to:

2. Article Number

3. Service Type

4. Restricted Delivery? (Extra Fee)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

State of New York Mental Retardation  
& Developmental Disabilities Office  
211 Crossways Park Drive  
Woodbury, New York 11797  
Clt.: Ruth Ando (MJC)

PS Form 3811, February 2004 Domestic Return Receipt 102595-02

**SENDER: COMPLETE THIS SECTION**

1. Article Addressed to:

2. Article Number

3. Service Type

4. Restricted Delivery? (Extra Fee)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

**SENDER: COMPLETE THIS SECTION**

1. Article Addressed to:

2. Article Number

3. Service Type

4. Restricted Delivery? (Extra Fee)

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-44-1

Comm. 13D-3 Page 21 of 55

# EXHIBIT C

### RETAINER AGREEMENT

The undersigned, Ruth Ando ("Client") hereby retains the law offices of Shaw & Shaw, P.C. (the "Firm") as attorneys to settle or prosecute the Client's claim against all persons, firms or corporations as may be liable to the client for damages as a result of an accident which occurred on the 30th day of August, 2011 at 1769 South Park Buffalo and agree that my attorneys shall be compensated according to the Laws of the New York State Appellate Division.

This retainer agreement is solely limited to all steps necessary to bring the referenced matter to trial, verdict or settlement and does not include appellate practice, Surrogate's and/or estate work, legal work pertaining to Medicare Set Aside issues, Medicare lien evaluation and no-fault arbitrations.

The scope of legal services to be provided includes: initial and ongoing investigation of this incident; securing potential witnesses and evidence; gathering appropriate medical records, employment records, wage records, educational records and other records; drafting, filing and responding to appropriate court documents; selection and retention of experts and investigators as necessary; appearance at court proceedings, depositions and arbitrations; conducting settlement negotiations; preparing for trial as appropriate and necessary; and maintaining appropriate contact with the client throughout.

The Attorney's fee is calculated after payment of litigation expenses and shall be one-third (1/3) of the remaining amount of the settlement. Litigation expenses advanced by the Firm will be reimbursed from the settlement and the balance is paid to the client. Litigation expenses, which include, but are not limited to, such amounts expended for filing, transcripts, copies, postage, computerized legal research charges, miscellaneous file materials, records, expert and other expenses will be set forth in a written statement provided to the client at the time of settlement. The client may have the right to arbitrate any fee disputed under the New York State Fee Dispute Resolution Program. The Firm reserves the right to withdraw from representation at any time.

There shall be no deduction in computing such percentages: liens, assignments or claims in favor of hospitals, for medical care and treatment by doctors and nurses, or of self-insurers or insurance carriers.

All debts of the Client relating to the accident or injury for which the Firm represents Client shall be paid out of any recovery by the Firm, as the agent of the Client.

It is agreed it is the Client's responsibility to reimburse the Firm for all expenses and disbursements expended by the Firm on the Client's behalf, whether or not a recovery is realized.

In the alternative, the attorney shall have the option of seeking compensation on the *quantum meruit* basis to be determined by the Court. In such circumstance, the Court would determine the fair value of the services performed by the offices of Shaw & Shaw, P.C., their agents, servants and/or employees. In the event the client is represented on appeal by another attorney, Shaw & Shaw, P.C. shall have the option of seeking compensation on a *quantum meruit* basis to be determined by the Court.

As outlined above, our fee arrangement provides that the Firm will receive one-third of the difference between the total sum recovered and the expenses. If the payment of the Firm's legal fee in installments in a settlement to be paid by the defendant's insurance carrier with an A.M. Best rating of "A+" or better will help facilitate a better settlement for the client, the Firm agrees to be paid its attorneys' fee in future periodic payments by the insurer. The present value of all periodic payments shall equal the agreed upon one-third.

There will be no attorney fee owed unless a recovery is obtained. No settlement shall be made without full knowledge and consent of both attorney and client. However, it is agreed that it is the client's responsibility to reimburse the Firm for all expenses and disbursements whether or not a recovery is realized.

X Ruth Ando  
CLIENT SIGNATURE

3/13/12  
Date

[Signature]  
ATTORNEY SIGNATURE

3/13/12  
Date

STATE OF NEW YORK: COURT OF CLAIMS

---

RUTH ANDO

Claimant,

**CONSENT TO  
CHANGE ATTORNEY**

-VS-

STATE OF NEW YORK  
STATE OF NEW YORK - OFFICE OF MENTAL  
RETARDATION & DEVELOPMENTAL DISABILITIES  
WEST SENECA DEVELOPMENTAL CENTER,

Respondents.

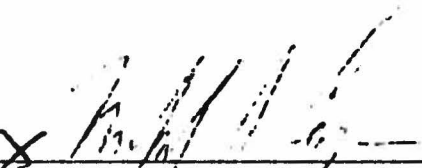
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**SIRS:**

**PLEASE TAKE NOTICE** that **SHAW & SHAW, P.C.** of 4819 South Park Avenue,  
Hamburg, New York be substituted as attorneys of record for plaintiff in place and stead of  
the undersigned attorneys as of the date hereof.

Dated: March 9, 2012  
Hamburg, New York

  
Ruth Ando

  
Michael J. Cooper, Esq.

)
)
)

)

Y. Garcia  
Notary Public

)
)ss.:
)

)

Robert M. Thompson  
Notary Public

**SILAW SHAW, PC**  
ATTORNEYS AND COUNSELLORS AT LAW



MICHAEL A. SIRAGUSA  
ERIE COUNTY ATTORNEY

## COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE  
DEPARTMENT OF LAW

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH  
SECOND ASSISTANT COUNTY ATTORNEY

May 29, 2012

Mr. Robert M. Graber, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Mr. Graber:

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>Slisz, Alice B. and Slisz, Richard v. County of Erie, City of Buffalo and Buffalo Urban Renewal Agency (BURA)</i>
Document Received:	Notice of Claim
Name of Claimants:	Alice B. Slisz and Richard Slisz 216 Niagara Shore Drive Tonawanda, New York 14150
Claimants' 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  
Enclosure

In the Matter of the Claim of  
ALICE B. SLISZ and RICHARD SLISZ,  
her spouse,

**NOTICE OF CLAIM**

Claimants,

- against -

COUNTY OF ERIE,  
CITY OF BUFFALO  
and  
BUFFALO URBAN RENEWAL AGENCY (BURA)



TO: COUNTY OF ERIE,  
CITY OF BUFFALO  
and  
BUFFALO URBAN RENEWAL AGENCY (BURA)

PLEASE TAKE NOTICE, that ALICE B. SLISZ and RICHARD SLISZ, have and hereby make claim against the COUNTY OF ERIE, CITY OF BUFFALO and BUFFALO URBAN RENEWAL AGENCY (BURA), and in support of said claim state the following:

1. The Post Office address of the claimants is 216 Niagara Shore Drive, Tonawanda, NY 14150.
2. The attorneys for the claimants 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 ALICE B. SLISZ is for personal injuries, including without limitation, loss of income and medical expenses, and the claim of RICHARD SLISZ is for loss of services, society, companionship and consortium as a result of his spouse's accident, and for consequential damages generally.

4. The claim arose at First Niagara Center, located at One Seymour H. Knox III Plaza, within the City of Buffalo, County of Erie and State of New York.

5. The claim arose in substance as follows: On or about the 26<sup>th</sup> day of February, 2012, the claimant, ALICE B. SLISZ, while lawfully and properly an invitee on the aforesaid premises for the purpose of watching the Cansius High School hockey team play against St. Francis High School hockey team, was caused to slip and fall on ice at said premises, 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 COUNTY OF ERIE, CITY OF BUFFALO and BUFFALO URBAN RENEWAL AGENCY (BURA), and more particularly, among other things, in failing and omitting to keep their walking surfaces free of icy conditions, furthermore, the incident and resultant injuries and damages were caused by those acts and omissions of the agents, servants and/or employees of the COUNTY OF ERIE, CITY OF BUFFALO and BUFFALO URBAN RENEWAL AGENCY (BURA), acting as owner and operator of First Niagara Center, and in violation of the regulations, rules and standards promulgated thereunder.

7. Upon information and belief, as a result of the aforesaid incident, the claimant, ALICE B. SLISZ, 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, ALICE B. SLISZ, sustained injuries in



the nature of a wrist fracture and other various injuries. Upon information and belief, these injuries will result in permanent defects.

8. As a result of the aforesaid incident and injuries sustained by ALICE B. SLISZ, the claimant, RICHARD SLISZ, spouse of ALICE B. SLISZ, has suffered the loss of services, society, companionship and consortium of ALICE B. SLISZ to which he was fully entitled.

WHEREFORE, claimants request that the COUNTY OF ERIE, CITY OF BUFFALO and BUFFALO URBAN RENEWAL AGENCY (BURA) honor and pay the claim on behalf of ALICE B. SLISZ.

DATED: Buffalo, New York  
May 1, 2012

  
\_\_\_\_\_  
RICHARD SLISZ


LIPSITZ GREEN SCIME CAMBRIA LLP

By:   
\_\_\_\_\_  
THOMAS M. MERCURE, ESQ.

Attorneys for Claimants  
Office and P.O. Address  
42 Delaware Avenue, Suite 120  
Buffalo, New York 14202-3924  
(716) 849-1333  
[TMM: #44707.0002]

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

RICHARD SLISZ, being duly sworn deposes and says that he is the claimant above named; and makes this claim on behalf of self; he 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, he believes them to be true.

  
RICHARD SLISZ

Sworn to before me on this

8 day of May, 2012.

  
Notary Public

**TINA L GIUSTI**  
**Notary Public - State of New York**  
**No. 01-GI6143845**  
**Qualified in Erie County**  
**My Commission Exp. 04/17/2014**



MICHAEL A. SIRAGUSA  
ERIE COUNTY ATTORNEY

## COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE  
DEPARTMENT OF LAW

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH  
SECOND ASSISTANT COUNTY ATTORNEY

May 29, 2012

Mr. Robert M. Graber, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Mr. Graber:

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>Locking, Melissa, as Parent and as Natural Guardian of Locking, Summer</i>
Document Received:	Notice of Claim
Name of Claimant:	Melissa Locking 71 S. Whispering Lane Hamburg, NY 14075
Claimant's attorney:	Eric A. Bloom, Esq. Damon Morey LLP The Avant Building - Suite 1200 200 Delaware Avenue Buffalo, New York 14202-2150

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  
Enclosure

STATE OF NEW YORK  
SUPREME COURT :: COUNTY OF ERIE

---

MELISSA LOCKING, as Parent and as  
Natural Guardian of SUMMER LOCKING

Claimant,

v.

COUNTY OF ERIE

Respondent.

---

**NOTICE OF CLAIM**

Mark Winsick

This paper received at the  
Erie County Attorney's Office  
from Kelly Brinkworth  
the 23 day of April, 2012  
at 3:00 a.m./p.m.  
Kelly Brinkworth  
Assistant County Attorney

**PLEASE TAKE NOTICE THAT, MELISSA LOCKING, as Parent and as Natural Guardian of SUMMER LOCKING, hereby makes a claim against the COUNTY OF ERIE, and in support of such claim does state the following:**

1. The name and post office address of the Claimant is as follows: Melissa Locking, as Parent and as Natural Guardian of Summer Locking, resides at 71 S. Whispering Lane, Hamburg, New York 14075. The injured infant, Summer Locking resides at 71 S. Whispering Lane, Hamburg, New York 14075.

2. The attorneys for the Claimant are Damon Morey LLP, The Avant Building, 200 Delaware Avenue, Suite 1200, Buffalo, New York 14202.

3. The claim is one against Respondent, COUNTY OF ERIE, for negligence, carelessness and recklessness of Respondent, COUNTY OF ERIE, for serious and permanent personal injuries sustained by Summer Locking, as a result of a motor vehicle accident which occurred on January 28, 2012 on Versailles Plank Road on the Cattaraugus Indian reservation in Brant, New York, Erie County.

4. The facts and circumstances of this claim are as follows: On January 28, 2012, Summer Locking was a passenger in an automobile operated by Bradley Maloney which was traveling on Versailles Plank Road on the Cattaraugus Indian reservation in Brant, New York, Erie County. The automobile dropped off a 50 foot ravine in the vicinity of a curve on the road. The accident caused severe and permanent injuries to Summer Locking, as hereinafter set forth, due to the negligence, carelessness and recklessness of the Respondent herein and others.

5. Upon information and belief, and at all times hereinafter mentioned, Respondent, COUNTY OF ERIE, owned, maintained, serviced and controlled the roadway and the surrounding area where the accident occurred.

6. Upon information and belief, and at all times hereinafter mentioned, Respondent, COUNTY OF ERIE, was negligent, careless and reckless in, among other things: for failing to properly maintain, service and control the roadway and surrounding area where the accident occurred; for failing to construct adequate and proper signage giving warnings to drivers; for failing to design and construct a safe roadway and surrounding area; for failing to maintain properly the surface of the road in the intersection and surrounding area; for failing to provide adequate guard rails; for failing to provide adequate protection for automobiles entering a curve on the roadway at issue; for failing to post a reduced speed limit in roadway and surrounding area in light of the extensive accident history at that vicinity in the roadway; for failing to perform adequate and appropriate maintenance, repair and upkeep of the roadway and surrounding area; for failing to respond and/or make the necessary changes to the roadway and surrounding area and its signage in light of the extensive accident history at that vicinity in the roadway and surrounding area; and for other careless, negligent and reckless acts.

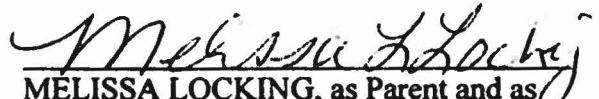
7. Upon information and belief, and at all times hereinafter mentioned, Respondent, COUNTY OF ERIE had actual and constructive notice of said defects and failed to remedy the defects in a timely manner and/or Respondent COUNTY OF ERIE created an unsafe condition in the roadway and the surrounding area by its negligent, careless and reckless acts and omissions.

8. This Notice is made and served on behalf of said Claimant in compliance with the provisions of the General Municipal Law section 50(e) and such other laws and statutes as are in the case made and provided.


9. At all times hereinafter mentioned, as a result of the negligence, carelessness and recklessness of Respondent, COUNTY OF ERIE, Claimant suffered serious and permanent injuries, internal as well as external, including, but not limited to: Fracture of the skull, dizziness, headaches, closed head injury, neck pain, bleeding in the brain, lacerations, back pain and other unknown injuries, and that Claimant has been and will be incapacitated from performing her usual duties for a long period of time, all to her damage in a sum pursuant to General Municipal Law section 50(e) and CPLR section 3017(c), and Claimant claims damages including, but not limited to: conscious pain and suffering, medical expenses and lost wages against Respondent, COUNTY OF ERIE, in an amount in excess of the jurisdictional limits of all lower courts.

WHEREFORE, Claimant requests these claims be allowed and paid for by Respondent, COUNTY OF ERIE.

Dated: Buffalo, New York  
April \_\_\_\_\_, 2012

  
MELISSA LOCKING, as Parent and as  
Natural Guardian of SUMMER LOCKING

**DAMON MOREY LLP**

By:   
Eric A. Bloom, Esq.  
*Attorneys for Claimant*  
**Melissa Locking**  
The Avant Building - Suite 1200  
200 Delaware Avenue  
Buffalo, New York 14202-2150  
Telephone: (716) 856-5500

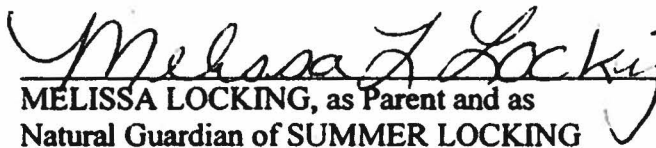
TO: COUNSEL FOR COUNTY OF ERIE  
As they may appear

**VERIFICATION**

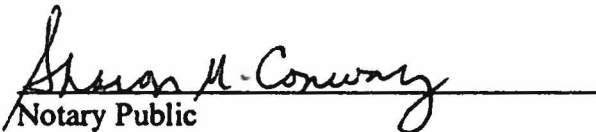
STATE OF NEW YORK     )  
COUNTY OF ERIE        ) ss:  
TOWN OF HAMBURG        )

Melissa Locking., being duly sworn, deposes and says:

That deponent is the Parent and Natural Guardian in the above-entitled matter; and has read the foregoing Notice of Claim and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those, deponent believes same to be true.

  
MELISSA LOCKING, as Parent and as  
Natural Guardian of SUMMER LOCKING

Subscribed and sworn to before me this  
23rd day of April, 2012.

  
Notary Public

SHARON M. CONWAY  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 08/30/20 15

Doc #1688218.1





MICHAEL A. SIRAGUSA  
ERIE COUNTY ATTORNEY

## COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE  
DEPARTMENT OF LAW

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH  
SECOND ASSISTANT COUNTY ATTORNEY

June 12, 2012

Mr. Robert M. Graber, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Mr. Graber:

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>Norwood, Brendagay v. County of Erie, New York and City of Buffalo, New York</i>
Document Received:	Notice of Claim
Name of Claimant:	Brendagay Norwood 107 Dodge Street, Lower Front Buffalo, New York 14209
Claimant's attorney:	Arienne J. Irving, Esq. William K. Mattar, P.C. 6720 Main Street, Suite 100 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.

This paper received at the  
Erie County Attorney's Office  
from Monique Gleising  
the 25 day of May, 2012  
at 11:30 a.m./p.m.  
Kelly Brunkowich  
Assistant County Attorney

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

**BRENDAGAY NORWOOD**

Claimant,

-against-

**NOTICE OF CLAIM**

**COUNTY OF ERIE, NEW YORK, and  
CITY OF BUFFALO, NEW YORK**

**Respondents.**

**PLEASE TAKE NOTICE** that **BRENDAGAY NORWOOD**, hereby makes  
Claim against the **COUNTY OF ERIE, NEW YORK** and the **CITY OF BUFFALO, NEW  
YORK** and in support thereof allege:

1. That the undersigned, **BRENDAGAY NORWOOD**, residing at 107 Dodge  
Street, Lower Front, Buffalo, New York 14209, by and through her attorney, **ARIENNE J. IRVING  
ESQ.**, William Mattar, P.C., 6720 Main Street, Suite 100, Williamsville, NY 14221-5986, claim  
damages against the **COUNTY OF ERIE, NEW YORK** and **CITY OF BUFFALO, NEW YORK**,  
for personal injuries, pain and suffering, general and special damages, medical expenses, and  
property damages sustained by her.

2. That the said injuries were sustained by **BRENDAGAY NORWOOD**, when she  
was a passenger in a vehicle struck by another motor vehicle on March 13, 2012 at approximately

12:30pm, at or near 570 Michigan Avenue in the City of Buffalo, Erie County, New York. A copy of the police report is attached as **Exhibit A**.

3. On that date, the Claimant, **BRENDAGAY NORWOOD**, was a passenger in a vehicle that slowed down in order to travel over an obstruction in the road, specifically a bump referred to as a fire hose in the police report, causing a 2008 Chevy that was owned and operated by Ruthie Hollis, which was traveling behind Claimant's vehicle, to collide with the vehicle from behind.

4. Upon information and belief, the obstruction in the road was caused by, maintained by and placed in the road by agents, servants or employees of the Respondents.

5. 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, **BRENDAGAY NORWOOD**, by Respondents, their servants, agents or employees in failing to provide a safe location for transit, along with other acts of negligence, carelessness and recklessness.

6. That the aforesaid respondents, by and through their agents, servants, and employees, had actual or constructive notice of the dangerous condition and hazard caused by said activity.

7. Upon information and belief, as a result of the aforesaid incident, the Claimant, **BRENDAGAY NORWOOD**, sustained severe bodily injuries and was painfully and seriously injured; was rendered sick, sore, lame and disabled; and more particularly, claimant **BRENDAGAY NORWOOD** sustained head, back and neck injuries. The full extent of these injuries is unknown at this time. Upon information and belief, the aforementioned injuries are

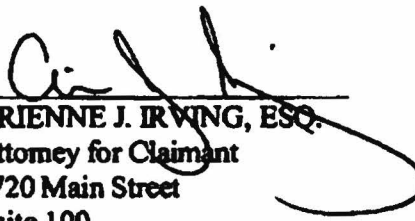
permanent and progressive in nature, and may require further medical treatment with all risks attendant thereto.

8. That as a result of the foregoing, the Claimant, BRENDAGAY NORWOOD, sustained severe and serious permanent injuries including a "serious injury" 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.

9. That the said injuries were occasioned as a result of the negligence of the COUNTY OF ERIE, NEW YORK and CITY OF BUFFALO, NEW YORK and through its agents, servants and employees and without any negligence on the part of the Claimant contributing thereto.

DATED:       Williamsville, New York

May 25, 2012

  
ARIENNE J. IRVING, ESQ.  
Attorney for Claimant  
6720 Main Street  
Suite 100  
Williamsville, NY 14221-5986

Local Office

ACC 344

CP # 12073034

New York State Department of Motor Vehicles  
**POLICE ACCIDENT REPORT**  
 MV-104A (8/04)  
 POLICE COPY 1

Original  
 Copy

1	Accident Date Month Day Year 03 13 2012	Day of Week Tues	Military Time 1730	No. of Vehicles 2	No. Injured 1	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/>	
2	VEHICLE 1				VEHICLE 2					
3	VEHICLE 1 - Driver License ID Number 568 219 978				VEHICLE 2 - Driver License ID Number 841 595 326				State of Lic. NY	
4	Driver Name - exactly as printed on license Hollis Rutledge M				Driver Name - exactly as printed on license KAZHDAN, YURYGEY				State of Lic. NY	
5	Address (Include Number & Street) 1250 BAYLEY AVE				Address (Include Number & Street) 276 TRAVES DR				State of Lic. NY	
6	City or Town Buff				City or Town Amherst				State of Lic. NY	
7	Date of Birth Month Day Year 05 24 26				Date of Birth Month Day Year 10 20 22				State of Lic. NY	
8	Sex F				Sex M				State of Lic. NY	
9	Address (Include Number & Street) Same				Address (Include Number & Street) 71 Military Rd				State of Lic. NY	
10	City or Town Buff				City or Town Buff				State of Lic. NY	
11	Plate Number ANTV4905				Plate Number 13B17LV				State of Lic. NY	
12	Vehicle Year & Make 08 Chev				Vehicle Year & Make 08 Dodge				State of Lic. NY	
13	Vehicle Type Car				Vehicle Type SUV				State of Lic. NY	
14	Violation Section(s) -				Violation Section(s) -				State of Lic. NY	
15	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.				Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.				Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.	
16	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes				VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes				ACCIDENT DIAGRAM 570 Michigan Ave	
17	Vehicle By Towed To				Vehicle By Towed To				Cost of repairs to any one vehicle will be more than \$1000. <input type="checkbox"/> Unknown/Unable to Determine <input type="checkbox"/> Yes <input type="checkbox"/> No	
18	VEHICLE DAMAGE CODING: 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER				Diagram of vehicle damage coding					
19	Reference Marker				Coordinates (if available) Latitude/Northing: Longitude/Easting:				Place Where Accident Occurred: County Erie City <input type="checkbox"/> Village <input type="checkbox"/> Town of Buff. Road on which accident occurred 570 Michigan Ave at 1) intersecting street or 2) <input type="checkbox"/> ON <input type="checkbox"/> OS <input type="checkbox"/> DE <input type="checkbox"/> OW of <input type="checkbox"/> (Intersecting Road's Number or Street Name)	
20	Accident Description/Officer's Notes Vehicle #2 was traveling south on Michigan Ave (570 Michigan Ave), when it did slow down to drive over an obstruction in the road (a large fire hydrant), when vehicle #1 also traveling south on Michigan did collide into the rear of veh. #2.									
21	Name of all involved				Date of Death Only					
22	A 1 1 4 104F - 13 0 - - Hollis Rutledge									
23	B 2 1 4 139M - 13 0 - - Kazhdan, Yurygey									
24	C 2 5 - 158F 4 12 6 268 MVA Roadman, Brenda									
25	D									
26	E									
27	F									
28	Officer's Rank and Signature Print Name in Full J. 1001				Badge/ID No. 000031890				Date/Time Reviewed 3/13/12 132	



MICHAEL A. SIRAGUSA  
ERIE COUNTY ATTORNEY

## COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE  
DEPARTMENT OF LAW

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH  
SECOND ASSISTANT COUNTY ATTORNEY

June 15, 2012

Mr. Robert M. Graber, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Mr. Graber:

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>Holmes, Arthur v. Smith, William, TF Kurk, Inc., Robinson, Franklin, Sr. and County of Erie</i>
Document Received:	Summons and Complaint
Name of Claimant:	Arthur Holmes 4 South Lane Buffalo, New York 14208
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

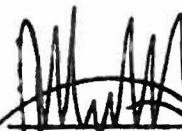
By:   
Michelle Parker

MMP/dld  
Enclosure

cc: Michael A. Siragusa, Erie County Attorney



**Yours Respectfully,**

A handwritten signature in black ink, appearing to read "J. Michael Hayes", is written over a horizontal line. A large, loopy circular flourish is drawn around the signature.

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

---

ARTHUR HOLMES,

Plaintiff,

**SECOND AMENDED  
COMPLAINT**

vs.

**Index No. : 2012-174**

WILLIAM M. SMITH,  
TF KURK, INC.,  
FRANKLIN ROBINSON, SR. and  
COUNTY OF ERIE

Defendants.

---

The Plaintiff, ARTHUR HOLMES, by his attorneys, J. MICHAEL HAYES, for his complaint against the Defendants, WILLIAM M. SMITH, TF KURK, INC., FRANKLIN ROBINSON, SR. and COUNTY OF ERIE herein alleges:

1. At all times hereinafter mentioned Plaintiff was and still is a resident of the County of Erie, State of New York.
2. Upon information and belief, at all times hereinafter mentioned, Defendant WILLIAM M. SMITH, was and still is a resident of the County of Erie, State of New York.
3. Upon information and belief, at all times hereinafter mentioned, Defendant, FRANKLIN ROBINSON, SR., was and still is a resident of the County of Erie, State of New York.
4. Upon information and belief, at all times hereinafter mentioned, Defendant, TF KURK, INC., was and still is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York with an office for the transaction of business in the County of Erie, State of New York.

5. Upon information and belief, at all times mentioned herein, defendant TF KURK, INC., was the owner of a 1994 Mack Truck bearing license plate number 58462JB.

6. Upon information and belief, at all times mentioned herein, Defendant, WILLIAM M. SMITH, was the operator of the aforementioned Mack Truck.

7. Upon information and belief, on or about January 21, 2011, defendant, WILLIAM M. SMITH, was operating the aforementioned Mack Truck with the permission and consent of the owner, TF KURK, INC.

8. Upon information and belief, on or about January 21, 2011 Defendant, WILLIAM M. SMITH, was operating the Mack Truck in the course of his employment with TF KURK, INC.

9. On January 21, 2011, Plaintiff, ARTHUR HOLMES, was a passenger in a motor vehicle then being operated by Defendant, FRANKLIN ROBINSON, SR.

10. Upon information and belief, on January 21, 2011 on Interstate 190 in Buffalo, New York, the motor vehicle operated by the said Defendant, FRANKLIN ROBINSON, SR. came into contact with the Mack Truck owned by Defendant TF KURK, INC. and operated by the Defendant, WILLIAM M. SMITH.

11. Upon information and belief, the aforementioned accident was caused and/or contributed to due to the negligence of the Defendants, WILLIAM M. SMITH, TF KURK, INC. and FRANKLIN ROBINSON, SR

12. 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.

13. Upon information and belief, Plaintiff, ARTHUR HOLMES is and/or has received Medicaid provided by the County of Erie.

5. Upon information and belief, at all times mentioned herein, defendant TF KURK, INC., was the owner of a 1994 Mack Truck bearing license plate number 58462JB.
6. Upon information and belief, at all times mentioned herein, Defendant, WILLIAM M. SMITH, was the operator of the aforementioned Mack Truck.
7. Upon information and belief, on or about January 21, 2011, defendant, WILLIAM M. SMITH, was operating the aforementioned Mack Truck with the permission and consent of the owner, TF KURK, INC.
8. Upon information and belief, on or about January 21, 2011 Defendant, WILLIAM M. SMITH, was operating the Mack Truck in the course of his employment with TF KURK, INC.
9. On January 21, 2011, Plaintiff, ARTHUR HOLMES, was a passenger in a motor vehicle then being operated by Defendant, FRANKLIN ROBINSON, SR.
10. Upon information and belief, on January 21, 2011 on Interstate 190 in Buffalo, New York, the motor vehicle operated by the said Defendant, FRANKLIN ROBINSON, SR. came into contact with the Mack Truck owned by Defendant TF KURK, INC. and operated by the Defendant, WILLIAM M. SMITH.
11. Upon information and belief, the aforementioned accident was caused and/or contributed to due to the negligence of the Defendants, WILLIAM M. SMITH, TF KURK, INC. and FRANKLIN ROBINSON, SR
12. 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.
13. Upon information and belief, Plaintiff, ARTHUR HOLMES is and/or has received Medicaid provided by the County of Erie, under Case Number \_\_\_\_\_.

14. Upon information and belief, the County of Erie claims a recovery right/"lien" out of any resolution in the above matter by virtue of medical expenses they claim to have incurred.

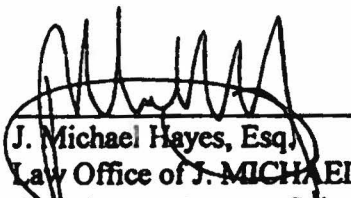
15. Upon information and belief, the Defendant, County of Erie, is a necessary party to this action in that for and before complete relief may be accorded, the County of Erie's claim must be considered, finalized, allocated and determined by way of compromise, settlement or Court determination and said Defendant has refused to join as a party plaintiff

16. That as a result of the foregoing, the Plaintiff, ARTHUR HOLMES, sustained severe and personal injuries, including a "serious injury" and "excess basic economic loss" as defined by Article 51 of the New York Insurance Reparations Law, all to his damage in a sum in excess of the jurisdictional limits of all the lower courts of the State of New York.

WHEREFORE, Plaintiff, ARTHUR HOLMES, demands judgment against the Defendants, WILLIAM M. SMITH, TF KURK, INC., FRANKLIN ROBINSON, SR. and COUNTY OF ERIE, for a sum in excess of the jurisdictional limits of all lower courts, together with the costs and disbursements, and such other and further relief as this Court deems just, proper and equitable.

DATED: BUFFALO, NEW YORK  
May 15, 2012

Yours Respectfully,



J. Michael Hayes, Esq.  
Law Office of J. MICHAEL HAYES  
69 Delaware Avenue, Suite 1111  
Buffalo, New York 14202  
(716) 852-1111



# 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, 2012

Mr. Robert M. Graber, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Mr. Graber:

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>Waters, Linda v. COE (Rath Building -- Elevator)</i>
Document Received:	Correspondence from the office of William Mattar, P.C.
Name of Claimant:	Linda D. Waters
Claimant's attorney:	Lori F. Hickey William Mattar, P.C. 6720 Main Street, Suite 100 Williamsville, New York 14221

Should you have any questions, please call.

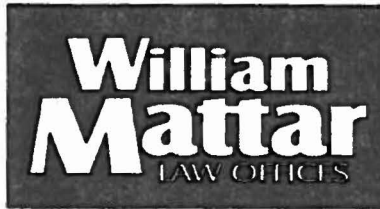
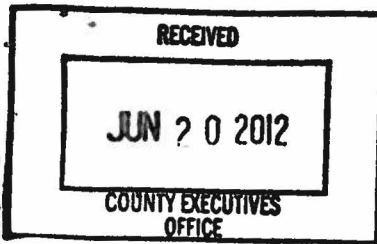
Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By: *Michelle M. Parker*  
Michelle M. Parker  
First Assistant County Attorney  
[parkerm3@erie.gov](mailto:parkerm3@erie.gov)

MMP:dld

Enclosure



**William Mattar, P.C.\***

**6720 MAIN STREET, SUITE 100 , WILLIAMSVILLE, NEW YORK 14221 (716) 633 - 3535**

**June 18, 2012**

**Erie County Executive  
Rath Building – 16<sup>th</sup> Floor  
Room 1600  
Buffalo NY 14202**

**Re: Our Client: Linda D. Waters  
Defendant: County of Erie  
Claim No: Please Provide  
Date of Loss: May 23, 2012  
Location: Rath Building, Buffalo, NY, Erie County**

**Dear Sir/Madam:**

**We represent Linda D. Waters in connection with the incident of May 23, 2012. Ms. Waters was in an elevator at the Rath Building when it suddenly fell several floors, coming to a jarring stop in between the ground floor and the sub-basement. The doors to the elevator had to be pried open and the passengers were extricated from the elevator with the assistance of the Buffalo Fire Department.**

**As a result of this incident and your negligence in failing to properly maintain this elevator, our client has suffered serious injuries, which include neck, back and right shoulder injuries, among other injuries. Ms. Waters' medical records will be provided to you upon receipt.**

**Kindly accept this letter to serve as our request under the Freedom of Information Law, for a copy of the following materials:**

- **Any videotape of this incident;**
- **Inspection records for this elevator for one year prior to this incident;**
- **All maintenance records pertaining to the elevator at issue for one year prior to the incident date; and**
- **A copy of any accident report regarding this incident.**

**e-mail [lhickey@mattar.com](mailto:lhickey@mattar.com)**

**SERVICING AREAS: BUFFALO ROCHESTER SYRACUSE ALBANY**

***You are hereby specifically notified of our need for the above-referenced materials and our request that they be preserved in their entirety. Any destruction or other loss of these materials will be considered spoliation of material evidence. Do not destroy any of the requested materials. Please take immediate steps to safeguard the requested items. The County of Erie is hereby advised that the incident in question resulted in serious, permanent injuries to Linda D. Waters.***

Please provide the applicable primary and excess policy limits for the County of Erie, if there is any insurance coverage in effect.

We will continue to keep you advised of the status of our client's injuries and treatment. Please feel free to call me at any time, if you have any questions or require additional information.

Very truly yours,  
WILLIAM MATTAR, P.C.



Lori F. Hickey, Esq.

Enclosures

e-mail [lhickey@mattar.com](mailto:lhickey@mattar.com)

SERVICING AREAS: BUFFALO ROCHESTER SYRACUSE ALBANY



MICHAEL A. SIRAGUSA  
ERIE COUNTY ATTORNEY

## COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE  
DEPARTMENT OF LAW

MICHELLE M. PARKER  
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH  
SECOND ASSISTANT COUNTY ATTORNEY

June 29, 2012

Mr. Robert M. Graber, Clerk  
Erie County Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Dear Mr. Graber:


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>Carlo Harris v. County of Erie, et al.</i>
Document Received:	Notice of Claim
Name of Claimant:	Carlo Harris 2961 Bailey Avenue Buffalo, New York 14215
Claimant's attorney:	Brown & Tarantino, LLC 1500 Rand Building 14 Lafayette Square Buffalo, New York 14203

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By:   
Michelle M. Parker  
First Assistant County Attorney  
[ParkerM3@erie.gov](mailto:ParkerM3@erie.gov)

MMP:dld

Enclosure



STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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In the Matter of the Claim of  
CARLO HARRIS,

Claimant,

v.

**NOTICE OF CLAIM**

Index No.:

COUNTY OF ERIE,  
ERIE COUNTY HOLDING CENTER,  
ERIE COUNTY SHERIFF'S DEPARTMENT,  
CITY OF BUFFALO and CITY OF BUFFALO  
POLICE DEPARTMENT,

Respondents.

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**TO THE COUNTY CLERK OF THE COUNTY OF ERIE, STATE OF NEW YORK:**

**PLEASE TAKE NOTICE**, that **CARLO HARRIS**, the Claimant herein, hereby makes claim against the County of Erie, State of New York for damages sustained by the Claimant because of the negligence of the **COUNTY OF ERIE, ERIE COUNTY HOLDING CENTER, ERIE COUNTY SHERIFF'S DEPARTMENT, CITY OF BUFFALO, and BUFFALO CITY POLICE DEPARTMENT** as set forth by **CARLO HARRIS**.

1. Claimant is **CARLO HARRIS** who resides at 2961 Bailey Avenue, Buffalo, New York 14215.

2. The name and Post Office Address of Claimant's attorneys are: **BROWN & TARANTINO, LLC, Kevin P. Wicka, Esq., of counsel, 1500 Rand Building, 14 Lafayette Square, Buffalo, New York 14203.**

3. The nature of this claim is for personal injuries suffered by **CARLO HARRIS**, as a result of the negligence of the Respondents, their agents, servants, and/or employees.

4. The claim arose on or about the 18<sup>th</sup> day of November 2011.
5. The place where the claim arose was at the Erie County Holding Center located at 40 Delaware avenue, Buffalo, New York 14202, County of Erie and State of New York.
6. Upon information and belief, injuries and resulting damages for which the claim is made arose from the wrongful, improper and negligent failure to provide the Claimant with his prescribed medications and/or insure his receipt of appropriate medical treatment as the Respondents knew or should have known the Claimant was epileptic and required medication.
7. That by reason of the negligence of the Respondents, through their agents, servants, and/or employees, the Claimant, **CARLO HARRIS**, sustained severe personal injuries including a seizure, subsequent hospitalization, induced coma, subsequent neurological deficits, including but not limited to impaired walking and vision, as well as contusions with resultant pain and suffering.
8. Upon information and belief, the injuries sustained by the Claimant are permanent.

**WHEREFORE**, the Claimant, **CARLO HARRIS**, claims damages against the **COUNTY OF ERIE, ERIE COUNTY HOLDING CENTER, ERIE COUNTY SHERIFF'S DEPARTMENT, CITY OF BUFFALO, and BUFFALO CITY POLICE DEPARTMENT**

Dated: Buffalo, New York  
March 1, 2012

  
**CARLO HARRIS**

### **CLIENT CERTIFICATION**

I, CARLO HARRIS under penalty of perjury, have carefully read and reviewed the annexed Notice of Claim and that all information contained in aforesaid document is true and accurate in all respect to the best of my knowledge and understanding.

I FURTHER CERTIFY, under penalty of perjury, that neither my attorney, nor anyone acting on my attorney's behalf, was the source of any of the information contained in the annexed document; that I provided all of the information contained in the annexed document to my attorney; and that I understand that my attorney, in executing the Attorney Certification required by 22 NYCRR 202.16(e), is relying entirely upon the information provided by me and upon my Certification that all such information is true and accurate.

I FURTHER CERTIFY that the annexed document includes all information which I provided to my attorney which is relevant to such document and that my attorney has not deleted, omitted or excluded any such information.

Dated: Buffalo, New York  
March 1, 2012

  
CARLO HARRIS

### **ATTORNEY CERTIFICATION**

I, KEVIN P. WICKA, ESQ., HEREBY CERTIFY, under penalty of perjury, that I have no actual knowledge that the substance of any statements of fact contained in the annexed document are false. This Certification is based solely and exclusively upon information provided by the client, and upon the Client's Certification to the undersigned attorney that such information is not false, and is not based upon any review, audit, examination, inquiry or investigation made by the undersigned attorney or anyone acting on behalf of said attorney.

PLEASE TAKE FURTHER NOTICE that this certification is made by the attorney as an Officer of the Court and is directed solely and exclusively to the Court in accordance with 22 NYCRR 202.16(e) and is expressly not directed or extended to the opposing party herein.

PLEASE TAKE FURTHER NOTICE that the opposing parties may not and should not rely upon this Attorney Certification in assessing the truth or validity of the information contained in the annexed document. The credibility of this submission is no greater than the credibility of the client represented by the undersigned attorney and the opposing parties should give this document no grater credence because it bears this Attorney Certification.

Dated: Buffalo, New York  
March 1, 2012

  
KEVIN P. WICKA, ESQ.