MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

December 7, 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:	*Franz, Adam v. Town of Eden, Town of North Collins, County of Erie, State of New York and Insurance Auto Auction*
Document Received:	Notice of Motion with Motion
Name of Claimant:	Adam Franz
Claimant's attorney:	Michael Sullivan Gibson, McAskill & Crosby, LLP 69 Delaware Avenue, Suite 900 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enclosure

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ADAM FRANZ,

Petitioners,

vs.

TOWN OF EDEN,
TOWN OF NORTH COLLINS,
COUNTY OF ERIE,
STATE OF NEW YORK and
INSURANCE AUTO AUCTION.

Respondents.

NOTICE OF MOTION FOR DISCLOSURE PRIOR TO COMMENCEMENT OF ACTION

Index No.: I2012-3916

Oral Argument is Requested

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NOV 30 2012
ERIE COUNTY
CLERK'S OFFICE

PLEASE TAKE NOTICE that upon the annexed Affirmation of Robert Scott, Esq., dated November 29, 2012, a motion will before the Honorable Shirley Troutman, J.S.C., 25 Delaware Avenue, Part 11, Buffalo, New York, on January 10, 2013 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to CPLR § 3102(c), directing the Administrators or any other officers of the Respondents, having knowledge of the facts, to produce for inspection and discovery and copying, a complete copy of all records referenced in the accompanying Affirmation, before commencement of an action for negligence, as well as to preserve the motor vehicle at issue (1998 4DSD Toyota; NYS License Plate: GBU6435) in this matter together with such other and further relief as the Court may deem just and proper.

The above-entitled action is for personal injuries arising out of a motor vehicle accident occurring on October 13, 2012.

DATED: Buffalo, New York
November 29, 2012

GIBSON, McASKILL & CROSBY, LLP

By: _____
Robert Scott, Esq.
Attorneys for Petitioner
ADAM FRANZ
69 Delaware Avenue, Suite 900
Buffalo, New York 14202
Telephone: (716) 856-4200

TO: William Trask, Esq.
Attorneys for Respondent
TOWN OF EDEN
2795 E. Church Street
Eden, New York 14057
Telephone: (716) 992-3406

TO: Richard M. Schaus, Esq.
Attorneys for Respondent
TOWN OF NORTH COLLINS
10543 Main Street
PO BOX 51
North Collins, New York 14111-0051
Telephone: (716) 337-3712

TO: Erie County Attorney
Attorney for Respondent
COUNTY OF ERIE
Office and Post Office Address
95 Franklin Street, Room 1634
Buffalo, New York 14202
Telephone: (716) 853-9555

TO: New York State Attorney
Attorney for Respondent
STATE OF NEW YORK
120 Broadway Avenue
New York, New York 12071
Telephone: (212) 416-8000

TO: INSURANCE AUTO AUCTION
Insurance Auto Auction
366 Vulcan Street
Buffalo, New York 14207
Telephone: (716) 874-9890

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

ADAM FRANZ,

Petitioners,

vs.

TOWN OF EDEN,
TOWN OF NORTH COLLINS,
COUNTY OF ERIE,
STATE OF NEW YORK and
INSURANCE AUTO AUCTION.

Respondents.

ATTORNEY AFFIRMATION IN SUPPORT OF DISCLOSURE PRIOR TO COMMENCEMENT OF ACTION

Index No.: I2012-3916

Oral Argument is Requested

Robert. E. Scott, Esq., being duly sworn, deposes and states that:

1. I am an attorney at law to practice in the State of New York and am a member of the law firm of Gibson, McAskill & Crosby, LLP, attorneys for the petitioner, ADAM FRANZ (hereinafter "petitioner"), in this action, and in such capacity am familiar with the facts and circumstances therein.

2. I make this Affirmation in support of Petitioner's application for an order pursuant to CPLR § 3102(c), directing respondents, TOWN OF EDEN, TOWN OF NORTH COLLINS, COUNTY OF ERIE, STATE OF NEW YORK and INSURANCE AUTO AUCTION (hereinafter "respondents") to a complete copy of all records referenced in this Affirmation, before commencement of an action for negligence, as well as to preserve the motor vehicle at issue (1998 4DSD Toyota; NYS License Plate: GBU6435) in this matter together with such other and further relief as the Court may deem just and proper.

3. This action arises out of a motor vehicle accident occurring at approximately 6:33

p.m. on Saturday, October 13, 2012 on Belcher Road approximately one (1) mile east of New Oregon Road, in the Town of North Collins or the Town of Eden, County of Erie and State of New York. (See **Exhibit A** for a copy of the police accident report).

4. At the time, and upon information and belief, a particular 1998 4DSD Toyota motor vehicle bearing NYS License Plate: GBU6435 was being operated by Kelsey M. Mueller (Date of Birth: March 20, 1992; NYS Driver's License Number: 516794694). The vehicle was owned by Ontario Sales, Inc., who maintains an office located at 6093 S. Transit Road in the Town of Lockport, New York 14094.

5. Upon information and belief, Ms. Mueller purchased this particular vehicle from Ontario Sales, Inc., a used car dealer, within a few short hours of the accident. Our preliminary investigation into this particular automobile indicates that it had previously been involved in a motor vehicle accident. To that end, we have some concerns as to whether the vehicle was properly certified for operation on the roadway and whether it had passed all relevant NYS inspections.

6. Petitioner, ADAM FRANZ, was aboard the vehicle when its operator, Kelsey M. Mueller, lost control of the vehicle resulting in significant personal injuries sustained by the petitioner.

7. Upon information and belief, Ms. Mueller lost control of the vehicle, in part, due to the absence of any speed limit signs and/or street signs warning of the elevation grade and curvature on Belcher Road leading up to the accident.

8. Upon information and belief, respondents TOWN OF EDEN, TOWN OF NORTH COLLINS, COUNTY OF ERIE and STATE OF NEW YORK owned, maintained or otherwise controlled the roadway, including the implementation of various signage, leading up to

the accident.

9. I am in the process of evaluating whether good and meritorious causes of action based in negligence exists against Kelsey M. Mueller (based on her operation of the vehicle), Ontario Sales, Inc. (based on their ownership of the vehicle, as well as respondents TOWN OF EDEN, TOWN OF NORTH COLLINS, COUNTY OF ERIE and STATE OF NEW YORK based on their control and ownership of this particular stretch of roadway. However, before we commence the suit against the respondents who allegedly controlled and owned this particular stretch of roadway, it is essential that I obtain and analyze certain pre-accident records for discovery, inspection and photocopying.

10. The records I request would include, but not be limited to, the following:

- Copies of any and all police accident reports and fire / rescue incident reports referencing any motor vehicle accidents occurring on Belcher Road between the intersections of New Oregon Road and Boston Road located in the Town of North Collins or the Town of Eden, County of Erie, State of New York for a period of ten (10) years prior to the subject October 13, 2012 motor vehicle accident.

- Copies of any and all documentation referencing the installation of all street signs of any kind advising motorists of speed limits; elevation, grade and curvature of the roadway, including stop signs and bus stop signs, appearing on Belcher Road between the intersections of New Oregon Road and Boston Road located in the Town of North Collins or the Town of Eden, County of Erie, State of New York for a period of ten (10) years prior to the subject October 13, 2012 motor vehicle accident.

- Copies of any written notices delivered to the agents, employees and/or representatives of the respondents, TOWN OF EDEN, TOWN OF NORTH COLLINS, COUNTY OF ERIE and STATE OF NEW YORK, with respect to any alleged defects pertaining to the speed limits, road conditions, road markings and maintenance on Belcher Road between the intersections of New Oregon Road and Boston Road located in the Town of North Collins or the Town of Eden, County of Erie, State of New York for a period of ten (10) years prior to the subject October 13, 2012 motor vehicle accident.

- Copies of any contracts and/or agreements maintained by the respondents, TOWN OF EDEN, TOWN OF NORTH COLLINS, COUNTY OF ERIE and STATE OF NEW YORK, with respect to their duties in maintaining the speed limits, road conditions

and maintenance on Belcher Road between the intersections of New Oregon Road and Boston Road located in the Town of North Collins or the Town of Eden, County of Erie, State of New York for a period of ten (10) years prior to the subject October 13, 2012 motor vehicle accident.

- Copies of any inspection reports, field study testing results or maintenance records together with any corresponding e-mails, notes, memorandum or other writings prepared by agents, employees and/or representatives of the respondents, TOWN OF EDEN, TOWN OF NORTH COLLINS, COUNTY OF ERIE and STATE OF NEW YORK, with respect to their duties in maintaining the speed limits, road conditions and maintenance on Belcher Road between the intersections of New Oregon Road and Boston Road located in the Town of North Collins or the Town of Eden, County of Erie, State of New York for a period of ten (10) years prior to the subject October 13, 2012 motor vehicle accident.

11. Following this accident, we learned that the aforementioned vehicle (1998 4DSD Toyota motor vehicle bearing NYS License Plate: GBU6435) was totaled and was taken to respondent INSURANCE AUTO AUCTION's facility for further handling. Their facility is located at 366 Vulcan Street in the City of Buffalo, New York 14207.

12. Upon learning this information, your Deponent's office immediately notified respondent INSURANCE AUTO AUCTION not to destroy, alter or modify the above-referenced automobile as it may be implicated in a potential law suit against Ontario Sales, Inc. (See **Exhibit B** for a copy of the October 19, 2012 letter we forwarded to Insurance Auto Auction asking that the automobile be preserved.)

13. In addition to the foregoing records from the various municipalities, I would request a directive from this Court ordering that the aforementioned vehicle not be to destroyed, altered or modified in anyway pending the outcome of our investigation including an inspection of said vehicle.

14. I believe that petitioners have good and meritorious causes of action against the various respondents as set forth above.

15. No previous application for the relief sought herein has been made.

WHEREFORE, it is respectfully requested that an Order be made and entered directing that respondents TOWN OF EDEN, TOWN OF NORTH COLLINS, COUNTY OF ERIE and STATE OF NEW YORK, furnish your Deponent with a full and complete set of records as set forth in paragraph 10. It is also respectfully requested that an Order be made and entered directing that respondent INSURANCE AUTO AUCTION not to destroy, alter or modify the above-referenced automobile as it may be implicated in a potential law suit against Ontario Sales, Inc.

DATED: Buffalo, New York
November 29, 2012

GIBSON, McASKILL & CROSBY, LLP

By: _____
Robert Scott, Esq.
Attorneys for Petitioner
ADAM FRANZ
69 Delaware Avenue, Suite 900
Buffalo, New York 14202
Telephone: (716) 856-4200

TO: William Trask, Esq.
Attorneys for Respondent
TOWN OF EDEN
2795 E. Church Street
Eden, New York 14057
Telephone: (716) 992-3406

TO: Richard M. Schaus, Esq.
Attorneys for Respondent
TOWN OF NORTH COLLINS
10543 Main Street
PO BOX 51
North Collins, New York 14111-0051
Telephone: (716) 337-3712

TO: Erie County Attorney
Attorney for Respondent
COUNTY OF ERIE
Office and Post Office Address
95 Franklin Street, Room 1634
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Telephone: (716) 853-9555

TO: New York State Attorney
Attorney for Respondent
STATE OF NEW YORK
120 Broadway Avenue
New York, New York 12071
Telephone: (212) 416-8000

TO: INSURANCE AUTO AUCTION
Insurance Auto Auction
366 Vulcan Street
Buffalo, New York 14207
Telephone: (716) 874-9890