

STATE OF NEW YORK

JOSEPH ROBINSON



Claimant,

-vs-

NOTICE OF CLAIM

ORCHARD PARK LAND COMPANY, LLC
1080 PITTSFORD VICTOR ROAD, SUITE 202
PITTSFORD, NY, UNITED STATES, 14534

TEAM PRO 3707 SOUTHWESTERN BLVD, LLC
3707 SOUTHWESTERN BOULEVARD
ORCHARD PARK, NY, UNITED STATES, 14127

TOWN OF ORCHARD PARK
4295 South Buffalo Street
Orchard Park, NY 14127

VILLAGE OF ORCHARD PARK
4295 S. Buffalo Street
Municipal Building – 1st Floor
Orchard Park, NY 14127

ERIE COUNTY WATER AUTHORITY
295 Main Street
Room 350
Buffalo, NY 14203

COUNTY OF ERIE
C/O Erie County Department of Law
95 Franklin Street, Room 1634
Buffalo, NY 14202

ERIE COUNTY SEWER AUTHORITY
A DIVISION OF THE COUNTY OF ERIE
C/O Erie County Department of Law
95 Franklin Street, Room 1634
Buffalo, NY 14202

**ERIE COUNTY DIVISION OF SEWERAGE MANAGEMENT
A DIVISION OF THE COUNTY OF ERIE**

C/O Erie County Department of Law
95 Franklin Street, Room 1634
Buffalo, NY 14202

**ERIE COUNTY SEWER DISTRICT NO. 3
A DIVISION OF THE COUNTY OF ERIE**

C/O Erie County Department of Law
95 Franklin Street, Room 1634
Buffalo, NY 14202

ERIE COUNTY DEPARTMENT OF PUBLIC WORKS

C/O Erie County Department of Law
95 Franklin Street, Room 1634
Buffalo, NY 14202

Respondents.

TO: ORCHARD PARK LAND COMPANY, LLC
1080 PITTSFORD VICTOR ROAD, SUITE 202
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1. The name and address of **Claimant** is:

JOSEPH ROBINSON



2. The **Claimant** is represented herein by:

Shaw & Shaw, P.C.
Blake Zaccagnino, Esq., of counsel
4819 South Park Avenue
Hamburg, NY 14075

LEGAL THEORY/CAUSE OF ACTION CLAIMED:

3. This is a claim founded in negligence, and is for personal injuries.

4. This is a claim for money damages for personal injuries sustained by the Claimant, when he was caused to fall on the property and premises and, more specifically, on the shoulder of the roadway at or near a storm/sanitary sewer/drain on Taylor Road in Orchard Park, adjacent to/abutting 3707 Southwestern Blvd, Orchard Park, NY 14127 and/or 3801 Taylor Rd, Orchard Park, NY 14127.

Upon information and belief, that property was under the possession, control and ownership of the Respondents.

Upon further information and belief, the Respondents caused and created a dangerous condition, that they had actual and constructive notice of, and failed to take corrective action prior to this incident, resulting in the accident and the Claimant's serious injuries.

TIME AND LOCATION AND MANNER IN WHICH THE CLAIM AROSE:

5. The time when the claim arose and the time when injuries and damages herein alleged were sustained was on or about November 14, 2023 at approximately 12:17AM.

NATURE AND BASIS FOR THIS CLAIM:

6. Attached as **Exhibit A**, please find a real property parcel search and deed of the adjacent/abutting properties mentioned above where the incident took place.

Same indicates that **ORCHARD PARK LAND COMPANY, LLC** and **TEAM PRO 3707 SOUTHWESTERN BLVD, LLC** owns those properties.

Attached as **Exhibit B**, please find a map indicating that Taylor Road where this incident took place is owned by the **COUNTY OF ERIE**.

7. As the Claimant walked on the shoulder of the roadway in the location mentioned above, he was caused to trip and fall over a dangerous condition on the shoulder of the

roadway at or near a storm/sanitary sewer/drain.

More specifically, the walking surface at the location of his fall was not level, not even, was cracked, had dangerous holes and cracks in it, was improperly lit, and was poorly maintained, causing and creating a dangerous condition of which they had actual and constructive notice of.

When he fell, he came into contact with the ground, seriously injuring himself.

Attached as **Exhibit C**, please find google images of the dangerous conditions that caused the Claimant's fall.

Attached as **Exhibit D**, please find close up images of the dangerous conditions that caused the Claimant's fall.

LEGAL THEORY/CAUSE OF ACTION CLAIMED:

8. The above mentioned incident and the injuries and damages occurring therefrom occurred by reason of the fault, neglect, and carelessness of the Respondents, their agents, servants, and/or employees. The negligence of the Respondents, their agents, servants and/or employees includes but is not limited to:

The Respondents' negligence included but was not limited to the following:

- Failure to properly, adequately, and safely maintain the aforesaid premises;

- In failing to repair, keep safe, and maintain the area where the incident took place;

- Failure to properly and adequately supervise and control the area

where the Claimant fell on the date of the incident;

- Carelessly and negligently designing the area on said premises where the incident occurred;
- Failure to take the necessary steps to correct un-level walking surfaces, un-even walking surfaces, shoulders of roadways, including but not limited to roadways with holes and cracks in them;
- Failure to give attention to walking surfaces that were not level, not even, were cracked, and had dangerous holes in it, and that were poorly maintained;
- Failure to take the necessary steps and make the necessary observations, which, if taken or made, would have avoided the said incident;
- Failing to act reasonable under the circumstances;
- Failing to take precautionary measures to the protect the Claimant from the incident after weighing the probability and gravity of the harm against the burden of precaution;
- Failing to take precautionary measures to the protect the Claimant

from the incident when they had ownership, occupancy, control, and or special use of the property on the date of the fall;

- The Respondents' negligence was the proximate cause of the Claimant's fall and serious injuries;
- The Respondents' negligence was a substantial factor in bringing about the Claimant's injuries in that a reasonable person would regard it as a cause of his injuries;
- They failed in their duty to use reasonable care to keep their property in a reasonably safe condition for the protection of the Claimant whose presence was reasonably foreseeable on the date of the fall;
- The Respondents created the condition that caused the Claimant 's fall; and had actual and constructive notice of it;
- The Respondents either knew, or in the use of reasonable care, should have known that the condition that caused the Claimant's fall long enough before the fall to have allowed them, in the use of reasonable care to correct it or to take other suitable precautions, but they failed to do so;
- The Respondents failed to warn the Claimant about the dangerous

condition before her fall;

- in having prior written notice of the dangerous sidewalk conditions shown herein, and in failing to timely fix/repair it (pursuant to, Town Law Section 65-a; Highway Law § 139(2); Local Law No. 3-2004)
- in prior negligent maintenance/repair of the conditions where this incident took place, immediately resulting in the dangerous conditions described herein;
- in affirmatively creating the dangerous conditions described herein through an act of negligence;
- in having special use of location where this incident took place, and the location of the incident, that resulted in a special benefit to the Respondents;
- causing/allowing the dangerous condition to have jagged edges, a rough irregular surface, poor lighting, to have the presence of other defects in the vicinity, to be irregular, the dangerous condition was located in an area where people are naturally distracted from looking down at their feet, and the surrounding circumstances and dangerous condition increased the risk of people, such as the Claimant, falling;

- in failing to warn of the dangerous conditions described herein;
- causing/allowing the intrinsic characteristics of area in question to be such that it was difficult for pedestrians to see and identify and to traverse safely on foot;
- the Respondents had constructive notice of the defect;
- such defective conditions described herein existed for so long a period that the same should have been discovered and remedied in the exercise of reasonable care and diligence, but they were negligent in not doing so;
- the defect mentioned above in the highway under the care of Respondents, and the defective, unsafe, dangerous and or obstructed conditions existed for so long a period that the same should have been discovered and remedied in the exercise of reasonable care and diligence, but they negligently failed to do so;
- in violating Highway Law § 139(1);
- the Respondents were negligent in allowing the dangerous conditions to exist when, in the exercise of reasonable care, it could and should

have had knowledge of the condition;

- in affirmatively creating said condition by failing and omitting to properly construct and/or repair the area of the incident;
- in permitting the area of the incident to remain in such a hazardous and dangerous condition;
- in failing and omitting to reasonably anticipate that persons traversing the area could sustain physical injury by reason of the hazardous condition;
- in failing and omitting to use reasonable and prudent care to keep the said area in safe condition;
- in failing and omitting to use proper maintenance and care of the area where the incident took place at the aforesaid premises and in failing and omitting to avoid the incident, which in the exercise of reasonable care, could and should have been avoided;
- that the Respondents, its agents, servants and/or employees were otherwise careless and negligent.

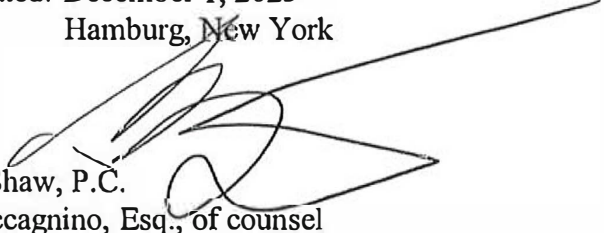
DAMAGES CLAIMED:

9. By reason of the aforesaid occurrence, the Claimant sustained severe, painful and permanent injuries in and about his body, including, but not limited to, **a right anterior shoulder dislocation with greater tuberosity fracture requiring surgery**, all of which were and are severe, painful and permanent in nature including, shock to the nerves and nervous system, circulatory system, traumatic injuries to nerves, tendons and muscular system with resultant impairment and/or loss of use of normal functions; was otherwise rendered sick, sore, lame and disabled and prevented him from performing his usual activities for a period of time subsequent to this incident, and has incurred, and may suffer and sustain loss of earnings and/or loss of future earning potential and/or capacity; has caused, or may incur, hospital expenses, medical expenses, physical therapy and/or rehabilitation and counseling expenses and/or other similar types of expenses as to past, present or future, as would relate to the care, treatment and attempted cure of the injuries sustained and/or the residual effects thereof; has been deprived of the ability to enjoy the life and lifestyle that he was able to participate in and enjoy prior to the happening of this incident, and has been caused to suffer emotional upset, anxiety and depression as a result of the pain and suffering associated with the injuries as to the past, present and, upon information and belief, into the future; and together with any other special and general damages as may manifest themselves subsequent to the date of this Notice of Claim.

10. The Claimant also makes a claim for any and all medical expenses incurred as to his care, treatment and attempted cure of the injuries sustain and/or the residual effects of the same herein as to the past, present, and or future.

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

Dated: December 1, 2023
Hamburg, New York

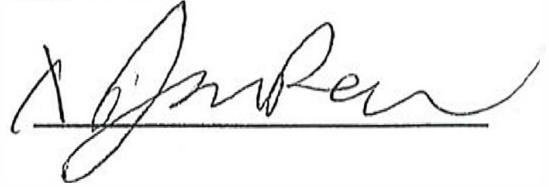


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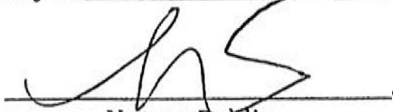
VERIFICATION

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

JOSEPH ROBINSON being duly sworn, deposes and says that (he)(she) is the Plaintiff/Claimant in the within action; that (he)(she) has read the foregoing and knows the contents thereof; that the same is true to (his) (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.



Sworn to before me this 28
day of NOVEMBER 2023



Notary Public

BLAKE J ZACCAGNINO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02ZA6336306
Qualified in Erie County
Commission Expires February 1, 2024