

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

RECEIVED
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135pm
BY: ASW

Dustin Smith

NOTICE OF CLAIM

Claimant,

v.

Erie County Water Authority

Respondent.

PLEASE TAKE NOTICE that the Claimant, Dustin Smith, hereby makes a claim and demand against the Erie County Water Authority as follows:

1. Dustin Smith (hereinafter "Claimant") resides at [REDACTED] Holland, New York 14080.
2. The attorneys for the Claimant is Dolce Firm with offices located at 1260 Delaware Avenue, Buffalo, New York 14209, Telephone: (716) 852-1888.
3. The present claim arose out of an incident that occurred on or about September 1, 2021 at approximately 9 a.m.
4. On the above-referenced date and time, the Claimant was injured in the course of his employment as a laborer with Fourth Generation Construction on a water main construction project taking place on Broadway near Calumet Steet in Depew, New York. Specifically, the Claimant was ascending a ladder to exit a trench when the ladder was caused to shift and/or roll to the side. As a result, the Claimant's body was caused to twist and his foot was caused to slip

off the ladder rung on which it was positioned. The Claimant felt immediate pain in his lower back.

5. The trench from which the Claimant was ascending was approximately 5 feet deep. The bottom of the trench was wet and muddy such that there was not a level, flat or otherwise stable surface on which the ladder could be footed. The top edge of the trench against which the ladder was leaning was not flat and level and, as such, there also was not a stable surface against which the top of the ladder could be positioned. The ladder that the Claimant was ascending was an 8-foot trench ladder. Upon information and belief, the ladder was deformed and had wear and tear and/ or cracking in its frame.

6. Upon information and belief, Respondent Erie County Water Authority was the owner of the above-described water main construction project and was the owner and operator of the water main utility system that the Claimant was working to construct.

7. The Claimant alleges that pursuant to the common law and the provisions of Labor Law §§ 200, 240(1) and 241(6), Respondent had a non-delegable duty to provide the Claimant with a safe place to work; to ensure that the work area was constructed, placed and operated as to give proper protection to a person so employed, namely the Claimant; to ensure that the Claimant had all of the protections required by the New York State Industrial Code including but not limited to §§23-1.5(c)(3); 23-1.7(d); 23-1.21(b)(1)&(3); 23-1.21(b)(4)(i),(ii), (iii), (iv) &(v); 23-4.2; and 23-4; to ensure that the Claimant had the proper device for ascending from the trench and that the device provided for that purpose was properly constructed, placed and operated; ensure that the ladder was constructed, placed and operated in accordance with the Labor Law statutes and Industrial Code; to ensure that the conditions within the trench were

reasonably safe for the work; to ensure that the equipment provided was in proper working order and to remove and defective equipment; to ensure that the Claimant had slip resistant footing; and to otherwise ensure that the Claimant had proper protections to carry out the work that was assigned to him.

8. The Claimant alleges the Respondent breached their statutory and common law duties by failing to provide Claimant with a safe place to work; failing to ensure that the work area was constructed, placed and operated as to give proper protection to a person so employed, namely the Claimant; failing to ensure that the Claimant had all of the protections required by the New York State Industrial Code including but not limited §§23-1.5(c)(3); 23-1.7(d); 23-1.21(b)(1)&(3); 23-1.21(b)(4)(i),(ii), (iii), (iv) &(v); 23-4.2; and 23-4; failing to ensure that the Claimant had the proper device for ascending from the trench and that the device provided for that purpose was properly constructed, placed and operated; failing to ensure that the ladder was constructed, placed and operated in accordance with the Labor Law statutes and Industrial Code; failing to ensure that the conditions within the trench were reasonably safe for the work; failing to ensure that the equipment provided was in proper working order and to remove any defective equipment; failing to ensure that the Claimant had slip resistant footing; failing to ensure that the Claimant had proper protections to carry out the work that was assigned to him; and was otherwise negligent, careless, and/or reckless.

9. The Claimant alleges that as a direct result of the above-described incident, the violations of the applicable statutes, regulations, codes and standards, and as a result of the negligence, carelessness and/or recklessness of the Respondent, it officers, agents, employees, and/or servants, the Claimant was caused to sustain serious bodily injuries, including but not

limited to injuries to his lumbar spine. Upon information and belief, the plaintiff's lumbar spine injuries include a disc herniation at L4-L5, among others. The plaintiff reserves the right to make claim for any and all further injuries that may manifest as a direct result of the above-described incident, as well as for any consequential injuries that he may sustain.

10. The Claimant has received medical care and treatment at Horvath Chiropractic and Ken-Ton Open MRI. The Claimant has been referred to spinal surgeon for consultation and further evaluation. The Claimant's injuries are on-going and progressive in nature and as such, the Claimant anticipates the need for on-going medical treatment into the future. He is making a claim for past and future medical expenses damages.

11. The Claimant is a laborer with Union Local 210, assigned to work for Fourth Generation Construction. He earns approximately \$40 hour in wages and an additional \$26 per hour in fringe benefits. The Claimant has not yet missed time from work but has been having difficulty performing many of the tasks associated with his job as a laborer. As such, it is reasonable to anticipate that the Claimant could miss time from work as a result of his causally related injuries in the future. The Claimant is reserving the right to make a claim for lost wage damages and/or a reduction in work life expectancy.

12. The Claimant is further making a claim for past, present and future pain and suffering.

13. The Claimant hereby files a claim for damages for serious and permanent personal injuries, economic loss, conscious pain and suffering, medical expenses, and changes in his lifestyle, all of which were caused by the statutory violations and negligence, carelessness, and recklessness of these Respondent, its officers, agents, employees, and/or servants.

14. As a result of the foregoing, the Claimant demands money damages from these Respondent for injuries sustained in the incident of September 1, 2021, which amount shall be supplemented at a later date consistent with the nature, extent, treatment, duration and/or permanency of the injuries sustained.

15. This claim and demand is hereby presented for adjustment and payment.

WHEREFORE, the Claimant, Dustin Smith, respectfully demands that this claim be adjusted and paid by the Respondents, the Erie County Water Authority, and further sets forth his intent to commence an action thereon if said claim is not adjusted and paid.

Dated: Buffalo, New York
November 1, 2021



Anne M. Wheeler, Esq.
DOLCE FIRM
Attorneys for Claimant
1260 Delaware Avenue
Buffalo, New York 14209
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VERIFICATION

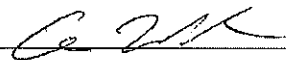
STATE OF NEW YORK)

COUNTY OF ERIE) ss:

Dustin Smith, being duly sworn, deposes and says that deponent is a Claimant in the within action; that deponent has read the foregoing Notice of Claim and know the contents thereof; 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 matters, deponent believes to be true.


Dustin Smith

Sworn to before me this 1
day of ~~October~~ 2021
November



Notary Public

Anne Marie Wheeler
Notary Public, State of New York
Qualified in Erie County
My Commission Expires on February 6, 2024