

STATE OF NEW YORK

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NICOLE CURCIO  
71 Hagen Avenue  
North Tonawanda, NY 14120

Claimant,

-vs-

ERIE COUNTY WATER AUTH  
20 SEP 23 PM 12:28

NOTICE OF CLAIM

ERIE COUNTY AGRICULTURAL SOCIETY  
5600 McKinley Parkway  
Hamburg, NY 14075

BUFFALO TROTting ASSOCIATION, INC.  
5600 McKinley Parkway  
Hamburg, NY 14075

STRATES SHOWS INC.  
P.O. Box 174  
Orlando, Florida 32802

SPORTSYSTEMS GAMING MANAGEMENT AT BUFFALO RACEWAY, LLC  
c/o Cogency Global, Inc.  
122 East 42<sup>nd</sup> Street, 18<sup>th</sup> Floor  
New York, NY 10168

J. POTILLO ENTERPRISE, INC.  
26313 Yalaha Road  
Yalaha, Florida 34797

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

COUNTY OF ERIE  
95 Franklin Street, Room 1634  
Buffalo, NY 14202

ERIE COUNTY SEWER AUTHORITY  
A DIVISION OF THE COUNTY OF ERIE  
95 Franklin Street, Room 1634  
Buffalo, NY 14202

ERIE COUNTY DIVISION OF SEWERAGE MANAGEMENT  
A DIVISION OF THE COUNTY OF ERIE  
95 Franklin Street, Room 1634  
Buffalo, NY 14202

ERIE COUNTY SEWER DISTRICT NO. 2 and 3  
A DIVISION OF THE COUNTY OF ERIE  
95 Franklin Street, Room 1634  
Buffalo, NY 14202

Respondents.

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TO:

ERIE COUNTY AGRICULTURAL SOCIETY  
5600 McKinley Parkway  
Hamburg, NY 14075

BUFFALO TROTTING ASSOCIATION, INC.  
5600 McKinley Parkway  
Hamburg, NY 14075

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ERIE COUNTY SEWER DISTRICT NO. 2 and 3  
A DIVISION OF THE COUNTY OF ERIE  
95 Franklin Street, Room 1634  
Buffalo, NY 14202

1. The name and address of **Claimant** is:

NICOLE CURCIO



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 she was caused to fall on the property and premises and, more specifically, at the Erie County Fairgrounds (5600 McKinley Parkway Hamburg, NY 14075), at or near the walkway from 42<sup>nd</sup> Street to the Event Center near the Wings Display.

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 August 10, 2023 at approximately 2:36PM.

**NATURE AND BASIS FOR THIS CLAIM:**

6. Attached as **Exhibit A**, please find a real property parcel search and deed of the property where the incident took place.

7. As the Claimant was walking in the location mentioned above, she was caused to trip and fall over a dangerous condition.

More specifically, she was walking in the walkway from 42<sup>nd</sup> Street to the Event Center, when she stepped into a depression in the pavement and fell to the ground causing serious injuries.

Upon information and belief, said depression in the pavement was approximately 3 or more inches deep. The Respondents did not place a warning sign located near the dangerous condition.

Upon information and belief, the depression in the ground was a drainage cover, and or was caused and created by a drainage cover and/or the Respondents' failure to maintain said location in a safe condition.

Attached as **Exhibit B**, please find an incident report documenting this incident.

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

The first two photos show what the dangerous condition looked like on the day and time of the Claimant's fall.

The third photo is a photo of what the dangerous condition looked like after the incident, when, upon information and belief, the Respondents spray painted it yellow.

The fourth through sixth photos show the general location of where the dangerous condition is located and where the incident took place.

**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 location 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 the dangerous conditions located therein;
- Failure to give attention to uneven and unlevel walking surfaces and dangerous depressions on the walking surfaces located therein;
- 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 her 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 conditions shown herein, and in failing to timely fix/repair it;
- in prior negligent maintenance/repair of the location where this incident took place, causing and creating a dangerous condition;
- in affirmatively creating the dangerous conditions described herein through an act of negligence;
- 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 sidewalk in question to be such that it was difficult for pedestrians to see and identify and to traverse safely on foot; including but not limited to,

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 her body, including, but not limited to, left ankle sprain, left ankle fracture, abrasions on her right hand, cuts on her right palm, cuts on her right forearm, bruises and cuts on her right knee, right breast bruise, right cheek bone bruise, including but not limited to a head injury, 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 her from performing her 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 she 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. Attached as **Exhibit D**, please find photos of some of the Claimant's injuries.

10. The Claimant also makes a claim for any and all medical expenses incurred as to her 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: September 5, 2023  
Hamburg, New York

Shaw & Shaw, P.C.  
Blake Zaccagnino, Esq., of counsel  
Attorneys for Claimant  
Office and Post Office Address  
4819 South Park Avenue  
Hamburg, New York 14075  
(716) 648-3020 Telephone  
(716) 648-3730 Fax  
[www.shawlawpc.com](http://www.shawlawpc.com)

VERIFICATION

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

NICOLE CULIO 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.

X Nicole Culio

Sworn to before me this 5  
day of SEPTEMBER, 2023

[Signature]  
Notary Public

BLAKE J ZACCAGNINO  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02ZA6336300  
Qualified in Erie County  
Commission Expires February 1, 2024



# EXHIBIT A

# This Indenture,

Made the 30<sup>th</sup> day of

Between May Nineteen Hundred and Seventy-nine  
Aloysius E. Armbruster, Survivor of Cecelia A. Armbruster,

of 238 Clark St., Hamburg, New York - 14075

party of the first part, and

Erie County Agricultural Society

of 5600 McKinley Parkway, Hamburg, New York - 14075

Witnesseth, that the party of the first part, in consideration of

One and more Dollars (\$1 & more)  
lawful money of the United States,

paid by the party of the second part, does hereby grant and release to the party of the second part, its successors & assigns forever,

All that Tract or Parcel of Land, situate in the Town of Hamburg, County of Erie and State of New York, being part of Lot No. 52, Township 9, Range 7 of the Holland Land Company's Survey, described as follows:-

BEGINNING at a point in the center line of Clark Street distant 176.22 feet southwesterly from the point of intersection of said center line of Clark Street with the north line of said Lot No. 51, Township 9, Range 7, as measured along the center line of said Clark Street said point being also the southeast corner of lands conveyed to Margaret Armbruster by deed recorded in Erie County Clerk's Office in Liber 2973 of Deeds page 497; thence northwesterly along the northeast line of lands so conveyed to Margaret Armbruster by aforesaid deed 168.3 feet to a point; thence northerly along said east line of lands so conveyed to Margaret Armbruster by aforesaid deed 240.37 feet to the principal point of beginning; thence westerly at an interior angle of 87° 15', 273.89 feet to the northeast line of lands conveyed to the Erie County Agricultural Society by deed recorded in Erie County Clerk's Office in Liber 7793 of Deeds page 185; thence northwesterly along the northeast line of lands so conveyed to the Erie County Agricultural Society by aforesaid deed about 100 feet to the east line of lands so conveyed to aforesaid society by deed recorded in Erie County Clerk's Office in Liber 7793 of Deeds page 176; thence northerly along the east line of lands so conveyed to aforesaid society by last aforesaid deed 319.76 feet to the south line of lands conveyed to aforesaid society by deed recorded in Erie County Clerk's Office in Liber 7644 of Deeds page 563; thence easterly along the south line of lands so conveyed to aforesaid society by last aforesaid deed and along the south line of lands conveyed to the aforesaid society by deed recorded in Erie County Clerk's Office in Liber 7644 of Deeds page 561, 328.22 feet to the east line of lands conveyed to Margaret Armbruster by deed recorded in Erie County Clerk's Office in Liber 2973 of Deeds page 497; thence southerly along the east line of lands so conveyed to Margaret Armbruster by last aforesaid deed 405.20 feet to the principal point of beginning.

That Aloysius E. Armbruster, party of the first part, is the survivor of his wife, Cecelia A. Armbruster, deceased.

That the above described premises are being conveyed for a full dollar value consideration paid by the party of the second part to the party of the first part.

Act of May 10 230 - 392 - Auto Co  
Lt. of May 28 77 - 355 - Deeds Co

RECEIVED  
\$ 1.00  
REAL ESTATE  
JUN 6 1979  
TRANSFER TAX  
ERIE  
COUNTY

Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold, the above granted premises unto the said party of the second part, its successors and assigns forever.

And said Aloysius E. Armbruster, Survivor of Cecelia A. Armbruster, covenant as follows:

First, that the party of the second part shall quietly enjoy the said premises;

Second, Aloysius E. Armbruster, Survivor of Cecelia A. Armbruster, that said will forever Warrant the title to said premises.

Third, that this conveyance is subject to the trust fund provisions of section thirteen of the lien law.

In Witness Whereof, the party of the first part has hereunto set his hand(s) and seal(s) the day and year first above written.

In Presence of

*Aloysius E. Armbruster*  
\_\_\_\_\_ lb  
\_\_\_\_\_ lb  
\_\_\_\_\_ lb

State of New York } ss.  
County of Erie

On this 30<sup>th</sup> day of May, Nineteen Hundred and Seventy-nine before me, the subscriber, personally appeared

Aloysius E. Armbruster, Survivor of Cecelia A. Armbruster, to me personally known and known to me to be the same person(s) described in and who executed the within Instrument, and he (she/they) acknowledged to me that he (she/they) executed the same.

*[Signature]*  
FRANCIS A. McGRATH, JR.  
Notary Public, State of New York  
Qualified in Erie County  
My Commission expires Mar. 30, 1981

State of New York } ss.  
County of Erie

On this \_\_\_\_\_ day of \_\_\_\_\_, Nineteen Hundred and \_\_\_\_\_ before me, the subscriber, personally appeared

to me personally known and known to me to be the same person(s) described in and who executed the within Instrument, and he (she) (they) acknowledged to me that he (she) (they) executed the same.

Box #9

**APD**  
Warranty with Lien Covenant  
(Individual)

JUN 5 2 00 PM '79

FILED  
Aloysius E. Armbruster  
Survivor of  
Cecelia A. Armbruster or CLERK'S OFFICE

10 137  
Erie County Agricultural Society

LIBER 8792 PAGE 224

Dated May 30<sup>th</sup>, 1979.  
STATE OF NEW YORK  
ERIE COUNTY CLERK'S OFFICE  
Recorded in Liber 8792 Page 223  
of \_\_\_\_\_  
on the 5<sup>th</sup> day of \_\_\_\_\_  
A. D., 1979, at 2:00 o'clock P. M.  
and examined.  
*[Signature]*  
County Clerk

THIS SPACE FOR CLERK'S TIME STAMP  
(Do not write in this space.)

17003

# Real Property Information

<b>Parcel Status</b>	ACTIVE	<b>City\Town</b>	Hamburg	<b>Village</b>	
<b>S-B-L</b>	183.10-1-8	<b>Owner</b>	ERIE COUNTY AGRICULT		
<b>Property Location</b>	5600 MCKINLEY PKWY	<b>Mailing Address</b>			
<b>Property Class</b>	531 FAIRGROUND	<b>Line 2</b>			
<b>Assessment</b>	\$28,027,000.00	<b>Line 3</b>			
<b>Taxable</b>	\$0.00	<b>Street</b>	5600 MCKINLEY PKWY		
<b>Desc</b>		<b>City/State</b>	HAMBURG NY		
<b>Desc</b>		<b>Zip</b>	14075	<b>SWIS</b>	144889
<b>Deed Book</b>	00414	<b>Deed Page</b>	00314		
<b>Frontage</b>	2940.00	<b>Depth</b>	0.00	<b>Acres</b>	215.22
<b>Year Built</b>		<b>Square Ft</b>			
<b>Beds</b>		<b>Baths</b>			
<b>FirePlace</b>		<b>School</b>	HAMBURG CENTRAL SCHO		

[Owner History](#)

[Tax Payment History](#)

[Google Maps](#)



# EXHIBIT B

**Erie County Fair**  
**INCIDENT REPORT**

Incident No: 23-11

Date: 8/10/2023

First Aid No: 9

Complainant: CURCIO, NICOLE

(Name)

6/4/1988

(Date of Birth(DOB))

Address: \_\_\_\_\_

(Address, City, State, Zip Code)

\_\_\_\_\_  
(Address Cont.)

\_\_\_\_\_  
(Phone Number)

Type of Incident: Accident - Fall

(Accident, Animal, Criminal, Fire, Disturbance, First Aid, Larceny, Safety, Trespassing, Vehicle, etc.)

Location of Incident: Walkway from 42nd Street to the Event Center near Wings Display

(Describe using fixed objects; utility pole numbers, etc.)

Date of Incident: 8/10/2023

Time of Incident: \_\_\_\_\_ A.M.

2:36 P.M.

**PERSONS INVOLVED**

1. Name: CURCIO, NICOLE

DOB: 6/4/1988

Address: \_\_\_\_\_

Phone#: \_\_\_\_\_

Injuries: Abraision to right hand

2. Name: \_\_\_\_\_

DOB: \_\_\_\_\_

Address: \_\_\_\_\_

Phone#: \_\_\_\_\_

Injuries: \_\_\_\_\_

3. Name: \_\_\_\_\_

DOB: \_\_\_\_\_

Address: \_\_\_\_\_

Phone#: \_\_\_\_\_

Injuries: \_\_\_\_\_

**EMERGENCY SERVICES**

1. Injured removed from scene by: \_\_\_\_\_

Treated at Scene by EMS

2. Injured treated at: \_\_\_\_\_

Scene

(Name and Location of First Aid Station, Hospital, Etc.)

3. Police Notified? (Enter "Yes" or "No")

No

Name of Agency: \_\_\_\_\_

Officer's Name: \_\_\_\_\_

**Erie County Fair**  
**INCIDENT REPORT**

Incident No: 23-11

**WITNESSES**

1. Name: \_\_\_\_\_ DOB: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone#: \_\_\_\_\_  
\_\_\_\_\_  
Statement Attached ? (Yes or No) \_\_\_\_\_

2. Name: \_\_\_\_\_ DOB: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone#: \_\_\_\_\_  
\_\_\_\_\_  
Statement Attached ? (Yes or No) \_\_\_\_\_

Referred to: \_\_\_\_\_ Department \_\_\_\_\_  
Pictures Attached ? (Yes or No) Yes # of Photos 3 Supplemental Sheet Attached? (Yes or No) \_\_\_\_\_

Reported by: Michael J. Kozlowski  
Reviewed by: \_\_\_\_\_

**NATURE OF INCIDENT**

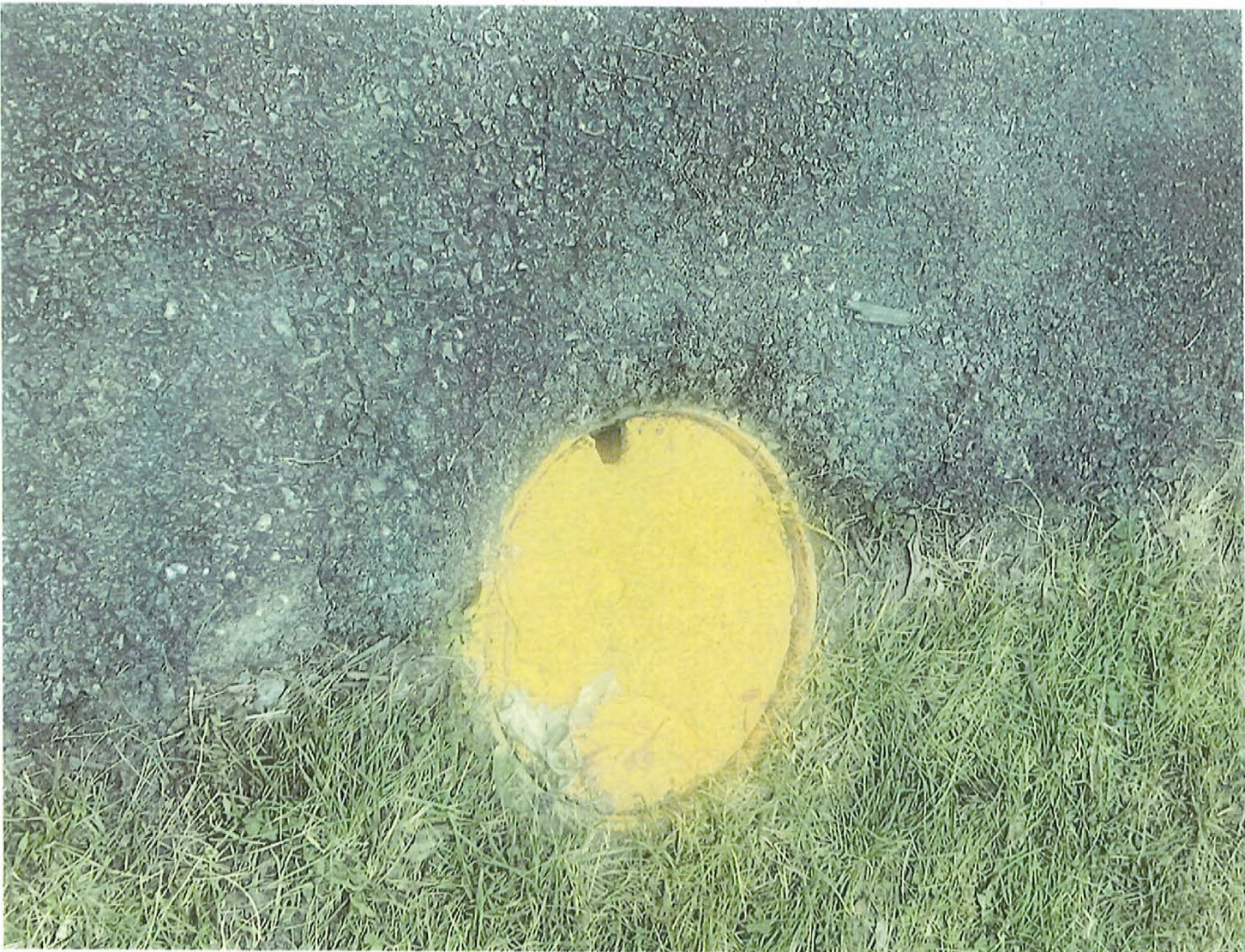
(If property i.e., vehicle, machinery, animal or building is involved, give owner and/or operator's name and address, and any special qualifications such as experience, training, etc. Supply a license, registration, serial number or identifications involved.)

NICOLE CURTIO (06/04/1988) is walking in a walkway from 42nd Street to the Event Center when she stepped in a depression in the pavement and fell to the ground causing the above injuries. The depression in the ground was a drainage cover. Curtio treated at scene by EMS and then returned to work inside the Event Center for Bathfitter.

# EXHIBIT C









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# EXHIBIT D



