

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

NEW YORK CENTRAL MUTUAL INSURANCE COMPANY
as subrogee of MICHAEL O'MALLEY
6088 Long Street,
Clarence Center, New York, 14032.

Plaintiff,

v.

Index No.: 802958/2022

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

Defendant.

SUMMONS

TO DEFENDANT:

YOU ARE SUMMONED to appear in this action by serving your answer to the verified complaint on Plaintiff's attorney within the time limits stated below.

Erie County is designated as the county where this action will be tried, because one or more of the parties to this action resides in that county.

TIME LIMITS TO ANSWER:

(1) If this summons is served by delivery to you personally within New York State, you must answer the verified complaint within TWENTY (20) days after such delivery.

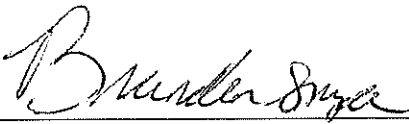
(2) If this summons is not served by delivery to you personally within New York State, and not served pursuant to CPLR 312-a, you must answer the verified complaint within THIRTY (30) days after service is complete.

(3) If this summons is served pursuant to CPLR 312-a, see accompanying STATEMENT OF SERVICE BY MAIL for time limits to answer.

IF YOU FAIL TO ANSWER THE VERIFIED COMPLAINT within the time stated, judgment will be entered against you for the relief demanded in the verified complaint.

Dated: March 7, 2022
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC
Attorneys for the Plaintiff,
New York Central Mutual Insurance Company,
as subrogee of Michael O'Malley

By: 
Marco Cercone, Esq., of Counsel
Brandon M. Snyder, Esq., of Counsel
1600 Liberty Building
Buffalo, New York 14202-3502
(716) 854-3400

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

NEW YORK CENTRAL MUTUAL INSURANCE COMPANY
as subrogee of MICHAEL O'MALLEY,

Plaintiff,

v.

Index No.:802958/2022

ERIE COUNTY WATER AUTHORITY,

Defendant.

VERIFIED COMPLAINT

Plaintiff, New York Central Mutual Insurance Company as subrogee of Michael O'Malley ("NYCM" or "Plaintiff") by and through its attorneys, Rupp Baase Pfalzgraf Cunningham LLC, ("Rupp-Baase") as and for its verified complaint against the Defendant, Erie County Water Authority ("ECWA" or "Defendant"), herein alleges as follows:

1. At all times hereinafter mentioned, NYCM was and is an insurance company licensed to conduct the business of insurance in the State of New York, with its principal place of business located at 1899 Central Plaza East, Suite 1100, Edmeston, New York, 13335.

2. Upon information and belief, at all times hereinafter mentioned, the Defendant, ECWA, was and is a public benefit corporation formed in 1949 by an Act of the New York State Legislature.

3. At all times hereinafter mentioned, Michael O'Malley ("Insured") was and is a natural person, and resident of the County of Erie, in the State of New York with a primary residence located at 6088 Long Street, Clarence Center, New York, 14032.

4. At all times hereinafter mentioned, NYCM's insured's real property is located at 6088 Long Street, Clarence Center, New York, 14032 ("Insured Property"), and is insured under insurance policy bearing the policy number "4690020" ("Policy"). The policy of insurance provided NYCM's Insured coverage against certain losses, including water damage and flooding, impacting the Insured Property.

5. On or about December 19, 2020, a high-pressure line water main, owned and serviced by the ECWA, broke ("water main break") under, near, and/or around the Insured Property and caused substantial damage to the subject property.

6. More specifically, the water main break caused water, mud, rocks, and debris to spray onto and into the front of the Insured Property, which, among other things, caused extensive damage to the Insured Property, including but not limited to, cracking the basement wall and causing the sump pump to fail flooding the basement, in addition to significant cleanup costs.

7. Upon information and belief, due to the water main break and the subsequent damage to the Insured Property's exterior, first floor, and flooding of the basement

on or about December 19, 2020, NYCM and its insured has been damaged in the total amount of no less than \$8,578.35.

8. Following the loss, on March 19, 2021, NYCM timely served a notice of claim on ECWA as required by General Municipal Law § 50-e. A true and accurate copy of the notice of claim and the letter enclosing the notice of claim is attached hereto as **Exhibit A**.

9. The Defendant, ECWA, received the notice of claim on March 22, 2021. A true and accurate copy of the certified receipt is attached hereto as **Exhibit B**.

10. To date, ECWA has failed and/or refused to pay NYCM's claim for the damages caused by the negligence, recklessness, and/or carelessness of the Defendant, ECWA, and/or its employees.

11. Following the above-described incident, and pursuant to the terms and conditions of the Policy, NYCM expended \$8,078.35 to and/or on behalf of its Insured. NYCM's Insured also was forced to incur their \$500.00 deductible.

12. By virtue of the foregoing, NYCM has become subrogated to the rights of its insured, and the Defendant is liable to the Plaintiff for damages in an amount to be determined at trial, but no less than \$8,578.35, plus interest as allowed by law, together with the costs of disbursements of this action, attorney's fees and such other and further relief as this Court deems just and proper.

FIRST CAUSE OF ACTION
(Negligence)

13. The Plaintiff repeats and realleges the allegations set forth in paragraphs “1” through “12” of this verified complaint.

14. Upon information and belief, ECWA, owned, controlled, and/or maintained the water lines located at or near the Insured Property.

15. Upon information and belief, ECWA owed a duty to NYCM and its insured to exercise reasonable and prudent care in inspecting and/or maintaining ECWA’s property in a reasonably safe condition, free from known and/or knowable defects; and/or otherwise to take all reasonable and necessary precautions to prevent damage to the property of others, such as that of NYCM’s insured.

16. Upon information and belief, ECWA breached its aforesaid duties, causing water, mud, rocks, and debris to spray onto and into the front of the Insured Property, that caused extensive damage to the Insured Property. Specifically, the damage to the Insured Property included but was not limited to, cracking the basement wall and causing the sump pump to fail flooding the basement, in addition to significant cleanup costs on December 19, 2020.

17. Upon information and belief, the incident described herein, and the resulting damages were caused solely and wholly through the negligence, carelessness, and/or recklessness of ECWA, and without any culpable conduct on the part of NYCM or its insured.

18. Upon information and belief, the Defendant, ECWA, was negligent, careless, and/or reckless generally and in the following manner:

- (a) negligently, carelessly, and/or recklessly failing properly to inspect, service, maintain, repair, and/or perform work to the waterline(s) located at or near the subject property; and
- (b) negligently, carelessly, and/or recklessly failing and omitting to take adequate steps to prevent the loss, under the circumstances.

19. Upon information and belief, as a direct and proximate result of the ECWA's negligent, careless, and/or reckless actions, NYCM sustained damages in an amount to be determined at trial, but no less than \$8,578.35, plus interest as allowed by law, together with attorneys' fees, as well as, the costs and disbursements of this action, and such other and further relief as this Court deems just and proper.

20. Following the above-described incident, and the pursuant to the terms and conditions of the Policy, NYCM expended \$8,078.35 to and/or on behalf of its Insured. The Insured also was forced to incur his \$500.00 deductible.

21. By virtue of the foregoing, the Plaintiff, NYCM has become subrogated to the rights of its insured, and the Defendant is liable to the Plaintiff for damages in an amount to be determined at trial, but no less than \$8,578.35, plus interest as allowed by law, together with the costs of disbursements of this action, attorneys' fees and such other and further relief as this Court deems just and proper.

WHEREFORE, New York Central Mutual Insurance Company as subrogee of Michael O'Malley demands judgment against the Defendant, Erie County Water Authority, in the amount of no less than \$8,578.35, plus attorneys' fees, accrued interest, costs, and disbursements of this action, and such other and further relief as this Court deems just and proper,

Dated: March 7, 2022
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC
Attorneys for the Plaintiff,
New York Central Mutual Insurance Company,
as subrogee of Michael O'Malley

By: 

Marco Cercone, Esq., of Counsel
Brandon M. Snyder, Esq., of Counsel
1600 Liberty Building
Buffalo, New York 14202-3502
(716) 854-3400

20200082820

VERIFICATION

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

Debra Wheelock, being duly sworn, deposes and says that she is employed as a Commercial/Property Claims Examiner of New York Central Mutual Fire Insurance Company, the Plaintiff named in the within entitled action; that she has read the foregoing Verified Complaint and knows the contents thereof; and that the same is true to her own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters she believes them to be true.

Deponent further says that the reason this verification is made by deponent and not by New York Central Mutual Fire Insurance Company, is because New York Central Mutual Fire Insurance Company is a corporation and the grounds of deponent's belief as to all matters in the Verified Complaint not stated upon her own knowledge, are investigations which deponent has caused to be made concerning the subject matter of this Verified Complaint and information acquired by deponent in the course of her duties as a subrogation examiner at said corporation and from the books and papers of said corporation.

By: Debra Wheelock
Debra Wheelock,
Commercial/Property Claims Examiner

Sworn to before me this
14th day of March 2022

Donna I. Morello
Notary Public

Donna I. Morello
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires 5/12/22

FILED: ERIE COUNTY CLERK 03/14/2022 02:21 PM

NYSCEF DOC. NO. 2

INDEX NO. 802958/2022
RECEIVED NYSCEF: 03/14/2022

EXHIBIT A



RUPP
BAASE
PFALZGRAF
CUNNINGHAM LLC
ATTORNEYS

1600 Liberty Building, 424 Main Street, Buffalo, NY 14202
716.854.3400 | ruppbaase.com

MARCO CERCONE
cercone@ruppbaase.com

March 19, 2021

**CERTIFIED MAIN/RETURN RECEIPT
REQUESTED**

Erie County Water Authority
295 Main Street – Room 350
Buffalo, New York 14203-2494
ATTN: Claim Representative/Risk Manager

9489 0090 0027 6315 5122 34

Dear Sir or Madam:

Re: New York Central mutual Insurance Company as subrogee of
Michael O'Malley v. Erie County Water Authority
Our File No.: 0005.28744

Enclosed please find a copy of our notice of claim pursuant to Section 50-e.

Should you have any questions, please feel free to give me a call.

Very truly yours,

Marco Cercone

/eg
Enclosure

NEW YORK CENTRAL MUTUAL
INSURANCE COMPANY
as subrogee of MICHAEL O'MALLEY,

Claimant

v.

NOTICE OF CLAIM

ERIE COUNTY WATER AUTHORITY.

TO: ERIE COUNTY WATER AUTHORITY

PLEASE TAKE NOTICE that Rupp Baase Pfalzgraf Cunningham LLC, on behalf of the petitioner, New York Central Mutual Insurance Company as subrogee of Michael O'Malley, hereby makes claim and demand against the Erie County Water Authority as follows:

1. Claimant's post office address is 1899 Central Plaza East, Edmeston, New York 13335. Claimant's subrogor's post office address is 6088 Long Street, Clarence Center, New York 14032.
2. The claimant's attorney is Marco Cercone, Esq. of Rupp Baase Pfalzgraf Cunningham LLC, with a post office address located at 1600 Liberty Building, 424 Main Street, Buffalo, New York.
3. The claim is one for negligence which resulted in substantial water damage to 6088 Long Street, Clarence Center, New York 14032 ("subject property"), on or

about December 19, 2020, at approximately 6:00 a.m. Specifically, Erie County Water Authority improperly installed, failed to maintain the water line, and/or acted in a manner which caused it to break, dispersing water onto and throughout the insured premises. Namely, among other things, the broken water line caused substantial damage to the following subject property items: the entranceway, storm door, front door, windows, hardwood flooring, wall paneling, carpeting, and linens. Additionally, as the Erie County Water Authority's agent, servant, representative and/or employees were conducting work near the insured premises and immediately witnessed the water disperse throughout the insured premises, the Erie County Water Authority had actual notice of the incident giving rise to this notice of claim.

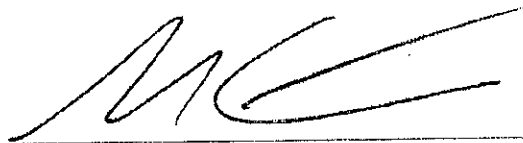
4. Upon information and belief, the incident described herein and resulting damages sustained were caused as a result of the negligence, carelessness, recklessness, acts, omissions, and/or unlawful conduct on the part of the agents, servants, representatives, and/or employees of the Erie County Water Authority. More particularly, among other things, in failing to properly install and/or maintain the water line, and/or refrain from engaging in an activity which was outside the scope, knowledge, and/or expertise of the agents, servants, representatives, and/or employees of the Erie County Water Authority.

5. Following the above-described incident, and pursuant to the terms and conditions of NYCM's contract with the insured, NYCM paid out \$8,078.35 either to its insured and/or on behalf of its insured, pursuant to the terms of the Policy, to compensate the insured for the substantial water damage to his property. Moreover, the insured was forced to incur his \$500 deductible as a result of the Erie County Water Authority's agents, servants, representatives,

and/or employee's negligence, carelessness, and/or recklessness. Accordingly, damages for the above-described incident are no less than \$8,578.35.

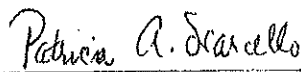
6. It is alleged the incident described herein occurred without any negligence, carelessness, and/or recklessness on the part of the claimant or its subrogor.

WHEREFORE, claimant requests that the Erie County Water Authority honor and pay the claim on behalf of New York Central Mutual Insurance Company as subrogee of Michael O'Malley. The Erie County Water Authority hereby is notified that unless it is adjusted and paid within the time provided by law from the date of presentation, the claimant intends to commence a lawsuit on this claim, together with interests, costs, and disbursements.



Marco Cercone, Esq.

Sworn to before me this
19th day of March 2021



Notary Public

Patricia A. Scarcello
Notary Public, State of New York
Qualified in Erie Co.
My Commission Expires May 22, 2021

FILED: ERIE COUNTY CLERK 03/14/2022 02:21 PM

NYSCEF DOC. NO. 3

INDEX NO. 802958/2022

RECEIVED NYSCEF: 03/14/2022

EXHIBIT B



May 14, 2021

Dear d f:

The following is in response to your request for proof of delivery on your item with the tracking number: 9489 0090 0027 6315 5122 34.

Item Details

Status:	Delivered, Left with Individual
Status Date / Time:	March 22, 2021, 12:15 pm
Location:	BUFFALO, NY 14203
Postal Product:	First-Class Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic
Recipient Name:	Claim Representative Risk Manager

Shipment Details

Weight: 1.0oz

Recipient Signature

Signature of Recipient:	MJS 331 C# 0115 19
Address of Recipient:	2917 MCM

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004



NYSCEF Confirmation Notice

Erie County Supreme Court



The NYSCEF website has received an electronic filing on 03/14/2022 02:21 PM. Please keep this notice as a confirmation of this filing.

Index Number NOT assigned
New York Central Mutual Fire Insurance Company v. Erie County Water Authority
Assigned Judge: None Recorded

Documents Received on 03/14/2022 02:21 PM

Doc #	Document Type
1	SUMMONS + COMPLAINT
2	EXHIBIT(S) A
3	EXHIBIT(S) B

Filing User

Brandon Michael Snyder | bsnyder@ruppbaase.com | 7168543400
 424 Main Stret Suite 1600, Buffalo, NY 14202

E-mail Notifications

An email regarding this filing has been sent to the following on 03/14/2022 02:21 PM:

BRANDON M. SNYDER - bsnyder@ruppbaase.com

Email Notifications NOT Sent

Role	Party	Attorney
Respondent	Erie County Water Authority	No consent on record.

* Court rules require hard copy service upon non-participating parties and attorneys who have opted-out or declined consent.

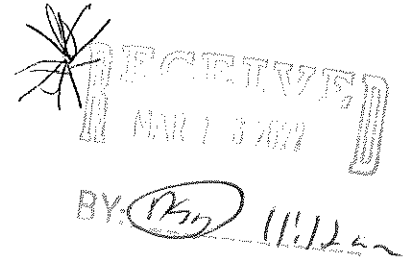
Michael P. Kearns, Erie County Clerk

Website: <http://www.erie.gov/clerk>

NYSCEF Resource Center, nyscef@nycourts.gov

Phone: (646) 386-3033 | Fax: (212) 401-9146 | Website: www.nycourts.gov/efile

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE



-----X
NEW YORK CENTRAL MUTUAL FIRE INSURANCE
COMPANY as subrogee of MICHAEL O'MALLEY

Plaintiff/Petitioner,

- against -

Index No. 802958/2022

ERIE COUNTY WATER AUTHORITY
Defendant/Respondent.

-----X

NOTICE OF ELECTRONIC FILING
(Mandatory Case)
(Uniform Rule § 202.5-bb)

You have received this Notice because:

- 1) The Plaintiff/Petitioner, whose name is listed above, has filed this case using the New York State Courts E-filing system ("NYSCEF"), and
- 2) You are a Defendant/Respondent (a party) in this case.

If you are represented by an attorney:

Give this Notice to your attorney. (Attorneys: see "Information for Attorneys" pg. 2).

If you are not represented by an attorney:

You will be served with all documents in paper and you must serve and file your documents in paper, unless you choose to participate in e-filing.

If you choose to participate in e-filing, you must have access to a computer and a scanner or other device to convert documents into electronic format, a connection to the internet, and an e-mail address to receive service of documents.

The benefits of participating in e-filing include:

- ! Serving and filing your documents electronically
- ! Free access to view and print your e-filed documents
- ! Limiting your number of trips to the courthouse
- ! Paying any court fees on-line (credit card needed)

To register for e-filing or for more information about how e-filing works:

- ! visit: www.nycourts.gov/efile-unrepresented or
- ! contact the Clerk's Office or Help Center at the court where the case was filed. Court contact information can be found at www.nycourts.gov

To find legal information to help you represent yourself visit www.nycourthelp.gov

Information for Attorneys
(E-filing is Mandatory for Attorneys)

An attorney representing a party who is served with this notice must either:

1) immediately record his or her representation within the e-filed matter on the NYSCEF site www.nycourts.gov/efile ; or

2) file the Notice of Opt-Out form with the clerk of the court where this action is pending and serve on all parties. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the knowledge to operate such equipment. [Section 202.5-bb(e)]

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: March 14, 2022

Brandon M. Snyder, Esq.
Name

1600 Liberty Building, 424 Main Street
Address

Rupp Baase Pfalzgraf Cunningham LLC
Firm Name

Buffalo, New York 14202

(716) 854-3400
Phone

snyder@ruppbaase.com
E-Mail

To: Erie County Water Authority

295 Main Street, Room 350

Buffalo, New York 14203