



IN THE MATTER OF THE CLAIM OF:

**DALIA M. ELTOUM Individually and as Guardian
for WISAM E. ELMALIK, M.D.**

5660 South Park Avenue, Apt. 220
Hamburg, New York 14075

Claimants,

-against-

NOTICE OF CLAIM

TOWN OF ORCHARD PARK

4295 South Buffalo Street
Orchard Park, New York 14127

COUNTY OF ERIE

Attention County Attorney
95 Franklin Street, Room 1634
Buffalo, New York 14202

ERIE COUNTY WATER AUTHORITY

350 Ellicott Square Building
Buffalo, New York 14203

Respondents.

PLEASE TAKE NOTICE that **Dalia M. Eltoum Individually and as Guardian**
for Wisam E. Elmalik, M.D. hereby makes claim against the **Town of Orchard Park, County of**
Erie and **Erie County Water Authority** and in support thereof Claimant alleges:

1. The name of the Claimants are Dalia M. Eltoum and Wisam E. Elmalik, M.D..

Ms. Eltoum resides at 3428 Loch Ridge Drive, Birmingham, Alabama 35216 and Wisam E. Elmalik

resides at 5660 South Park Avenue, Apt. 220, Hamburg, New York 14075. The attorneys for the Claimants are William Mattar, P.C., 6720 Main Street, Williamsville, NY 14221-5986.

2. The nature of the Claim is one to recover damages for personal injuries and conscious pain and suffering, change of lifestyle, loss of enjoyment of life, general and special damages, lost income, medical expenses and property damage and all other damages allowed by law resulting from the injuries suffered by the Claimant, Dr. Wisam E. Elmalik, as a result of the negligence of the Town of Orchard Park, County of Erie and Erie County Water Authority in the design, control, maintenance and safety of public roads.

3. The incident which forms the basis of the claim herein occurred at 5132 S. Freeman Road, which is near its intersection with Independence Drive, on August 27, 2023 at approximately 11:27am in the Town of Orchard Park, County of Erie and the State of New York. On that date and at that time, the Claimant Dr. Wisam E. Elmalik was operating a bicycle on South Freeman Road in the Town of Orchard Park and County of Erie. As Dr. Elmalik was riding his bicycle on the shoulder of the roadway he hit two (2) metal water access grates causing him to lose control of his bicycle. A copy of the Town of Orchard Park Police report is attached hereto as **Exhibit A**. The grates on the roadway were not marked and were below the grade of the roadway. Photographs of the grates are attached hereto as **Exhibit B**. The location and lack of notice of the grates caused a hazardous condition that injured Dr. Elmalik grievously.

4. That as a result of the foregoing, the Claimant Wisam E. Elmalik sustained very serious and substantial injuries, including a fractured skull, brain bleed, a traumatic brain injury, unconsciousness and several lacerations. Dr. Elmalik was placed into a medically induced coma for

several weeks, and underwent several surgical procedures on his brain. Dr. Elmalik remains hospitalized and in a vegetative state at present. These injuries may be of a permanent or indefinite duration, and the Claimant Wisam E. Elmalik has been and may be forced to expend sums of money for hospitals, doctors, and other medically related expenses. Other injuries will be disclosed as revealed through diagnosis by treating physicians and other medical personnel.


5. Also as a result of the foregoing, Dalia M. Eltoun, Dr. Elmalik's spouse and mother of his two young children, has lost Dr. Elmalik's financial and emotional support, companionship, and should Dr. Elmalik pass away, she and her children will claim wrongful death and any and all claims and damages that stem from such wrongful death.

6. That the said injuries were occasioned solely and wholly as a result of the negligence of the Town of Orchard Park, County of Erie and/or Erie County Water Authority, in their failure to correct and/or creation of an unsafe condition, and in the design, ownership, maintenance, safety, and management or lack thereof of their streets and water access points.

WHEREFORE, the Claimants Dalia M. Eltoun and Wisam E. Elmalik requests that this claim be allowed and paid by the Town of Orchard Park, County of Erie and Erie County Water Authority.


PLEASE TAKE FURTHER NOTICE, that unless said claim is adjusted and paid by the Town of Orchard Park, County of Erie and Erie County Water Authority within thirty (30) days from the date of service of the Notice of Claim, said Claimants intends to commence an action in the Supreme Court of the State of New York against the Respondents, seeking a sum which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest, costs and disbursements.

DATED: Williamsville, New York
 October 31, 2023


WILLIAM MATTAR, P.C.
Arienne J. Irving, Esq.
Attorney for Claimants
Office and P.O. Address
6720 Main Street
Williamsville, NY 14221-5986
(716)633-3535

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

Dalia M. Eltoun Individually and as Guardian for Wisam E. Elmalik, M.D., being duly sworn, depose and say that she is the Claimant in this action; that she has read the foregoing Notice of Claim and know the contents thereof; that the same is true to the knowledge of deponents, except as to matters therein stated to be alleged on information and belief, and that as to those matters they believe them to be true.



Dalia M. Eltoun Individually and as
Guardian for Wisam E. Elmalik, M.D.

Sworn to before me this
31st day of October, 2023



Notary Public

