

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE



In the Matter of the Claim of  
  
BUFFALO & ORCHARD PARK TOPSOIL, INC.,  
  
Plaintiff

-against-

NOTICE OF CLAIM

ERIE COUNTY WATER AUTHORITY and  
TOWN OF ORCHARD PARK

Defendants.

TO: ERIE COUNTY WATER AUTHORITY and  
TOWN OF ORCHARD PARK

PLEASE TAKE NOTICE that the Claimant herein hereby makes claims and demands against the Erie County Water Authority and Town of Orchard Park as follows:

1. The name and post office address of the claimant and of its attorney is:

Claimant: BUFFALO & ORCHARD PARK TOPSOIL, INC.  
3340 North Benzing Road  
Orchard Park, New York 14127

Attorneys: Baumeister Denz LLP  
Arthur G. Baumeister, Jr., Esq., of Counsel  
174 Franklin Street, Suite 2  
Buffalo, New York 14202

2. The nature of the claim: Claim for property damage as a result of negligence and carelessness of the Erie County Water Authority and the Town of Orchard Park which consisted of the following amongst other things: failure to adequately and properly maintain water

delivery to fire hydrants in proximity to 3340 Benzing Road, Orchard Park, New York (the "Premises"); failure to adequately and properly maintain the equipment necessary to deliver water at sufficient pressure to fire hydrants in proximity to the Premises; failure to adequately and properly inspect and monitor the equipment necessary to deliver water at sufficient pressure to fire hydrants in proximity to the Premises; failure to properly and adequately promulgate proper rules, regulations, policies and procedures relative to water delivery in and about the Premises; failure to properly and adequately comply with its rules, regulations, policies and procedures relative to water delivery in and about the Premises; failure to properly and adequately train its personnel; failure to properly and adequately hire its personnel; failure to properly and adequately supervise its personnel; failure to adequately and properly test levels of water pressure for water delivered in and about the Premises; failure to adequately and properly provide sufficient water pressure and water delivery to fire hydrants in proximity to the Premises; and that the Erie County Water Authority and the Town of Orchard Park were otherwise negligent

3. The time when, the place where and the manner in which the claim arose: On April 24, 2019 in late morning or early afternoon, a fire broke out at the Premises. Fire companies were quickly on the scene, but were unable to utilize water delivered to fire hydrants in close proximity to the Premises due to an absence of sufficient water pressure. After more than an hour after arrival, the first water applied to the fire was required to be made from tanker of water that also had insufficient pressure. Thereafter, after further delay, ultimately, the fire companies were able to pull water from behind the property near the Target Store being several thousand feet from the Premises and ran hoses covering this length. The absence of sufficient water pressure resulted in an inordinate delay in extinguishing the fire. The need to utilize a

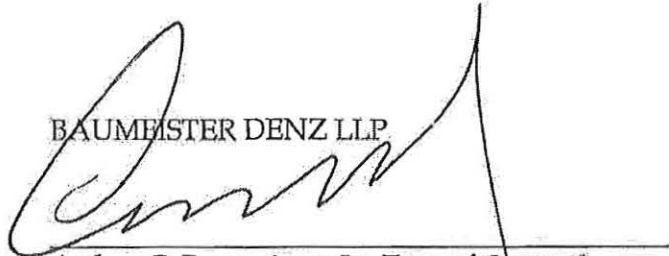
tanker of water and long lengths of hose in order to tap into the distant hydrants additionally caused delay in extinguishing the fire. Substantial damage and injuries to Claimant's property resulted from the negligence of the Erie County Water Authority and the Town of Orchard Park, including their respective agents, servants and employees, without any negligence on the part of the Claimant contributing hereto.

4. The items of damage and injuries claimed are: Claimant sustained a total loss of its warehouse and significant loss of the front office section of the building on the Premises. As a result of the extensive damage to the Claimant's warehouse and office building, the Town of Orchard Park has indicated that it will not approve replacement of the building citing an alleged non-conforming use which can no longer be grandfathered due to the extent of the destruction to the Premises. As a result, the Claimant's business has essentially been destroyed. In the absence of the negligence cited herein, the Claimant's damage would not have been extensive enough to allegedly require replacement of the building on the Premises. Claimant claims an unliquidated amount of damages for: the diminution of value of the Premises and past, present and future lost revenue and profits, together with any other damages to which Claimant is entitled under applicable law.

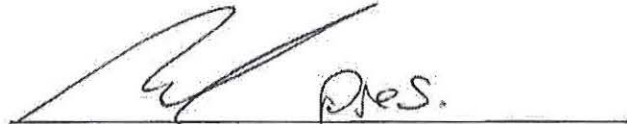
**PLEASE TAKE FURTHER NOTICE** that by reason of the foregoing, and the default of the Erie County Water Authority and the Town of Orchard Park to adjust and pay the Claimant for its damages, Claimant intends to commence an action against the Erie County Water Authority and the Town of Orchard Park to recover said damages, with interest and costs.

DATED: Buffalo, New York  
July 19, 2019

BAUMEISTER DENZ LLP

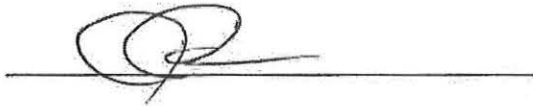


Arthur G. Baumeister, Jr., Esq., of Counsel  
Attorneys for Claimant  
Mailing and Post Office Address  
174 Franklin Street, Suite 2  
Buffalo, New York 14202  
Phone: (716) 852-1300



Alan Huegel,  
President of Claimant

Sworn to before me  
this 19 day of July, 2019



**JAY A. POHLMAN**  
Notary Public, State of New York  
Erie County  
My Commission Expires  
January 31, 2022