

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

-----X
NEW YORK CENTRAL MUTUAL INSURANCE COMPANY
as subrogee of MARK E. MONCALIAN and
GAIL A. MONCALIAN

Plaintiff/Petitioner,

- against -

Index No. 814181/2019

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.

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- ! 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: December 13, 2019

Marco Cercone, Esq.
Name

1600 Liberty Building, 424 Main Street
Address

Rupp Baase Pfalzgraf Cunningham LLC
Firm Name

Buffalo, New York 14202

(716) 854-3400
Phone

stachowski@ruppbaase.com
E-Mail

To: Erie County Water Authority

295 Main Street, Room 350

Buffalo, New York 14203

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

MARK E. MONCALIAN and
GAIL A. MONCALIAN
6271 Eckhardt Road
Lake View, New York 14085

Plaintiffs,

v.

Index No.: 814181/2019

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

Defendant.

AMENDED 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: November 27, 2019
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC
Attorneys for the Plaintiff,
Mark E. Moncalian and Gail A. Moncalian

By: 

Marco Cercone, Esq.
1600 Liberty Building
Buffalo, New York 14202-3502
(716) 854-3400

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

MARK E. MONCALIAN and
GAIL A. MONCALIAN

Plaintiff,

v.

Index No.: 814181/2019

ERIE COUNTY WATER AUTHORITY

Defendant.

VERIFIED AMENDED COMPLAINT

Plaintiffs, Mark E. Moncalian and Gail A. Moncalian (the "Moncalians") by and through its attorneys, Rupp Baase Pfalzgraf Cunningham LLC, as and for its verified amended complaint against defendant, Erie County Water Authority, herein alleges as follows:

1. At all times hereinafter mentioned, the Moncalians lived at 6271 Eckhardt Road, Lake View, New York ("subject property").

2. Upon information and belief, at all times hereinafter mentioned, defendant, Erie County Water Authority, was and is a public benefit corporation formed in 1949 by an Act of the New York State Legislature and is located at 295 Main Street, Room 350 Buffalo, New York 14203.

3. On or about June 27, 2019 between 12:01 a.m. and 11:59 a.m., a high pressure line water main break (“water main break”) occurred near the subject property and caused substantial damage to the subject property.

4. More specifically, the water main break caused the subject property’s basement to flood, which, among other things, caused extensive damage to the subject property, in addition to significant cleanup costs.

6. Upon information and belief, due to the water main break and the subsequent flooding of the subject property’s basement on or about June 27, 2019, the Moncalians have been damaged in the total amount of no less than \$31,980.31.

7. Following the loss, on July 23, 2019, the Moncalians timely served a notice of claim on the Erie County Water Authority as required by General Municipal Law § 50-e. A copy of the notice of claim is attached hereto as Exhibit A.

8. Additionally, plaintiff’s insurance company, New York Central Mutual Fire Insurance Company (“NYCM”) timely served a notice of claim on the Erie County Water Authority as required by General Municipal Law § 50-e. A copy of the notice of claim and the letter enclosing the notice of claim is attached hereto as Exhibit B. The Erie County Water Authority received the notice of claim on September 9, 2019. The copy of the certified receipt is attached hereto as Exhibit C.

9. To date, it has been more than thirty days since both notice of claims were served and the Erie County Water Authority has failed and/or refused to pay both NYCM's claim and the Moncalians claim for the damages caused by the negligence, recklessness, and/or carelessness of the Erie County Water Authority and/or its employees.

FIRST CAUSE OF ACTION
(Negligence)

10. Plaintiff repeats and realleges the allegations set forth in paragraphs "1" through "9" of this verified amended complaint.

11. Upon information and belief, the Erie County Water Authority owned, controlled, and/or maintained the water lines located at or near the subject property.

12. Upon information and belief, the Erie County Water Authority owed a duty to the Moncalians to exercise reasonable and prudent care in inspecting and/or maintaining the Erie County Water Authority'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 the Moncalians.

13. Upon information and belief, the Erie County Water Authority breached its aforesaid duties, which caused the subject property to flood with water on June 27, 2019, which caused damage to the subject property.

14. Upon information and belief, the incident described herein and resulting damages were caused solely and wholly through the negligence, carelessness, and/or recklessness of the Erie County Water Authority, and without any culpable conduct on the part of the Moncalians.

15. Upon information and belief, the Erie County Water Authority 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.

16. Pursuant to Erie County Water Authority's negligent conduct the Moncalians have been damaged in the amount of no less than \$31,980.31.


17. Upon information and belief, as a direct and proximate result of the Erie County Water Authority's negligent, careless, and/or reckless actions, the Moncalians sustained damages in an amount to be determined at trial, but no less than \$31,980.31, plus interest as allowed by law, together with the costs and disbursements of this action, and such other and further relief as this Court deems just and proper.

WHEREFORE, plaintiffs demands judgment against defendant,

Erie County Water Authority in the amount of no less than \$31,980.31, plus accrued interest, costs, and disbursements,

Dated: November 27, 2019
Buffalo, New York

RUPP BAASE PFALZGRAF CUNNINGHAM LLC
Attorneys for the Plaintiff,
Mark E. Moncalian and Gail A. Moncalian

By: 

Marco Cercone, Esq.
1600 Liberty Building
Buffalo, New York 14202-3502
(716) 854-3400

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF ERIE)

Gail A. Moncalian, being duly sworn, deposes and says:

I am a plaintiff in the above-captioned matter. I have read the foregoing verified amended complaint and know its contents. The document is true to my own knowledge, except as to matters stated to be upon information and belief, and as to those matters, I believe them to be true.

Gail A. Moncalian
Gail A. Moncalian

Sworn to before me

This 7 day of December, 2019

Carlyn J. Szarowicz
Notary Public

CARLYN J SZAROWICZ
NOTARY PUBLIC STATE OF NEW YORK
ERIE
LIC. #01628320917
COMM. EXP. 03/09/2023

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF ERIE)

Mark E. Moncalian, being duly sworn, deposes and says:

I am a plaintiff in the above-captioned matter. I have read the foregoing verified amended complaint and know its contents. The document is true to my own knowledge, except as to matters stated to be upon information and belief, and as to those matters, I believe them to be true.

Mark E. Moncalian
Mark E. Moncalian

Sworn to before me
This 1 day of December, 2019

Carl W. Scharowicz
Notary Public

CARL W. SCHAROWICZ
NOTARY PUBLIC STATE OF NEW YORK
ERIE
LIC. #015783-00017
COMM. EXP. 03/04/2023

FILED: ERIE COUNTY CLERK 12/16/2019 11:24 AM

NYSCEF DOC. NO. 6

INDEX NO. 814181/2019

RECEIVED NYSCEF: 12/16/2019

Exhibit A

2019-06-27-11:24 AM Gail

PROPERTY DAMAGE CLAIMANT STATEMENT
CLAIMS REPRESENTATIVE / RISK MANAGER
ERIE COUNTY WATER AUTHORITY
 295 MAIN STREET - ROOM 350
 BUFFALO, NEW YORK 14203-2494
 (716) 849-8484 - TELEPHONE
 (716) 849-8463 - FAX

Property Damage Claim Checklist, (the following items must be included for your claim to be processed):

- ☒ 1 - Insurance declaration page (If at fault, the Erie County Water Authority or our insurance company will reimburse for uncovered items such as your deductible)
- ☐ 2 - Two written estimates
- ☐ 3 - Evidence of any other amounts you are claiming

Please Print

Claimant Name	Gail Moncalian	Social Security #	-
Address	6271 Eckhardt Rd, Lakeview	Zip Code	14085
Home Phone #	716-627-2155	Cell Work Phone #	716-713-6816

Accident / Damage Location	6271 Eckhardt Rd, Lakeview, NY 14085		
Date of Incident	June 27, 2019	Time of Incident	a.m./p.m.
Police Contacted?	Yes/No	Police Report Taken?	Yes/No
If NO, why?	See attached complaint # 19-017009		

If this is not your property, give the name and address of the owner:

Name			
Address		Zip Code	
Home Phone #		Work Phone #	

Repair Estimates	\$ still waiting	\$
on total amount		
Witness(es), if available		

Name	Bill Pawloski	Name	Kevin Snyder
Address	6275 Eckhardt Rd	Address	3666 Woodhaven Cir
Phone	716-870-0597	Phone	716-345-6413

Claimant's Statement (please be specific):

On the morning of June 27, 2019 a water break in the S
 in Lakeland caused major flooding to our yard. It looked
 like a river flowing through our property. We knew
 we had a problem. I knew it was an Island. The water was
 recently purchased bag, at much flat. It was
 flowing down a river. Immediately we checked our
 insurance and had a water pump. 10 minutes later
 we had 3-4" of water. The pump pump was unable
 to handle such a huge amount of water. We called
 in the fire dept and police dept. for responders.
 They could not believe the amount of water. We
 informed us that 2 hours ago there was a severe
 water main break in E-S and that Erie County water
 representatives would be coming around to the affected
 properties to assess any damage. At this point the fire
 dept was trying to locate a pump. In the meantime
 the fire dept. called out of water and a fire pump was
 a pump from Serv. To a Hamburg. The fire dept. called
 later in the much smaller pump which we did not use. We
 felt it could not handle the amount of water we had
 when the water main was finally shut off the water was

(Use reverse side if necessary)

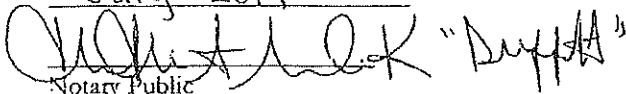
VERIFICATION

Gail A. Moncalan being duly sworn, deposes and says s/he is the Claimant in this action; that s/he has read the foregoing Notice of Intention to File a Claim and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters s/he believe it to be true.

Claimant's Signature

Gail Moncalan

Date: 7/23/19

Sworn to before me this 23 day of
July 2019

 Notary Public

HEATHER A. MICHALAK
 NOTARY PUBLIC-STATE OF NEW YORK
 No. 01MI6325747
 Qualified in Chautauqua County
 My Commission Expires June 01, 2023

The yard started receding and the pumps started to empty the basement. At that time we could see the damage to our property. We recently had 10 truck loads of millings put down on our back driveway (approximately 400' long by 12' wide) leading to our barn and they were washed away in the flood.

A claim has been filed with our insurance company, NTCM. The claim number is 20190055170. The adjuster is Brian Pawlowski (716-712-7893). We have not settled yet with insurance company. We are still waiting on some estimates. Our deductible is \$1000 as you can see on page 3 of our home owners declarations page.

I have communicated with Anthony Alessi at Erie County Water the day the flood occurred and informed him 2 weeks later I was still working on getting everything together and trying to get all the estimates.

FILED: ERIE COUNTY CLERK 12/16/2019 11:24 AM

NYSCEF DOC. NO. 7

INDEX NO. 814181/2019

RECEIVED NYSCEF: 12/16/2019

Exhibit B



**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

August 29, 2019

**CERTIFIED MAIL / RETURN
RECEIPT REQUESTED**

Margaret A. Murphy, Esq.
General Counsel
Erie County Water Authority
295 Main Street – Room 350
Buffalo, New York 14203-2494

9489 0090 0027 6145 2772 42

Dear Ms. Murphy:

Re: New York Central Mutual Insurance Company as subrogee of
Mark E. Moncalian and Gail A. Moncalian v. Erie County Water Authority
Our File No. 0005.25662

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

/s/
Enclosure

Innovation in Practice

Rochester | Williamsville | Albany | Jamestown

NEW YORK CENTRAL MUTUAL
INSURANCE COMPANY
as subrogee of MARK E. MONCALIAN and
GAIL A. MONCALIAN

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 claimant, New York Central Mutual Insurance Company as subrogee of Mark E Moncalian and Gail A. Moncalian, hereby makes claim and demand against the Erie County Water Authority as follows:

1. The claimant's post-office address is 1899 Central Plaza East, Edmeston, New York. The claimant's subrogors' post-office address is 6271 Eckhardt Road, Lake View, New York.

2. The claimant's attorney is Marco Cercone, Esq., of Rupp Baase Pfalzgraf Cunningham LLC, with a post-office address at 1600 Liberty Building, 424 Main Street, Buffalo, New York.

3. The claim is one for negligence which resulted in property damage to 6271 Eckhardt Road, Lake View, County of Erie, State of New York, on or about June 27, 2019 between 12:01 a.m. and 11:59 a.m. Specifically, a high pressure line water main break occurred near the property known as 6271 Eckhardt Road, Lake View, New York ("subject property"), and caused substantial damage. Namely, among other things, the water main break caused the subject property basement to flood. Moreover, this caused damage to the property, personal belongings of claimant's subrogors, carpeting, and the hot water tank. Additionally, as a result of the water damages significant cleanup costs were incurred by the claimant's subrogors.

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, and/or employees of the Erie County Water Authority, and more particularly, among other things, in failing to properly operate the water main, and otherwise failing to properly inspect or maintain the water main prior to the date in question.

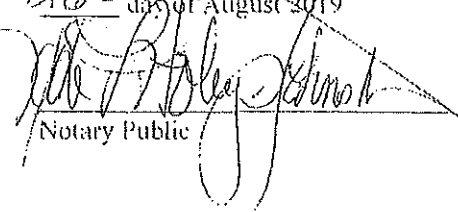
5. It is alleged the incident described herein occurred without any negligence or carelessness on the part of the claimant or its subrogors.

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 Mark E. Moncalian and Gail A. Moncalian. 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.

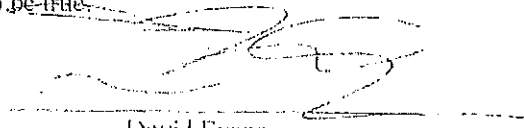
Sworn to before me this
26th day of August 2019


 Notary Public

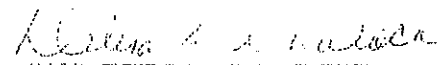
JODI L. FOLEY-JOHNSTON
 Notary Public, State of New York
 Qualified in Erie County
 My Commission Expires Nov. 22, 2021

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

I, David Evans, being duly sworn, deposes and says that I am a representative of New York Central Mutual Insurance Company, representing the claimant in the above-entitled action. I have read the foregoing notice of claim and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.


 David Evans

Sworn to before me this
26th day of August 2019.


 Notary Public

NOTARY PUBLIC
 STATE OF NEW YORK
 My Commission Expires Nov. 22, 2021

FILED: ERIE COUNTY CLERK 12/16/2019 11:24 AM

NYSCEF DOC. NO. 8

INDEX NO. 814181/2019

RECEIVED NYSCEF: 12/16/2019

Exhibit C

FILED: ERIE COUNTY CLERK 12/16/2019 11:24 AM

NYSCEF DOC. NO. 8

INDEX NO. 814181/2019

RECEIVED NYSCEF: 12/16/2019



Date Produced: 09/09/2019

RBPC:

The following is the delivery information for Certified Mail™ item number 9489 0090 0027 6145 2772 42. Our records indicate that this item was delivered on 09/06/2019 at 12:19 p.m. in BUFFALO, NY 14203. The scanned image of the recipient information is provided below.

Signature of Recipient :

Handwritten signature: M. F. UCI

Address of Recipient :

**295 MAIN ST BUFFALO,
NY 14203**

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 0005.25662