

# LAW OFFICES OF ROBERT BERKUN, LLC.

ROBERT D. BERKUN, ESQ.\*  
rbjd62@yahoo.com

BRIAN WEBB, ESQ.\*\*  
brianmwebb393@gmail.com

\*Also admitted in Florida  
\*\*Also admitted in Illinois

## Attorneys at Law

2150 Main Place Tower  
350 Main Street  
Buffalo, New York 14202  
Phone: (716) 856-4080  
Fax: (716) 768-1485

---

JESSICA DUQUETTE  
Legal Assistant  
jmduquette89@gmail.com

February 28, 2019

Erie County Water Authority  
295 Main Street – Suite 350  
Buffalo, New York 14203

*Via Regular & Certified Mail*

**Re:   Doris F.                   v. Town of West Seneca**

Dear Sir/Madam:

Enclosed herewith, please find a Notice of Claim pertaining to the above-captioned matter.

If you have any questions, please do not hesitate to call.

Sincerely,



Jessica Duquette  
Legal Secretary to Robert D. Berkun, Esq.

CC: Timothy A. B

/jd  
Enclosure

# ITEM 6

STATE OF NEW YORK : COUNTY OF ERIE

---

**In the Matter of the Claim of DORIS F**

Claimant,

v.

**NOTICE OF CLAIM**

**ERIE COUNTY WATER AUTHORITY**

Respondent.

---

TO: Erie County Water Authority  
295 Main St #350  
Buffalo, NY 14203

Timothy A. B  
Office of Corporation Counsel  
1100 City Hall  
Buffalo, New York 14202

*PLEASE TAKE NOTICE* that the Claimant, DORIS F \_\_\_\_\_, by and through her attorneys, the Law Offices of Robert D. Berkun, hereby makes a claim against the Erie County Water Authority for personal injuries and other damages sustained by the negligence and recklessness of the Erie County Water Authority and/or its employees, agents and/or contractors, and in support thereof, the Claimant states as follows:

1. The name and post office address of the Claimant and her attorney are as follows:

a) Doris \_\_\_\_\_ Lockport, New York  
14094;

b) The Law Offices of Robert D. Berkun, 350 Main Street, Suite 2150, Buffalo  
New York 14202.

2. The claims of negligence and recklessness are for damages, including

## ITEM 6

medical expenses, past, present and future pain and suffering, loss of enjoyment of life, and lost wages, sustained by the Claimant, DORIS F [REDACTED], as a result of the failure of the ERIE COUNTY WATER AUTHORITY to properly maintain the sidewalk on, appurtenant, and/or adjacent to 231 Covington Drive in the Town of West Seneca and State of New York. Specifically, upon information and belief, the ERIE COUNTY WATER AUTHORITY was negligent in their maintenance of said sidewalk in that they allowed for a dangerous and hazardous condition to persist, consisting of a water pipe sticking out of said sidewalk thereon.

3. That on or about the 14th day of February 2019, the Claimant was caused to trip and fall on the aforementioned sidewalk due to the dangerous and hazardous condition as described above, sustaining serious injuries thereon.

4. Upon information and belief, said sidewalk was installed by and is maintained by the ERIE COUNTY WATER AUTHORITY.

5. That the incident described above was caused by the negligence of the ERIE COUNTY WATER AUTHORITY their agents, servants, employees and/or contractors, in that the ERIE COUNTY WATER AUTHORITY did not take all adequate, reasonable, and necessary steps to provide for the safety of the Claimant. That specifically, the ERIE COUNTY WATER AUTHORITY their agents, servants, employees and/or contractors, were careless, negligent and reckless in the following ways: failing to ensure that the subject sidewalk was in a condition safe for the normal use of persons lawfully on the premises; allowing a dangerous and/or hazardous condition to exist and persist on the subject sidewalk; failing to mark or indicate the water pipe on the subject sidewalk when the Respondent knew, or should have known in the exercise of reasonable care, that such a condition would pose a foreseeable risk of bodily harm to persons lawfully thereon; failing to correct the hazardous and dangerous condition of the subject sidewalk,

## ITEM 6

which was in existence for days, weeks and/or months prior to the Claimant's fall; Respondent knew, or should have known in the exercise of reasonable care, that the condition of the subject sidewalk was not fit for ordinary use and failed to take any measures to block access to the dangerous portions thereof to prevent injury to those lawfully thereon; Claimant was injured as a result of the dangerous condition which was allowed to occur and continue on the premises due to the acts and omissions of the Respondent; Respondent had a non-delegable duty to properly inspect and maintain the premise, and keep the same in a reasonably safe condition to prevent foreseeable injury to other persons on the premises and failed to do so; Respondent failed to exercise ordinary and reasonable care in that he was generally careless and negligent, causing injury to the Claimant, who was lawfully on the premises.

6. That as a result of this fall, the Claimant, DORIS F \_\_\_\_\_ sustained serious personal injuries, including, but not limited to injuries to her ribs and the right side of her body.

7. That the Claimant, DORIS F \_\_\_\_\_ has incurred various medical expenses and is continuing to treat with medical providers for the injuries she sustained due to the negligence of the Respondent, ERIE COUNTY WATER AUTHORITY.

8. That the Claimant, DORIS F \_\_\_\_\_ hereby makes a claim against the Respondent, ERIE COUNTY WATER AUTHORITY, for her personal injuries, medical expenses, past, present and future pain suffering, loss of enjoyment of life, and lost wages suffered as a result of the incident that occurred on or about February 14, 2019 on the sidewalk in front of, adjacent to and/or appurtenant to 231 Covington Drive.

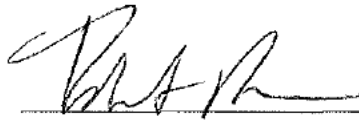
9. That the Claimant, DORIS F \_\_\_\_\_, respectfully reserves the right to amend this Notice of Claim if necessary.



## ITEM 6

*PLEASE TAKE NOTICE*, that in the event that the Respondent fails to resolve the matter, the Claimant intends to commence an action in the Supreme Court of the State of New York, County of Erie, to recover damages in an amount which is currently undetermined, together with the costs and disbursements of this action, and for such other and further relief as the Court deems just and proper.

DATED: Buffalo, New York  
February 26, 2019



---

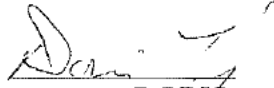
Robert D. Berkun, Esq.  
LAW OFFICES OF ROBERT D. BERKUN  
*Attorneys for Plaintiff*  
Office and P.O. Address  
Main Place Tower – Suite 2150  
350 Main Street  
Buffalo, New York 14202  
(716) 856-4080

ITEM 6


STATE OF NEW YORK )  
COUNTY OF ERIE ) SS  
CITY OF BUFFALO )

DORIS F being duly sworn, deposes and says:

That she is the Claimant in the above-captioned action; that she has read the foregoing Notice of Claim and knows and understands the contents thereof as true, except as to matters therein stated to be alleged upon information and belief, and any matters so stated, she believes them to be true.

  
DORIS

Subscribed and sworn to before me  
this 27 day of February, 2019.

  
Notary Public

JOSHUA F. SCRIVANI  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 02SC6376375  
Qualified in Erie County 22  
Commission Expires June 11, 20

ITEM 6

Initial  Certification by Attorney

The undersigned attorney certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Initial  Attorney's Affirmation

The undersigned, an attorney admitted to practice in the courts of New York State shows: that deponent is the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.  
Dated:

Initial  Individual Verification

I am the being duly sworn deposes and says that in this action; that I have read the foregoing and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

Initial  Corporate Verification

being duly sworn deposes and says that he/she is the of the corporation named in the within entitled action; that he/she has read the foregoing and knows the contents thereof; and 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 as to those matters he/she believes it to be true. Deponent further says that the reason this verification is made by deponent and not by is because the said is a corporation and the grounds of deponent's belief as to all matters in the said not stated upon his/her own knowledge, are investigations which deponent has caused to be made concerning the subject matter of this and information acquired by deponent in the course of his/her duties as an officer of said corporation and from the books and papers of said corporation.

Sworn to before me this day of , 20 .....

**AFFIDAVIT OF PERSONAL SERVICE**

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at That on the day of , 20 , at approx. M. at No. deponent served the within

upon the herein, by delivering a true copy thereof to him/her personally. Deponent knew the person so served to be the person mentioned and described as follows:

- |                                 |                                      |                                     |                                       |                                      |   |
|---------------------------------|--------------------------------------|-------------------------------------|---------------------------------------|--------------------------------------|---|
| <input type="checkbox"/> Male   | <input type="checkbox"/> White Skin  | <input type="checkbox"/> Black Hair | <input type="checkbox"/> 14-20 Yrs.   | <input type="checkbox"/> Under 5'    | <input type="checkbox"/> Under 100 lbs. |
| <input type="checkbox"/> Female | <input type="checkbox"/> Black Skin  | <input type="checkbox"/> Brown Hair | <input type="checkbox"/> 21-35 Yrs.   | <input type="checkbox"/> 5'0" - 5'3" | <input type="checkbox"/> 100-130 lbs.   |
|                                 | <input type="checkbox"/> Yellow Skin | <input type="checkbox"/> Blond Hair | <input type="checkbox"/> 36-50 Yrs.   | <input type="checkbox"/> 5'4" - 5'8" | <input type="checkbox"/> 131-160 lbs.   |
|                                 | <input type="checkbox"/> Brown Skin  | <input type="checkbox"/> Gray Hair  | <input type="checkbox"/> 51-65 Yrs.   | <input type="checkbox"/> 5'9" - 6'0" | <input type="checkbox"/> 161-200 lbs.   |
|                                 | <input type="checkbox"/> Red Skin    | <input type="checkbox"/> Red Hair   | <input type="checkbox"/> Over 65 Yrs. | <input type="checkbox"/> Over 6'     | <input type="checkbox"/> Over 200 lbs.  |

Other identifying features:

**MILITARY SERVICE**  
 I asked the person spoken to whether defendant was in active military service of the United States or the State of New York in any capacity whatever and received a negative reply. Defendant wore ordinary civilian clothes and not military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated.

Upon information and belief I aver that the defendant is not in the military service of New York State or of the United States as that term is defined in either the State or in the Federal statutes.

Sworn to before me this day of , 20 .....

Signature of Server



Year

**ROBERT D. BERKUN, ESQ.**

*Attorney for*

*Office, Post Office Address and Telephone*  
2150 MAIN PLACE TOWER  
350 MAIN STREET  
BUFFALO, NEW YORK 14202  
(716) 856-4080

Personal Service of the within and of the notice (if any)  
hereon endorsed, is admitted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

.....  
Attorney(s) for

Sir:—Please take notice

**NOTICE OF ENTRY**

that an \_\_\_\_\_ of which the within is a copy, was duly granted in the  
within entitled action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and duly entered in the office of the Clerk  
of the County of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

To  
Attorney(s) for

**ROBERT D. BERKUN, ESQ.**

*Attorney for*

Sir:—Please take notice

**NOTICE OF SETTLEMENT**

that an order

of which the within is a true copy will be presented for settlement to the Hon.  
one of the judges of the within named Court, at  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

To  
Attorney(s) for

**ROBERT D. BERKUN, ESQ.**

*Attorney for*

STATE OF NEW YORK, COUNTY OF \_\_\_\_\_

SS.:

**AFFIDAVIT OF SERVICE BY MAIL**

being duly sworn, deposes and says; deponent is not a party to the action,

is over 18 years of age and resides at

On \_\_\_\_\_, 20\_\_\_\_, deponent served the within

upon \_\_\_\_\_  
attorney(s) for \_\_\_\_\_ in this action, at

\_\_\_\_\_ the address, designated by said attorney(s) for that purpose by depositing a

true copy of same enclosed in a post-paid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody  
of the United States Postal Service within the State of New York.

Sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_



ITEM 6

RECEIVED

19 MAR -4 AM 10:45

ERIE COUNTY  
WATER AUTHORITY



OF ROBERT D. BERKUN, LLC.  
LACE TOWER  
REET  
W YORK 14202

Erie County Water Authority  
295 Main Street – Suite 350  
Buffalo, New York 14203