

---

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

Robert Barry

Petitioner,

v.

Erie County Water Authority

Respondent.

---

---

DOLCE PANEPINTO, P.C.

Attorneys for Plaintiff  
OFFICE, POST OFFICE ADDRESS & TELEPHONE:

1260 Delaware Ave.  
Buffalo, New York 14209  
716-852-1888

---

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE**

-----X  
ROBERT BARRY

Plaintiff/Petitioner,

- against -

Index No. 820198/2018

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](http://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](http://www.nycourts.gov)

To find legal information to help you represent yourself visit [www.nycourthelp.gov](http://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](http://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](http://www.nycourts.gov/efile) or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: [efile@nycourts.gov](mailto:efile@nycourts.gov)).

Dated: 1/3/19

MARC C. PANEPINTO, ESQ.  
Name

1260 DELAWARE AVE.  
Address

DOLCE PANEPINTO, P.C.  
Firm Name

BUFFALO, NEW YORK 14209

716-852-1888  
Phone

[mpanepinto@dolcepanepinto.com](mailto:mpanepinto@dolcepanepinto.com)  
E-Mail

To: ERIE COUNTY WATER AUTH

\_\_\_\_\_  
\_\_\_\_\_

6/6/18

At a Special Term of the Supreme Court held in and for the County of Erie at Buffalo, New York on the 02 day of January, 2019.

Hon. Dennis E. Ward  
Justice Presiding

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

Robert Barry  
200 Valley View Drive  
Elma, New York 14509

Petitioner,

**ORDER TO SHOW CAUSE**

v.

Index No.:

820198/2018

Erie County Water Authority  
350 Ellicott Square Bldg.  
295 Main Street  
Buffalo, NY 14203

Respondent.

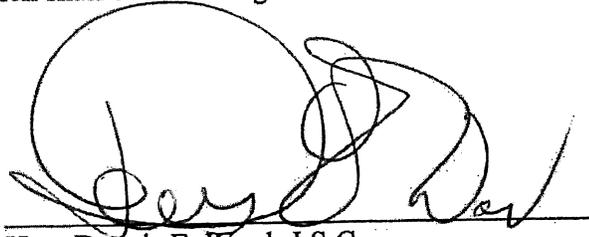
Upon reading the annexed Affirmation of Marc C. Panepinto, Esq., with attached exhibits A-J, duly affirmed on the 19<sup>th</sup> day of December, 2018, it is hereby

**ORDERED**, that the Respondent show cause at a Special Term of the Supreme Court of New York to be held in and for the County of Erie at Part 12, 25 Delaware Avenue/92 Franklin Street, Buffalo, New York on the 16<sup>th</sup> day of January, 2019 at 9<sup>30</sup> a.m./p.m. of that day or as soon thereafter as counsel can be heard, why an order should not be granted permitting the Petitioner to file and serve a late notice of claim pursuant to General Municipal Law §50(e).

**ORDERED**, that service of a copy of this order and the papers upon which it is granted be sent via Federal Express Overnight Delivery to the main place of business of the Respondent:

**Erie County Water Authority  
350 Ellicott Square Bldg.  
295 Main Street  
Buffalo, NY 14203**

on or before January 8, 2019, which shall be deemed good and sufficient service.



Hon. Dennis E. Ward, J.S.C.

GRANTED:

JAN 03 2019

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

Robert Barry

Petitioner,

v.

Erie County Water Authority

Respondent.

---

**AFFIRMATION**

Index No.

20198/2018

Marc C. Panepinto, Esq., an attorney duly admitted to practice law in the State of New York, affirms the following under penalty of perjury:

1) I am an attorney at law duly licensed to practice in the State of New York and am an associate in the law firm of Dolce Panepinto, P.C., attorneys for the Petitioner, Robert Barry. As such, I am fully familiar with the facts and circumstances herein.

2) This affirmation is submitted in support of the Petitioner's application for leave to file and serve a late notice of claim pursuant to General Municipal Law § 50(e)(5). A copy of a Proposed Notice of Claim is attached hereto as **Exhibit A**.

3) This claim arises out of an incident that occurred on January 7, 2018, wherein the Petitioner Robert Barry was injured in the course of his employment for Verizon N.Y. Inc, (hereinafter "Verizon") on an excavation project being carried out at the corner of Elmview and Abbott Road in Lackawanna, New York. While in the course of his work as a utility marker for Verizon, the Petitioner was caused to slip and/or trip and fall on snow and ice covered in water due to the Erie County Water Authority's failure to turn off a water valve and mark out the area of a water main break. Mr. Barry sustained serious injuries to his neck as a result of this incident. See the Mercy Hospital intake report with a date of service of January 8, 2018 attached hereto as **Exhibit**

**B.**

4) The Petitioner first contacted our firm on August 20, 2018, more than 90 days after the cause of action had accrued, to investigate as to whether he may have any legal remedies beyond his Workers' Compensation Claim. On August 29, 2018, our office filed an Order to Show Cause seeking pre-litigation discovery from Petitioner's employer, Verizon, seeking copies of his accident report and any and all communication between his employer, Verizon, and the Erie County Water Authority. See Attorney Affirmation from Pre-litigation discovery, attached hereto as **Exhibit C**.

5) That pre-litigation Order to Show Cause was granted by Your Honor on October 11, 2018. The Order with Notice of Entry is attached hereto as **Exhibit D**. We served the order on Verizon on October 15, 2018. Attached as **Exhibit E** is the Affidavit of Service. To date, Verizon has ignored the Court's Order. On December 19, 2018 we filed a Motion for contempt against Verizon. Attached as **Exhibit F** is our Affirmation on that motion.

6) Upon information and belief, Respondents herein is the owner and/or contractor repairing the water line at the corner of Elmview and Abbot Road on January 7, 2018. The work the petitioner was performing in marking the Verizon utility facilities was ancillary and necessary work. The excavation work to repair the water line necessitated that Verizon confirm that the area to be excavated was free of Verizon lines before the excavation work took place. Accordingly, Erie County Water Authority was either a statutory owner of the water line or a contractor vested with the duty and authority to repair the water line. As a statutory owner or contractor of the aforementioned excavation site at Elmview and Abbott Road, the respondent will be vicariously liable under Labor Law §200 and §241(6) for any proven violations of the statute.

7) Upon information and belief, the Petitioner possesses a meritorious claim against

the Erie County Water Authority under Labor Law §§ 200 and 241(6), as well as in negligence, for failing to provide the Petitioner a safe place to work as required by those statutes and the provisions New York State Industrial Code 23-1.7(d)(c)(2)

**THE PETITIONER SHOULD BE PERMITTED TO SERVE A LATE NOTICE OF  
CLAIM**

8) General Municipal Law § 50(e)(1) requires a claimant to serve a notice of claim within ninety (90) days after the claim arises – i.e. the date of the incident. General Municipal Law § 50(e)(1). However, should a notice of claim not be served within the statutory ninety (90) day window, a Court may, upon application, extend the time to serve a notice of claim. General Municipal Law § 50(e)(5). “[S]o long as the application is made within the time available for commencement of an action, the court is vested with “broad” discretion to grant or deny the application.” Downey v. Macedon Center Volunteer Fire Dept., 179 AD2d 999, 999 [4th Dept 1992]. Here, there is no dispute that this application is being made within the applicable one year, ninety (90) day limitations period.

9) When considering an application for leave to serve a late notice of claim, the Court is instructed to take into account a number of factors including: (a) the reasonableness of the excuse offered for the delay; (b) whether the respondent had actual or constructive notice of the essential facts constituting the claim within the ninety (90) day statutory period or a reasonable time thereafter and; (c) whether the delay in serving the notice of claim would substantially prejudice the respondent in maintaining a defense. General Municipal Law § 50(e)(5); Coplon v. Town of Eastchester, 82 AD3d 1095, 1095-1096 [2d Dept 2011]. The presence or absence of any one factor is not

determinative. Downey, 179 AD2d at 999; Bay Terrace Co-op. Section IV, Inc. v. New York State Employees' Retirement System Policemen's and Firemen's Retirement System, 55 NY2d 979 [1982].

**a. The Petitioner has a reasonable and justifiable excuse for the delay**

10) The petitioner was partially paralyzed for four (4) days and was hospitalized for twenty-two (22) days. Upon information and belief, thereafter but before contacting our office, the Petitioner consulted with three (3) different law firms and was advised that he did not have a separate legal remedy beyond the benefits under the New York Workers' Compensation system. The 90 day period in which to timely file the Notice of Claim had already lapsed at the time that the Petitioner contacted our office. Once our office was retained by the Petitioner on August 20, 2018, we acted quickly to obtain pre-litigation discovery in an attempt to determine whether there was a viable claim against the Respondents or any other entity. That pre-litigation order has been ignored. While that order was pending against Verizon we filed a FOIA request with the Erie County Water Authority on October 25, 2018. Attached as **Exhibit G** is our FOIA request. The Erie County Water Authority responded to our FOIA by way of a letter providing documents and audio tape. The letter response is attached as **Exhibit H**. The letter is dated December 5, 2018, but we did not receive it until December 10, 2018. Upon listening to the 25 taped dispatch conversations on December 17, 2018, it became apparent that it was the Respondent who requested the dispatch of a Verizon worker to the job site and thus confirmed that the Respondent is a proper Labor Law defendant. We accordingly make this motion for Late Claim.

11) The Petitioner's failure to appreciate that he had two separate potential legal claims is a reasonable excuse for the delay beyond 90 days in timely serving notice of claim in the instant

case, especially given his reliance on consultation with other legal counsel.

**b. The Respondents had actual or constructive notice of the essential facts constituting the claim within 90 days of its accrual**

12) The second factor to be considered by the Court is whether the Respondents had actual or constructive notice of the essential facts constituting the claim within the ninety (90) day notice of claim period or a reasonable time thereafter. This factor also weighs in favor of the Petitioner.

13) There can be no dispute that the Respondent was on notice of the conditions that resulted in the petitioner's incident, as the conditions were caused by the break of its own utility. Indeed, it was that utility break and the dangerous condition that resulted that lead to the Respondent requesting the presence of the plaintiff's employer at the job site. In other words, the Erie County Water Authority's broken utility created the hazard and the Erie County Water Authority's response to that hazard resulted in the presence of the petitioner at the injury site.

14) With respect to the happening of the incident, as referenced, the incident and injuries were significant enough that petitioner was partially paralyzed for four (4) days and was hospitalized for twenty-two (22) days. On the day of the incident, January 7, 2018, the Petitioner reported the incident to his employer, Verizon, after he was transported to Mercy Hospital by ambulance. Specifically, on the night of the injury he spoke to his supervisor at Verizon, Chris Haley, and told him that he was injured at the Erie County Water Authority excavation located at the corner of Elmview and Abbott Road. He gave his employer all the essential details of his fall and expected that Mr. Haley would follow up with the Erie County Water Authority. See Ex A, Proposed Notice of Claim. Petitioner is unaware at this juncture whether Verizon is in possession of additional facts

concerning notice to the Erie County Water Authority because it has ignored this Court's pre-litigation order.

15) The Lackawanna Police Department and the Lackawanna Fire Department both reported to the scene and the petitioner gave notice to both of his slip and fall and injury and expected that these agencies would also notify the Erie County Water Authority. Attached as **Exhibit I and J** respectively are the police and fire reports of Robert Barry's injury. The Police report dated January 7, 2018 reports he slipped on ice. The Lackawanna Fire Department report states that he slipped on ice, fell, hit head and was laying in 2" of water.

16) Given the fact that the Petitioner reported the accident to his employer on the day of the accident as well as verbal notice to both the Lackawanna Police Department and Fire Department, notice of the incident can be imputed to the Respondents and it is clear that the Respondents knew or should have known of the essential facts constituting the claim within the ninety (90) day window to file a notice of claim.

17) Furthermore, after listening to over twenty-five (25) dispatcher recordings of the Elmview and Abbott road water main break, it is clear that the Erie County Water Authority had knowledge of the water main break. In investigating the water main break, it is the Erie County Water Authority policy to shut off the water valves to stop the water flowing and control potential flooding. After the water valves are turned off, the Erie County Water Authority notifies "Dig Safe" who informs the other utilities to mark their facilities in the area. To facilitate this process, Dig Safe issues tickets to the various utilities. Attached as **Exhibit K** is the ticket issued to Mr. Barry.

18) After listening to the dispatch recordings two days ago from the Erie County Water Authority regarding the Elmview and Abbott water main break, we learned that it was discussed on

the tapes that the valve to shut off the water was buried under mud and snow. The individual dispatched to shut off the water main valve at Elmview and Abbott reported to dispatch that he could not get to the valve to shut the water off. The Erie County water Authority never notified Dig Safe of its inability to shut off the water main valve and Dig Safe in turn was unable to let Verizon and Mr. Barry know that the flooding at Elmview and Abbott would be greater than he usually encountered. Attached hereto is the CD from the Water Authority as **Exhibit L**.

**c. The respondent is not substantially prejudiced by the late notice of claim.**

19) The final factor to be considered by the Court is whether the delay in serving the notice of claim *substantially* prejudices the Respondents in maintaining a defense. This factor also weighs in favor of the Petitioner.

20) The Respondents are not prevented from, or disadvantaged by, investigating the claim now. More, 262 A.D.2d at 1030. As discussed above, the Petitioner immediately reported the incident to his employer and also to the Police and Fire Departments. Both the police officer and Fire Department first responders can be interviewed about the conditions as they existed. The Water Authority is also aware of the valve technician, Timothy Tomasik, who initially responded to the scene. Lastly, Mr. Barry was found laying in the water by Father Christopher Coric of Our Lady of Bristrica Croaton Roman Catholic Church. Father Coric lives in Lackawanna and is available to describe the conditions and what he saw on January 7, 2018. Upon information and belief, an investigation into the incident was performed by Verizon resulting in the completion of an Accident Report, which they have failed to provide despite the Court's Order. In fact, it is quite possible that the Respondents performed an investigation as well in response to the completion of the Verizon

Report.

21) Further, if this application is granted, the Respondents, pursuant to General Municipal Law § 50(h), will be entitled to examine the Petitioner about the happening of the incident and the extent of his injuries thereby further alleviating any claimed prejudice. Finally, the Respondents will be able to conduct depositions of the Verizon employees, the police officer, the firemen and the priest to whom the Petitioner reported the incident on January 7, 2018.

21) Accordingly, the Petitioner has established that the Respondents are not *substantially* prejudiced by the Petitioner's late notice of claim.

**WHEREFORE**, the Petitioner respectfully requests that this Court grant him leave to file and serve a late notice of claim and grants such other and grant any and all other relief that the Court deems just and proper.

Dated: Buffalo, New York  
December 19, 2018



---

**Marc C. Panepinto, Esq.**  
**DOLCE PANEPINTO, P.C.**  
*Attorneys for Petitioner*  
1260 Delaware Avenue  
Buffalo, New York 14209  
(716) 852-1888

# EXHIBIT A

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

---

Robert Barry

Claimant,

v.

Erie County Water Authority

Respondents.

---

**PROPOSED NOTICE  
OF CLAIM**

Index No.

PLEASE TAKE NOTICE that the claimant, Robert Barry, hereby makes a claim and demand against the Erie County Water Authority as follows:

1. Robert Barry (hereinafter "Claimant") resides at 200 Valley Drive, Elma, New York 14059.

2. The attorney for the Claimant is Marc C. Panepinto, Esq., Dolce Panepinto, P.C., with offices located at 1260 Delaware Avenue, Buffalo, New York 14209, Telephone: (716) 852-1888.

3. The present claim arose out of an incident that occurred on or about January 7, 2018 at approximately 7:40 p.m.

4. At the above-referenced date and time, the Claimant was injured in the course of his employment with Verizon on an excavation project to be carried out at the corner of Elmview and Abbott Road in Lackawanna, New York. Specifically, the Claimant was in the process of attempting to identify and mark Verizon utility wires around the location of the water main break when he was caused to slip and/or trip and fall on ice covered by water due to the presence of a larger than anticipated water main leak.

5. On the night of the injury the Claimant spoke to his supervisor at Verizon, Chris Haley, and told him that he was injured at the located of the water main break at the corner of

Elmview and Abbott Road. He gave his employer all the essential details of his fall and expected that Mr. Haley would follow up with the Respondent, Erie County Water Authority.

6. Upon information and belief, Respondents herein are the owner of the water line and/or contractor designated to repair the water line located at the corner of Elmview and Abbott in Lackawanna where the subject excavation project was being carried out. Before excavation work necessary to complete the water main repair was performed, all utilities in the area, including the Verizon utility, had to be marked out.

7. Accordingly, upon information and belief, Respondents are a "statutory owner or contractor" of the aforementioned construction project for the purpose of Labor Law §§ 200 and 241(6), and accordingly will be vicariously liable for any proven violations of those statutes.

8. The Claimant alleges that pursuant to the common law and the provisions of Labor Law §§ 200 and 241(6), Respondents had a non-delegable duty to provide the Claimant with a safe place to work; to ensure that the work area was constructed, placed and operated as to give proper protection to a person so employed, namely the Claimant; to ensure that the Claimant had all of the protections required by the New York State Industrial Code; and to otherwise ensure that the Claimant had proper protections to carry out the work that was assigned to him.

9. The Claimant alleges the Respondent breached their statutory and common law duties by failing to provide Claimant with a safe place to work; failing to ensure that the work area was constructed, placed and operated as to give proper protection to a person so employed, namely the Claimant; failing to ensure that the Claimant had all of the protections required by the New York State Industrial Code; otherwise failing to ensure that the Claimant had proper protections to carry out the work that was assigned to him; and were otherwise negligent, careless, and/or reckless.

10. The Claimant alleges that as a direct result of the above-described incident, the violations of the applicable statutes, regulations, codes and standards, and as a result of the negligence, carelessness and/or recklessness of the Respondents, their officers, agents, employees, and/or servants, the Claimant was caused to sustain serious bodily injuries, including but not limited to injuries to his lumbar spine.

11. Following the incident, the Claimant was transported by ambulance to Erie County Medical Center. Upon information and belief, the Claimant continues to treat with Dr. James Egnatchik, MD for his spinal injuries. The Claimant is claiming past medical damages for the medical expenses incurred to date. It is reasonably anticipated that the Claimant will continue to need causally-related medical care in the future and is claiming future medical damages for the costs associated with any such necessary treatment.

12. At the time of the incident, the Claimant was employed as a full-time utility line marker for Verizon earning approximately \$1,700 per week. The Claimant has been disabled from his employment from the date of the incident to the present and the Claimant is claiming past lost wage damages. It is reasonably anticipated that the Claimant will continue to remain disabled into the future and/or will suffer a loss in his earning capacity. Accordingly, the Claimant is further making a claim for future loss of earnings.

13. The Claimant hereby files a claim for damages for serious and permanent personal injuries, economic loss, conscious pain and suffering, medical expenses, and changes in his lifestyle, all of which were caused by the statutory violations and negligence, carelessness, and recklessness of these Respondents, their officers, agents, employees, and/or servants.

14. As a result of the foregoing, the Claimant demands money damages from these Respondents for injuries sustained in the incident of January 7, 2018, which amount shall be

supplemented at a later date consistent with the nature, extent, treatment, duration and/or permanency of the injuries sustained.

15. This claim and demand is hereby presented for adjustment and payment.

**WHEREFORE**, the Claimant, Robert Barry, respectfully demands that this claim be adjusted and paid by the Respondents, the Erie County Water Authority, and further sets forth his intent to commence an action thereon if said claim is not adjusted and paid.

Dated: Buffalo, New York  
December 18, 2018

---

**Marc C. Panepinto, Esq.**  
**DOLCE PANEPINTO, P.C.**  
*Attorneys for Claimant*  
1260 Delaware Avenue  
Buffalo, New York 14209  
(716) 852-1888

VERIFICATION

STATE OF NEW YORK)

COUNTY OF ERIE ) ss:

Robert Barry, being duly sworn, deposes and says that deponent is a Claimant in the within action; that deponent has read the foregoing Proposed Notice of Claim and know the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes to be true.

\_\_\_\_\_

Robert Barry

Sworn to before me this \_\_\_\_\_

day of December, 2018

\_\_\_\_\_

# EXHIBIT B

**CATHOLIC HEALTH SYSTEM**

Mercy Hospital of Buffalo 565 Abbott Road, Buffalo, NY 14220 ,

**History and Physical**

NAME:	BARRY JR, ROBERT J	ENC#:	50051742406
DATE:	01/08/2018	MR#:	B00282279
DOB:	<del>XXXXXXXXXX</del>	ROOM:	0640 D
ADMIT:	01/08/2018		
DISCH:			
ATTENDING PHYSICIAN:	James G Egnatchik		

CC: David A Lawton, MD  
James G Egnatchik, MD

This report is a preliminary document until electronically signed

**HISTORY OF PRESENT ILLNESS:** Mr. Barry is a 45-year-old gentleman who was brought to the Emergency Room by EMS yesterday after a fall injury, which occurred at work. Apparently, he got out of his truck and slipped on ice and fell backwards hitting the back of his head. He lay in a puddle of water, unable to get up for a period of time and then was apparently discovered by a priest walking down the street. He was taken to Mercy Hospital and an urgent MRI scan of the cervical spine was performed, which showed a C3-C4 disk herniation with spinal cord contusion and severe spinal stenosis. The patient had had previous C5-C6-C7 fusion 7 years ago.

Mr. Barry had been seen recently in my office. We were planning upcoming anterior cervical discectomy and fusion. He had been scheduled for a new MRI scan later this month in anticipation of that surgery. Neurologically speaking after the fall, he had difficulty moving his right arm. He was given steroids and emergent surgery was planned.

**ALLERGIES:** SULFA DRUGS.

**HOME MEDICATIONS:** Motrin.

**PAST MEDICAL HISTORY:** None significant.

**SIGNIFICANT PAST SURGICAL HISTORY:** Neck surgery.

**REVIEW OF SYSTEMS:** Positive for nausea and vomiting. Negative for pain. Neuro is positive for weakness of the upper extremities. He is able to move his legs. It is also positive for loss of consciousness.

**PHYSICAL EXAMINATION:** Mr. Barry is awake, alert and oriented. His heart rhythm is regular with normal S1 and S2. No murmurs are auscultated. No JVD. the lungs have equal breath sounds bilaterally without rales or rhonchi. Abdomen: Soft, there is no evidence of any abdominal injury. He has a cervical collar in place. His right arm was weak. He is able to grip my hand this morning and if I lift his arm up. He is able to hold it up.

**CATHOLIC HEALTH SYSTEM**

Mercy Hospital of Buffalo 565 Abbott Road, Buffalo, NY 14220 ,

---

		History and Physical
NAME:	BARRY JR,ROBERT J	ENC#: 50051742406
DATE:	01/08/2018	MR#: B00282279
DOB:	<del>03/08/1957</del>	ROOM: 0640 D
ADMIT:	01/08/2018	
DISCH:		
ATTENDING PHYSICIAN:	James G Egnatchik	

---

**RADIOGRAPHIC STUDIES:** The MRI scan was reviewed. It shows a large C3-C4 disk herniation with spinal cord compression.

**IMPRESSION:**

1. Acute cervical disk herniation C3-C4 with spinal cord compression and edema.
2. Status post C5-C7 anterior cervical discectomy and fusion.

**PLAN:** Mr. Barry needs to go to surgery emergently to perform an anterior cervical discectomy and fusion of the C3-C4 level. The risks of the surgery were explained and accepted.

James G Egnatchik, MD

JE/cp

D: 01/08/2018 07:20:14

T: 01/08/2018 07:31:04

Job #: 083889/ Doc #: 1669153

<b>Pt Name:</b>	BARRY JR, ROBERT J	<b>MRN:</b>	00282279
<b>Pt ID:</b>	2010028243	<b>Acct No:</b>	80081742406
<b>DOB:</b>	<del>XXXXXXXXXX</del>	<b>Age/Sex:</b>	45Y/M
<b>Adm DTime:</b>	01/08/2018 0:28	<b>Att Dr:</b>	Egnatchik, James G MD
<b>Nurs Sta:</b>	BIC	<b>Rm &amp; Bed:</b>	81281B
<b>Dx:</b>			
<b>Allrg:</b>	Sulfa (Sulfonamide Antibiotics)		

**Critical Care (H&P) - Admission History and Physical**

Collected On: 01/08/2018 19:08

**Chief Complaint / HPI**

120 Minutes Critical Care Services were Provided.

POD #

1 Procedure

Part 1.

Anterior cervical discectomy C3-4.

Anterior cervical fusion C3-4 with Medtronic Cornerstone machined allograft bone cage and Progenix demineralized bone matrix.

Anterior cervical fusion C3-4 with Synthes variable angle plate and screws.

Part 2:

Posterior cervical laminectomy C3, C4, C5, C6.

Posterior cervical fusion C3, C4, C5, C6 with Synthes Synapse polyaxial lateral mass screws and titanium rods.

Posterior cervical fusion C3, C4, C5, C6 with autograft bone and Progenix demineralized bone matrix.

**Chief Complaint**

Inability to move arms and legs s/p fall outside at work.

HPI

Patient fell while at work last night, work up in water unable to move, he yelled for help, priest from local church found him called EMS. Patient brought to ER, evaluated and admitted to hospital for paraesthesia with possible spinal cord contusion.

Events of Last 24 Hours

Went to OR today with Dr. Egnatchik today, brought to ICU post-op, seen by myself at upon arrival.

**Allergies**

- \* Sulfa (Sulfonamide Antibiotics)

Allergy List Was Reviewed

Yes.

Pt Name: BARRY JR, ROBERT J

MRN: 00282279

Operation Admission History and Physical

Rm/Bed: 81281B

Page 1 of 9

ORE\_D713\_FDR.rpt v1.00

Printed By: EDR - Event Driven Routing

Printed On: 05-Jan-18 18:37

© 2003-2018 Siemens Medical Solutions USA, Inc. All rights reserved.  
Crystal Reports © 2018 Business Objects SA. All rights reserved.

Received by WCB Fax on 2/1/2018 1:28:14 PM

# EXHIBIT C

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

Robert Barry

Petitioner,

v.

Verizon New York, Inc.

Respondent.

AFFIRMATION

Index No.

Marc C. Panepinto, Esq., an attorney duly admitted to practice law in the State of New York, affirms the following under penalty of perjury:

1) I am an attorney at law duly licensed to practice in the State of New York and am the attorney for the Petitioner, Robert Barry, and that my firm has been retained to represent him for the injuries he sustained on or about January 7, 2018. As such, I am fully familiar with the facts and circumstances herein.

2) Upon information and belief, on or about January 7, 2018, petitioner was employed by Verizon New York, Inc., assigned to work at the Cardinal Stepinac Memorial Auditorium at 1618 Abbott Road.

3) On January 7, 2018, during the course of his employment, Mr. Barry was working at the Cardinal Stepinac Memorial Auditorium at a locator for Verizon to locate the lines for the Erie County Water Authority who was responding to a water main break. Mr. Barry was caused to slip and fall on ice, causing serious personal injuries to his neck and head.

4) Upon information and belief, Respondent Verizon New York, Inc. did not provide a safe place to work for the claimant as mandated by the New York State Labor Law, and was further

negligent, careless and reckless, which negligence, carelessness and recklessness in violation of the New York State Labor Law caused injury to the claimant and resulting damages.

5) Upon information and belief, the Verizon New York, Inc. is a domestic business corporation authorized to conduct business in the State of New York.

6) Respondent, Verizon New York, Inc., had a duty to provide a safe place to work for the claimant as mandated by the New York State Labor Law, and were further negligent, careless and reckless, which negligence, carelessness and recklessness in violation of the New York State Labor Law caused injury to the claimant and resulting damages.

7) This Motion for Pre-Litigation Discovery requests production of all documents and evidence, in whatever form maintained, materials relating to the above matter and further seeks an injunction directing respondents to preserve and not alter, dispose of, or destroy any of the information requested herein.

8) Upon information and belief, the information which petitioner is seeking is kept in the usual and regular course of business by the respondents.

9) CPLR 3102(c) provides that "before an action is commenced, disclosure to aid in bringing an action may be obtained, but only by Court order." Assessment of the propriety of pre-litigation discovery lies within the broad discretion of the Court. *Urban v. Hooker Chemicals and Plastics Corp.*, 75 A.D.2d. 720 (4th Dept. 1980).

10) Pursuant to the authority of CPLR 3102(c), the petitioner seeks the following disclosure from the respondent both "to aid in bringing an action" and "to preserve information":

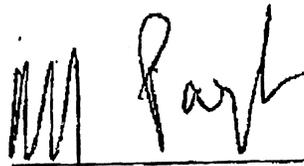
- A copy of any accident/incident reports prepared regarding the incident involving Robert Barry on or about January 7, 2018;
- Any and all communication between Verizon New York, Inc. and any and all parties regarding Robert Barry's injury/accident;
- All email, written or electronic communication between Verizon New York, Inc. and the Erie County Water Authority regarding the water main break and Mr. Barry's injury/accident;
- The name, address and phone number of the locator who finished the project; and
- A copy of the contract, memorandum of understanding or agreement between the Erie County Water Authority and Verizon New York, Inc. for locating lines and/or leaks.

11) This pre-litigation discovery is necessary to determine and preserve facts surrounding the petitioner's accident and to utilize the pre-litigation discovery process to identify any and all potential defendants.

12) Petitioner recognizes his obligation to bear the reasonable copying costs associated with this requested relief.

13) No prior application for the relief requested herein has been made.

Dated: Buffalo, New York  
August 29, 2018



Marc C. Panepinto, Esq.  
DOLCE PANEPINTO, P.C.  
Attorneys for Petitioner  
1260 Delaware Avenue  
Buffalo, New York 14209  
(716) 852-1888

# EXHIBIT D

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

NOTICE OF ENTRY

Robert Barry

Index No. 813621/2018

Petitioner,

v.

Verizon New York, Inc.

Respondent.

**PLEASE TAKE NOTICE**, that the annexed Order is a copy of an Order duly entered in the above-entitled action and filed in the office of the Clerk of the County of Erie on the 11<sup>th</sup> day of October, 2018.

Dated: Buffalo, New York  
October 11, 2018



Marc C. Panepinto, Esq.  
DOLCE PANEPINTO, P.C.  
*Attorneys for Petitioner*  
1260 Delaware Avenue  
Buffalo, New York 14209  
(716) 852-1888

TO: Verizon New York, Inc.  
120 Dyke Road  
West Seneca, NY 14224

At a Special Term of the Supreme Court held in and for the County of Erie at Buffalo, New York on the 10<sup>th</sup> day of October, 2018.

Hon. Dennis E. Ward, J.S.C.  
Justice Presiding

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

Robert Barry

Petitioner,

v.

Verizon New York, Inc.

Respondent.

**ORDER**

Index No. 813621/2018

Upon reading the annexed Order to Show Cause and Affirmation of Marc C. Panepinto, Esq., attorney for Petitioner, duly affirmed on the 29<sup>th</sup> day of August, 2018; no appearance by the Respondent; and said motion having duly come on to be heard before the Hon. Dennis E. Ward, J.S.C. for oral argument; it is hereby

**ORDERED**, that Respondent, Verizon New York, Inc., respond within 30 days of the date of service of entry of the Order, to Petitioner's outstanding request for pre-litigation discovery pursuant to CPLR §3102(c) by producing the following items, to the extent in their respective possession:

- A copy of any accident/incident reports prepared regarding the incident involving Robert Barry on or about January 7, 2018;
- Any and all communication between Verizon New York, Inc. and any and all parties regarding Robert Barry's injury/accident;

- All email, written or electronic communication between Verizon New York, Inc. and the Erie County Water Authority regarding the water main break and Mr. Barry's injury/accident;
- The name, address and phone number of the locator who finished the project; and
- A copy of the contract, memorandum of understanding or agreement between the Erie County Water Authority and Verizon New York, Inc. for locating lines and/or leaks.

SO ORDERED:



Hon. Dennis E. Ward, J.S.C.

GRANTED:

OCT 1 1 2018

# EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ERIE

Plaintiff / Petitioner:

Robert Barry

Defendant / Respondent:

Verizon New York, Inc.

AFFIDAVIT OF SERVICE

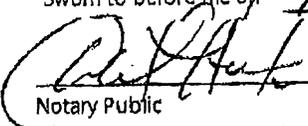
Index No:  
813621/2018

The undersigned being duly sworn, deposes and says; deponent is not a party herein, is over 18 years of age and resides at 501 New York Ave Sulta 3, Union City, NJ 07087. That on Mon, Oct 15 2018 AT 02:45 PM AT 111 Eight Ave, New York 10011 deponent served the within Notice of Entry, Order on Verizon New York, Inc C/O Ct Corporation

- Individual; by delivering a true copy of each to said defendant, personally; deponent knew the person so served to be the person described as said defendant therein.
- Corporation: Verizon New York, Inc. a defendant, therein named, by delivering a true copy of each to Nora Dindyal personally, deponent knew said corporation so served to be the corporation described, and knew said individual to be Process Specialist thereof.
- Suitable Person: by delivering thereat, a true copy of each to \_\_\_\_\_ a person of suitable age and discretion.
- Affixing to Door: by affixing a true copy of each to the door thereof, deponent was unable with due diligence to find defendant, or a person of suitable age or discretion thereat, having called thereon; at \_\_\_\_\_
- Mailing: Deponent also enclosed a copy of same, in a postpaid sealed wrapper properly addressed to said defendant at defendant's last known residence, \_\_\_\_\_, and depositing said wrapper in a post office, official depository under the exclusive care and custody of the United States Post Office, department, with New York State. Mailed on \_\_\_\_\_
- Military Service: I asked the person spoken to whether defendant was in active military service of the United States or of the State of New York in any capacity whatever and received a negative reply. *Defendant wore ordinary civilian clothes and no military uniform.* The source of my information and the ground 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.

Description:  
 Age: 40 Ethnicity: Middle Eastern Gender: Female Weight: 140  
 Height: 5'6" Hair: Black Eyes: \_\_\_\_\_ Relationship: Process Specialist  
 Other \_\_\_\_\_

  
 Augustus Wilson  
 Process Server License# 2066221

Sworn to before me on 10/17/2018  
  
 Notary Public

**WAH HEE LEI**  
 NOTARY PUBLIC, STATE OF NEW YORK  
 NO. 01LEG151951  
 QUALIFIED IN RENSSELAIRE COUNTY  
 CERTIFICATE FILED IN NEW YORK COUNTY  
 COMMISSION EXPIRES AUGUST 28, 2022

# EXHIBIT F

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

---

Robert Barry

Plaintiff,

v.

Verizon New York, Inc.

Defendant.

---

**ATTORNEY AFFIRMATION**

Index No.: 813621/2018

Marc C. Panepinto, Esq., affirms the following under the penalties of perjury:

1. I am an attorney at law duly licensed to practice in the State of New York and am a partner in the law firm of Dolce Panepinto, P.C., attorneys for Robert Barry (hereinafter Mr. Barry or plaintiff). As such, I am fully familiar with the prior pleadings and proceedings had heretofore and the facts and circumstances herein.

2. This affirmation is submitted in support of the plaintiff's motion, by way of order to show cause, to hold non-party Verizon New York, Inc. (hereinafter Verizon) in civil contempt for its failure to comply with the pre-litigation discovery order of Hon. Dennis E. Ward, J.S.C.

3. The underlying application for pre-litigation discovery action arises out of a workplace accident which occurred on January 7, 2018. On that date, Mr. Barry, an employee of Verizon, sustained serious personal injuries when, while doing the marking of utility lines in response to a water main break on that date he slipped and fell on ice covered in water suffering a severe neck injury. Upon information and belief, the Erie County Water Authority was the owner of the water main and/or was the contractors tasked with repairing the water main, and

thus would be liable for any proven violations of Labor Law §§ 200 and 241(6) statutes.

4. The plaintiff commenced the action for pre-litigation discovery against his employer Verizon in an attempt to confirm that the Erie County Water Authority was proper defendant for the purpose of the Labor Law §§ 200 and 241(6) statutes. The plaintiff further sought pre-litigation discovery for the purposes of ascertaining whether the Erie County Water Authority had notice of the facts underlying the claim within 90-days of the plaintiff incident so that the plaintiff could include such evidence in his application to serve late notice of claim against the Erie County Water Authority, pursuant to General Municipal Law § 50(e)(5). Verizon has ignored this Court's order to provide pre-litigation discovery and has consequently deprived the plaintiff of discovery pertaining to the notice issue and has further delayed the filing of the late notice of claim application.

#### **RELEVANT PROCEDURAL HISTORY**

5. On August 29, 2018, the plaintiff filed a motion, by way of order to show cause, for pre-litigation discovery. The motion was supported by an affirmation. The order to show cause was granted by Justice Ward on October 11, 2018 and Notice of Entry was filed on the same date. A copy of the Order to Show Cause and the supporting Affirmation are attached hereto collectively as Exhibit A.

6. The order directed Verizon to produce documents to the petitioner within thirty (30) days after Notice of Entry of the Order pursuant to CPLR 3102(c). The documents included the following:

- A copy of any accident/incident reports prepared regarding

the incident involving Robert Barry on or about January 7, 2018;

- Any and all communication between Verizon New York, Inc. and any and all parties regarding Robert Barry's injury/accident;
- All email, written or electronic communication between Verizon New York, Inc. and the Erie County Water Authority regarding the water main break and Mr. Barry's injury/accident;
- The name, address and phone number of the locator who finished the project; and
- A copy of the contract, memorandum of understanding or agreement between the Erie County Water Authority and Verizon New York, Inc. for locating lines and/or leaks.

**Exhibit A.**

7. Verizon neither appeared nor submitted papers in opposition to the request for pre-litigation discovery. In the absence of opposition, Justice Ward granted the plaintiff's motion and directed Verizon to submit to pre-litigation discovery and produce the requested items within thirty days. An order memorializing the decision was filed on October 11, 2018. A copy of the Order with Notice of Entry is attached hereto as Exhibit B.

8. The order was personally served upon Verizon via its registered agent - C.T. Corporation System, 111 Eighth Avenue, New York, New York 10011 on October 15, 2018. A copy of the Affidavit of Service is attached hereto as Exhibit C.

9. To date Verizon has not responded in any way and has totally ignored the Judge's Order. The information requested from Verizon is crucial to the petitioner, Robert Barry as he has been attempting to ascertain the Erie County Water Authority's status as owner and/or

contractor for the purposes of the Labor Law and has further been attempting to establish notice of his work place injury on January 7, 2018 against the Erie County Water Authority.

**SUMMARY OF THE ARGUMENT**

**POINT I**

**VERIZON'S DISOBEDIENCE TO A LAWFUL ORDER CLEARLY EXPRESSING AN UNEQUIVOCAL MANDATE PREJUDICED THE PLAINTIFF AND THEREFORE, VERIZON MUST BE HELD IN CIVIL CONTEMPT**

**A. Verizon is Guilty of Civil Contempt.**

10. Under Judiciary Law § 753:

[a] court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of a duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced, in any of the following cases:

\* \* \*

3. A party to the action or special proceeding, an attorney, counsellor, or other person, for the non-payment of a sum of money, ordered or adjudged by the court to be paid, in a case where by law execution can not be awarded for the collection of such sum except as otherwise specifically provided by the civil practice law and rules; *or for any other disobedience to a lawful mandate of the court.*

Judiciary Law § 753(A)(3)[emphasis added].

11. There are four elements necessary to support a finding of civil contempt: (1) it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect; (2) it must appear, with reasonable certainty, that the order has been disobeyed; (3)

the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party and; (4) prejudice to the right of a party to the litigation must be demonstrated. Here, there can be no doubt that the four elements are satisfied. See Memorandum of Law at pp. 3-4.

12. First, the order of Justice Ward granted on October 11, 2018 was a lawful order of the court, clearly expressing an unequivocal mandate. The order contains the following unambiguous directive:

ORDERED, that Respondent, Verizon, respond within 30 days of the date of service of entry of the order to petitioners outstanding request for pre-litigation discovery pursuant to CPLR §3102(e) by producing the following items to the extent in their respective possessions:

\* \* \*

b) A copy of any accident / incident report prepared regarding the incident involving Robert Barry on or about January 7, 2018.

**Exhibit B.**

13. Second, it is undisputed that Verizon disobeyed the order. In response to being served with the order, Verizon has failed to respond at all.

14. Third, it is clear that Verizon had knowledge of the order. The order was served on October 15, 2018. **Exhibit C.**

15. Fourth, the plaintiff was prejudiced by Verizon's failure to comply with the order. The plaintiff believes that documents recently obtained pursuant to a FOIL Request establish that the Erie County Water Authority is a proper defendant for the purpose of the Labor Law §§ 200 and 241(6). Nevertheless, the plaintiff is still attempting to establish the Erie County Water

~~Authority had notice of the facts underlying the plaintiff's claim within 90 days of the incident,~~  
and believes that Verizon possesses information relevant to that issue. The failure of Verizon to produce the requested information may result in the denial of the plaintiff's late notice of claim application pursuant to General Municipal Law § 50(e)(5) that the plaintiff intends to file shortly, as notice is one of the elements the Court is to consider upon such an application.

15. Based on the foregoing, Verizon is guilty of civil contempt.

**B. A Fine Must be Imposed Upon Verizon Sufficient to Indemnify the Plaintiff.**

16. Once civil contempt has been established, the court *must* impose a fine to compensate the aggrieved party. Judiciary Law § 773 provides:

If an actual loss or injury has been caused to a party to an action or special proceeding, by reason of the misconduct proved against the offender, and the case is not one where it is specifically prescribed by law, that an action may be maintained to recover damages for the loss or injury, a fine, sufficient to indemnify the aggrieved party, must be imposed upon the offender, and collected, and paid over to the aggrieved party, under the direction of the court.

Judiciary Law § 773 [emphasis added].

17. Here, the plaintiff will sustain actual loss by reason of the disobedience of Verizon if the court is to deny the plaintiff's late notice of claim application against Erie County Water Authority.

18. The plaintiff submits that, if leave to serve late notice of claim is granted, liability against the Erie County Water Authority will be clear and undisputed. The evidence gathered to date establishes that the Erie County Water Authority is the owner and/or contractor of the project that involved the repair of the water main break at the corner of Elmview and Abbot Road

on January 7, 2018 for the purposes of the Labor Law §§ 200 and 241(6) statutes. Indeed, Labor Law §241(6) is a vicarious liability statute which imposes liability upon an owner or general contractor for the negligence of a subcontractor or other party, even in the absence of control or supervision of the work site. See Accompanying Memorandum of Law. An entity will be held liable as owner if it holds title to the property where the accident occurred; if it has a interest in land, other than fee ownership, or if it owns the project, benefits from the project, and had the authority to control the activities conducted in connection therewith. See Accompanying Memorandum of Law. Similarly, an entity will be held liable as contractor under Labor Law § 241(6) where it has the authority to control the work and th injury producing job site conditions. See Accompanying Memorandum of Law. An entity will similarly be held liable under Labor Law § 200 where that entity had authority over the work site . Upon information and belief, the Erie County Water Authority is both the owner of the water main at issue and acted as contractor who undertook the repair of the water main, with requisite authority over the work.

19. In addition, it is well settled that the statute does not only protect workers engaged in construction work, but also protects workers engaged in tasks that are ancillary to the completion of those types of work that are clearly delineated in the statute. See Accompanying Memorandum of Law. The work that the plaintiff was performing in marking the Verizon utility facilities was ancillary and necessary work. Indeed, the excavation work to repair the water line necessitated that Verizon confirm that the area to be excavated was free of Verizon lines before the excavation work took place. As such, as a statutory owner or contractor of the aforementioned excavation site at Elmview and Abbott Road, the respondent will be vicariously liable under Labor Law §200 and §241(6) for any proven violations that existed at the time of the

plaintiff's work.

20. Given that Mr. Barry earned approximately \$90,000 per year as a Verizon employee and he has suffered a career ending injury at age 45, the total wage loss until age 65 could be in excess of \$1,500,000.

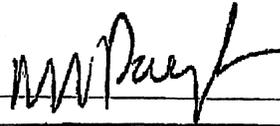
21. As a result of the incident, the plaintiff sustained, a traumatic herniated disc with cord compression necessitating a four level cervical fusion. Attached as Exhibit D is the operative report of Dr. Egnatchik. At the time of the injury, Mr. Barry was 45 years old. He is currently 46 years old. Mr. Barry continues to treat for his injuries.

### CONCLUSION

22. For the reasons stated above, the court should hold Verizon in civil contempt for disobeying the pre-litigation discovery order. Simply put, this type of behavior cannot be permitted. In order to compensate the plaintiff and punish Verizon for its conduct, the court must grant the plaintiff's motion, hold Verizon in contempt civilly and impose adequate and appropriate fines of between \$100,000 and \$1,000,000.

**WHEREFORE**, the plaintiff respectfully requests that the court grant his motion by way of order to show cause, to hold Verizon in civil contempt for its failure to comply with the pre-litigation discovery order of Hon. Dennis E. Ward, J.S.C.; and for such other and further relief as the court deems just and proper.

DATED: Buffalo, New York  
December 19, 2018



---

**Marc C. Panepinto, Esq.**  
**DOLCE PANEPINTO, P.C.**  
*Attorneys for Plaintiffs*  
1260 Delaware Avenue  
Buffalo, New York 14209  
(716) 852-1888

# EXHIBIT G

**DOLCE PANEPINTO**  
ATTORNEYS AT LAW

1260 Delaware Avenue • Buffalo, NY 14209  
P:716.852.1888 • DolcePanepinto.com • F:716.852.3588

MARC C. PANEPINTO  
SEAN E. COONEY  
EDWARD L. SMITH, III  
ANNE M. WHEELER  
JONATHAN M. GORSKI

October 25, 2018

COLLEEN M. MALCHOW  
HOLLY L. SCHOENBORN  
DONALD M. PANEPINTO  
JOHN B. LICATA  
RENE JUAREZ  
EDWARD T. MAZZU, JR.  
KRISTIN M. ALLEN  
THORICE M. JACOBS  
RICH HALL

Sent via email at  
[Foia@ECWA.org](mailto:Foia@ECWA.org)  
Original via US Mail

Erie County Water Authority  
350 Ellicott Square Building  
295 Main Street  
Buffalo, NY 14203

ANN M. NICHOLS  
SAMUEL P. DAVIS  
OF COUNSEL

**RE: FOIA Request**

Dear Sir/Madam:

I am writing this letter to request the release of certain documents under the Freedom Of Information Act. The information that I request is necessary for litigation, and any information delivered to myself will not be used for any commercial purposes, nor for any of the other enumerated exceptions to a freedom of information request.

I represent a client, Robert Berry, who was injured in an incident on January 7, 2018. At this time I would request copies of the following documents:

1. All dispatch recordings for 1/7/18 and 1/8/18 regarding a water main break at the corner of Elmview and Abbott Road in the City of Buffalo.
2. All communications between the Erie County Water Authority and Dig Safe and/or Verizon about the water main break at the corner of Elmview and Abbott Road on 1/7/18.
3. The names of the valve crew workers that responded to the water main break at the corner of Elmview and Abbott on 1/7/18.
4. The names of the Water Authority workers or contractors who responded to the water main break at the corner of Elmview and Abbott on 1/7/18.

FRANK J. DOLCE  
(1953-2016)

5. Any and all communications and/or correspondence in any form between the Erie County Water Authority and Dig Safe and/or Verizon and/or from any party about the accident involving Robert Barry on 1/7/18 at Elmview and Abbott.
6. Any incident report or accident investigation report prepared by the Erie County Water Authority involving the accident of Robert Barry at the corner of Elmview and Abbott on 1/7/18.
7. Any and all communication between the Erie County Water Authority and Verizon and any and all other parties regarding Robert Barry's injury / accident.

Thank you for your cooperation in this matter.

Very truly yours,

**DOLCE PANEPINTO, P.C.**



Marc C. Panepinto

MCP:cs

# EXHIBIT H

**Erie County Water Authority**

295 Main Street • Room 350 • Buffalo, NY 14203-2494  
716-849-8484 • Fax 716-849-8463

December 5, 2018

Marc C. Panepinto  
Dolce Panepinto, P.C.  
1260 Delaware Avenue  
Buffalo, New York 14209

**RE: FOIL – January 7, 2018 incident**

Dear Mr. Panepinto:

Please be advised that I am the Freedom of Information Officer for the Erie County Water Authority. I am in receipt of your letter dated October 25, 2018 (received by the Authority on October 29, 2018) requesting the below information. Please note ECWA's response immediately following each item.

1. All dispatch recordings for 1/7/18 and 1/8/18 regarding a watermain break at the corner of Elmview and Abbott Road in the City of Buffalo.

Response: Enclosed is a CD containing all records the Authority has located.

2. All communications between the Erie County Water Authority and Dig Safe and/or Verizon about the water main break at the corner of Elmview and Abbott Road on 1/7/18.

Response: Enclosed are the DigTrack requests that the Authority was able to locate.

3. The names of the valve crew workers that responded to the water main break at the corner of Elmview and Abbott on 1/7/18.

Response: The ECWA employee that responded to the break is Timothy Tomasiik.

4. The names of the Water Authority workers or contractors who responded to the water main break at the corner of Elmview and Abbott on 1/7/18.

Response: Jordan Grimaldi, Crew Chief and Mark Nasca on behalf of the Water Authority and Chris Galati and Justin Bradley on behalf of Russo Development.

Marc C. Panepinto  
Dolce Panepinto, P.C.  
December 5, 2018

Page 2

5. Any and all communications and/or correspondence in any form between the Erie County Water Authority and Dig Safe and/or Verizon and/or from any party about the accident involving Robert Barry on 1/7/18 at Elmview and Abbott.

Response: The Authority has no information on this matter.

6. Any incident report or accident investigation report prepared by the Erie County Water Authority involving the accident of Robert Barry at the corner of Elmview and Abbott on 1/7/18.

Response: The Authority has no records regarding this item.

7. Any and all communications between the Erie County Water Authority and Verizon and any and all other parties regarding Robert Barry's injury/accident.

Response: The Authority has no records regarding this item.

Very truly yours,

ERIE COUNTY WATER AUTHORITY



Terrence D. McCracken  
Secretary to the Authority

TDM:slz  
Enclosure

# EXHIBIT I

# LACKAWANNA POLICE DEPARTMENT



## Complaint Information

**Complaint# 18-000196 Date Received: 01/07/2018 Source: RADIO**

**Dispatch Code: 3473 Description: PERSON DOWN Call Type: POLICE**

**Final Dispatch Code: 3473 Description: PERSON DOWN**

**Street: ABBOTT RD Tract: 04 Street Code:**

**Cross Street: W ELMVIEW AV Municipality: LACKAWANNA**

**Business: Call Back:**

**Times: Received: 20:23:19 Dispatched: 20:24:51 Arrived: 20:28:48 Completed: 20:45:49**

**Officers: 107-KOWALSKI, M 049-MADDIGAN, J**

**Received By: 122-MURRAY, K Dispatcher: 122-MURRAY, K**

**Report (follow up): NO Notified: LIEUTENANT**

**Action Codes 1. LFD NOTIFIED 2. ONE TOT MERCY BY RURAL/METRO  
3. 4.**

**Associated Persons:**

01/07/18 20:48:20 122 SUBJECT SLIPPED AND FELL ON ICE

# EXHIBIT J



**Lackawanna Fire Department**  
Station: 2  
Shifts Or Platoon: Platoon 'A'

<b>Location:</b> Abbott RD Lackawanna NY 14218 west elmview	<b>Incident Type:</b> 321 - EMS call, excluding vehicle accident with injury
<b>Lat/Long:</b> N 42° 49' 3.76" W 78° 48' 4.56"	<b>EMSID: NA666</b> <b>FDID: 15049</b> <b>Incident #: 2018-63</b> <b>Exposure ID: 29281514</b> <b>Incident Date: 01/07/2018</b>
<b>Zone:</b> 3 - 3rd Ward <b>Location Type: 2 - Intersection</b> Cross Street, Directions or National Grid: west elmview	

<b>Report Completed by:</b>	Janczyk, Daryl	<b>ID:</b> 78	<b>Date:</b> 01/07/2018
<b>Report Reviewed by:</b>	Palczewski, Jeffrey	<b>ID:</b> 71	<b>Date:</b> 01/10/2018
<b>Report Printed by:</b>	Galanti, Ralph	<b>ID:</b> 74	<b>Date:</b> 9/5/2018 <b>Time:</b> 10:12

<b>Type of Service Requested:</b>	911 Response (Scene)	<b>Mass Casualty Incident:</b>	No	<b>Complaint Reported By Dispatch:</b>	Fall Victim
<b>Aid Given or Received:</b>	None	<b>Primary action taken:</b>	30 - Emergency medical services, other		
<b>Total # of apparatus on call:</b>	1		<b>Total # of personnel on call:</b>	2	

PATIENT #1 - PCR 3918761			
Name	Home Address	Gender	Pregnancy
Robert Barry	200 Valley View Road, Eden, NY 14057 United States	Male	N/A
Race	Ethnicity	DOB	Age
( )	( )		45 Years
Unit Number	Unit Service Level	Estimated Body Weight	Pediatric Color Code
R2	BLS, Emergency	kg	( )

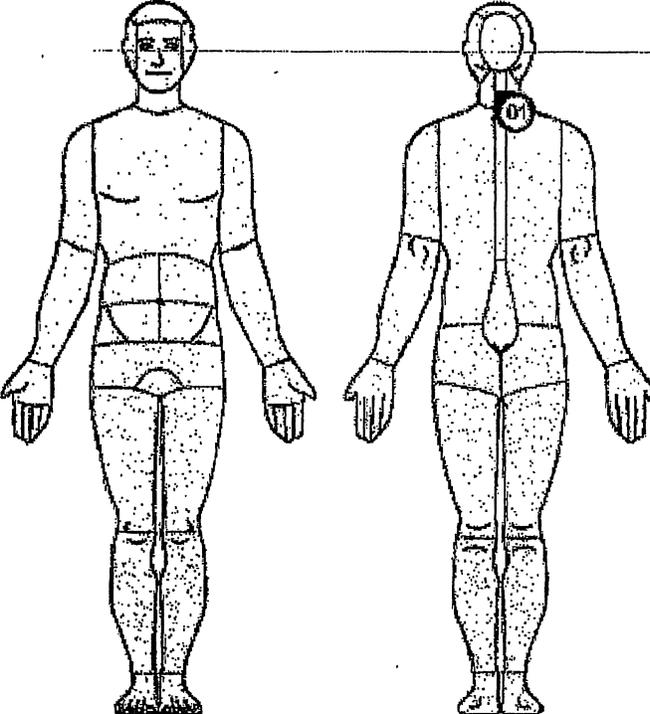
PATIENT HISTORY		
Primary Symptom:	What happened to this patient:	ICD-9 Condition Code Number:
Pain	Treated, Transported by EMS	[Not Available]

TIMELINE ENTRIES				
	Date / Time	Type	Details	Performed By
1	2018-01-07 20:33:33.000000	▲ Respiration	18	--

Proc #	Time Perf	Procedure	Notes	By
1	1/7/2018 20:33	Spinal Immobilization (Size: adult)	No	

**PATIENT NARRATIVE:**  
Pt alleges he slipped on ice, fell, hit head. Reports neck pain and diminished PMS in extremities, Pt laying in cold water 2 inches deep and is in cold icy clothes. C Collar applied moved out of water / ice with backboard and assisted to ambulance. removed from backboard once on stretcher, to Mercy with AMR 552, vitals deferred to remove icy clothes.  
**Review Requested:** No

COMPLAINT	
<b>Chief Complaint Narrative</b>	neck pain
<b>Complaint Anatomic Location</b>	Neck
<b>Primary Symptom</b>	Pain
<b>Providers Primary Impression</b>	Traumatic Injury

<b>EXAM</b>		<b>Exam Time: Performed By:</b>
		
<b>#</b>	<b>Region</b>	<b>Assessment/Injury</b>
1	Spine - Cervical	Pain without swelling/bruising

<b>DESTINATION</b>		
<b>Incident Patient Disposition</b>	Treated, Transported by EMS	
<b>EMS PERSONNEL</b>	<b>ID</b>	<b>ROLE</b>
Janczyk, Daryl	78	0
Palczewski, Martin N	32	0

Member Making Report (Lieutenant Daryl Janczyk): \_\_\_\_\_

Incident Reviewer (Captain Jeffrey Palczewski): \_\_\_\_\_

# EXHIBIT K

Subject: Fw: Seq# 5: 01078-543-022 for VERIZON / BUFFALO

From: Robert Barry (glad9797@yahoo.com)

To: Dan@cf-legal.com;

Date: Tuesday, January 16, 2018 4:55 PM

--- On Tue, 1/16/18, <agt\_comm@irth.com> wrote:

> From: <agt\_comm@irth.com>  
> Subject: Seq# 5: 01078-543-022 for VERIZON / BUFFALO  
> To: Glad9797@Yahoo.com  
> Date: Tuesday, January 16, 2018, 11:55 AM  
> \*\*\*\*\*EMERGENCY\*\*\*\*\*

> DIG REQUEST from DSNY for: VERIZON /  
> BUFFALO Taken: 01/07/2018  
> 17:33  
> To: VERIZON

> Transmitted: 01/07/2018 17:35 00158

> Ticket: 01078-543-022-00 Type:  
> Emergency Previous Ticket:

> State: NY County: ERIE  
> Place:  
> LACKAWANNA /C

> Addr: From:  
> To: Name: W  
> ELMVIEW  
> AVE

> Cross: From:  
> To: Name:  
> Offset:

> Locate: SOUTH SIDE OF W ELMVIEW AVE 50'  
> WEST OF ABBOTT RD  
> NearSt: ABBOTT RD & COBB RD  
> Means of Excavation: BACKHOE

> Blasting:  
> N  
> Site marked with white: N  
> Boring/Directional Drilling: N  
> Within 25ft of Edge of Road: Y

- >
- > Work Type: WATER MAIN REPAIR
- > Duration:
- > Depth of excavation:
- > Site dimensions:
- > Start Date and Time: 01/07/2018 17:33
- > Must Start By: 01/23/2018
- >
- >-----
- > Contact Name: RYAN NOLAN
- > Company: ERIE COUNTY WATER AUTHORITY
- > Addr1: 3030 UNION RD
- >
- > Addr2:
- >
- > City: CHEEKTOWAGA
- >
- > State: NY Zip: 14227
- > Phone: 716-685-8241
- > Fax:
- > 716-685-8501
- > Email: DISPATCHUFPO@ECWA.ORG
- >
- >
- >
- > Field Contact: RYAN
- >
- > Working for: ECWA
- >
- >-----
- > Comments: EMERGENCY, CREW IS ON WAY TO
- > SITE NOW, THIS IS A THREAT TO
- > :
- > LIFE/PROPERTY/VITAL UTILITY
- > : Lookup
- > Type: MANUAL
- >
- >-----
- > Boundary: n 42.822038 s
- > 42.821515 w -78.803769 e
- > -78.801993
- >
- >-----
- >
- > Members: ERIE CTY SWR
- >
- > ERIE WTR AUTH
- > : KIANTONE
- > PIPE
- > NFG / BUFFALO
- > : NAT GRID / WEST
- > / ELECTR TWCBL-BUFFALO
- > : VERIZON /

> BUFFALO

>

>

>

> Ticket History (All Times in Eastern Time):

> 1/7/2018 5:36:53 PM: Received  
> Details: Ticket received  
> for registration code VERIZON / BUFFALO

>

> 1/7/2018 5:36:53 PM: Put in Folder  
> Details: Put in South  
> Park 651 by auto process  
> Notes: Auto Processed  
> per Responsibility Area

>

> 1/7/2018 6:59:01 PM: Assigned  
> Details: Assigned to  
> Robert 2Barry by Robert 2Barry

>

> 1/7/2018 7:37:57 PM: Responded  
> Details: Add note  
> (Ongoing): added by Robert 2Barry, Locate Time: {2018-01-07  
> 19:37:44}  
> Notes: 440-028

>

> 1/7/2018 7:38:07 PM: Responded  
> Details: Add note  
> (Ongoing): added by Robert 2Barry, Locate Time: {2018-01-07  
> 19:38:01}

>

> 1/7/2018 7:38:44 PM: Responded  
> Details: No Conflict:  
> added by Robert 2Barry, Locate Time: {2018-01-07 19:38:37}

>

> 1/7/2018 7:38:45 PM: Positive Response  
> to Center Queued  
> Details: Positive  
> Response to Center queued for delivery

>

> 1/7/2018 7:38:45 PM: Positive Response  
> to Excavator Queued  
> Details: Positive  
> Response to Excavator queued for delivery

>

> 1/7/2018 7:38:46 PM: Positive Response  
> to Center Delivered  
> Details: Positive  
> Response to Center successfully sent

- >
- > 1/7/2018 7:38:52 PM: Positive Response
- > to Excavator Delivered
- > Details: Positive
- > Response to Excavator successfully sent to DISPATCHUFPO@ECWA.ORG
- >
- > 1/11/2018 4:45:28 PM: Ticket Queued
- > Details: Ticket queued
- > for delivery to Verizoni2r@gmail.com
- > by John 2Lamb
- >
- > 1/11/2018 4:45:29 PM: Ticket
- > Delivered
- > Details: Ticket
- > successfully sent to Verizoni2r@gmail.com
- >
- > 1/16/2018 11:07:58 AM: Ticket Queued
- > Details: Ticket queued
- > for delivery to Glad9797@Yahoo.com
- > by Robert 2Barry
- >
- > 1/16/2018 11:08:01 AM: Ticket
- > Delivered
- > Details: Ticket
- > successfully sent to Glad9797@Yahoo.com
- >
- > 1/16/2018 11:55:34 AM: Ticket Queued
- > Details: Ticket queued
- > for delivery to Glad9797@Yahoo.com
- > by Robert 2Barry
- >

**Attachments**

- Digsite.txt (2.82KB)

# EXHIBIT L

Insert shipping document here  
ITEM 6

RT 417  
10:30  
1961  
E

Page 1 of 2

Extremely Urgent

ORIGIN ID: BUFA (6) 852-1888  
MARC C. PANEPINTO, ESQ.  
DOLCE PANEPINTO, P.C.  
1260 DELAWARE AVE.  
BUFFALO, NY 14209  
UNITED STATES US

SHIP DATE: 03JAN19  
ACTWGT: 1.00 LB  
CAD: 104799387/INET4040

BILL SENDER

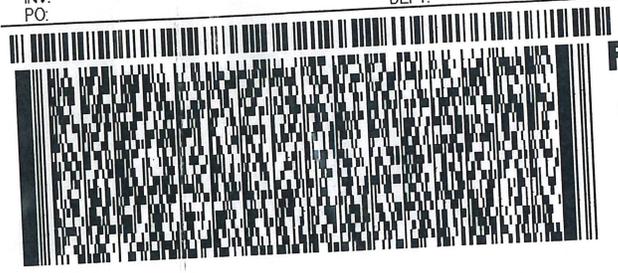
TO LEGAL DEPARTMENT  
ERIE COUNTY WATER AUTHORITY  
350 ELLICOTT SQUARE BLDG.  
295 MAIN STREET  
BUFFALO NY 14203

(716) 849-4444  
INV:  
PO:

REF: BARRY 18-1134

DEPT:

552J2/D74C/DCAS



FedEx  
TRK# 7741 0703 6661  
0201

FRI - 04 JAN 10:30A  
PRIORITY OVERNIGHT

11 BUFA

14203  
NY-US BU



#1791800 01/03 552J2/D74C/DCAS



JAN19 10:30 AM  
#44297-438-9708 Exp 10/19

ITEM 6

# FedEx Express

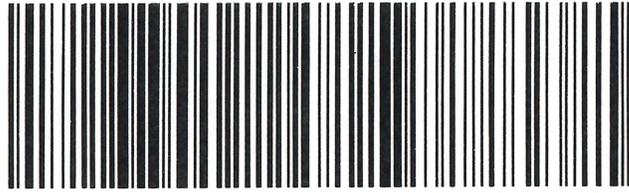
FedEx  
TRK# 7741 0703 6661  
0201

FRI - 04 JAN 10:30A  
PRIORITY OVERNIGHT

11 BUFA

14203  
NY-US BUFA

1-800-438-8638 EXP 10/19



#1791800 01/03 552J2/D74C/DCA5

**earthsmart**  
FedEx carbon-neutral  
envelope shipping

twel