

LAWYERS FILE NOTICE OF CLAIM IN 2 DROWNINGS - 2 COUNTIES, STATE, W. SENECA CALLED NEGLIGENCE IN BUFFALO CREEK - DEATHS

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- Author/Byline: LINE: By SHARON LINSTEDT; News Staff Reporter
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Lawyers representing the estates of two men who drowned in Buffalo Creek in West Seneca in April have filed a notice of claim against Erie County and several other entities in connection with their deaths.

The claim, which is the first step in any potential lawsuit, contends negligence on the county's part in the administration, operation, management and control of the Buffalo Creek flood control project contributed to the tragedy.

The claim stems from the drowning deaths of Edward P. Gene Fibich, 22, of West Seneca, and Joseph Flanagan Jr., 25, of Buffalo. The pair drowned while on an inner tube adventure on the rain-swollen creek April 22.

The two men were apparently pulled under the fast-moving water just beyond a concrete dam near Lexington Green Road. That spot, the same location in which two people drowned in July 1987, is viewed as particularly dangerous when creek waters are high because an undertow forces water back upstream.

The resulting whirlpool effect pulls objects toward the bottom of the creek and back into the current. The county's connection to the drowning scene stems from the involvement of the Erie County Soil and Water Conservation Board in installation of the low-head dam.

Buffalo attorney Christopher C. Kerr said notices of claim have also been filed naming the Wyoming County soil board, New York State, as well as the Town of West Seneca, where the deaths occurred.

Kerr, who represents the mothers of the drowning victims' children, said while investigation into the deaths continues, it's clear the dam site posed a danger.

"The fact that people had died at the same location previously is certainly significant," Kerr said.

The lawyer, however, did not provide details on how the two counties, state and town allegedly contributed to the deaths.

County Attorney Patrick H. NeMoyer said he was aware of the claim, but downplayed the counties' potential liability. He said there is existing legal opinion that conservation district officials cannot be considered county employees.

NeMoyer also discounted the need for warning signs or barriers to keep would-be rafters, boaters and others away from the dams.

"I have no way of knowing if they knew exactly how dangerous the area is during high water periods. Sure, it's a tragedy, but these were adults who voluntarily went into the creek," he said.

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