

NOTICE OF CLAIM

In the Matter of the Claim of
ZOLIA FLORENCIA ZHINGRE ARPI, deceased, and JOSE REMIGIO LALVAY
-against-

THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP., COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE

To: THE CITY OF PEEKSKILL, 840 Main Street, Peekskill, NY 10566
CITY OF PEEKSKILL POLICE DEPARTMENT, 2 Nelson Ave, Peekskill, NY 10566
Peekskill Fire Department, 828 Main St, Peekskill, NY 10566
Peekskill Community Volunteer Ambulance Corp., 1427 Main St, Peekskill, NY 10566
County of Westchester, WESTCHESTER COUNTY ATTORNEY 148 Martine Avenue, 6th Floor, White Plains, NY 10601
State of New York, c/ o Attorney General Of The State Of New York, 120 Broadway, 24th Floor, New York, New York 10271
New York State Police, 1220 Washington Avenue, Building 22, Albany, NY 12203

PLEASE TAKE NOTICE that the undersigned Claimant hereby makes claim and demands against you as follows:

1. The name and address of the Claimant and Claimant's attorneys:

Claimant

JOSE LALVAY and
ZOLIA FLORENCIA ZHINGRE ARPI, *deceased*
1115 Cordlandt Street
Peekskill, NY 10566

Attorneys:

SHULMAN & HILL, PLLC
26 Court Street, Suite 2100
Brooklyn, NY 11242
(718) 852-4700

2. **Nature of Claim:** This is a personal injury claim relating to the negligent, careless, reckless and wanton conduct of, **THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP., COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE**, their agents, servants and/or employees in causing, creating and/or allowing a dangerous, improper, unsafe, defective and hazardous condition and design to be and remain at the location in question.

3. **The time when, the place where and the manner in which the claim arose:**

The Claimants, was caused to sustain serious and severe personal injuries as a result of a motor vehicle accident that occurred on May 27, 2017 at approximately 5:00 PM, on Hudson Avenue between Washington Street and Smith Street in Peekskill NY, County of Westchester. That the negligence of **THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP., COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE**, their agents, servants and/or employees consisted of, amongst other things, actively and negligently designing, constructing, redesigning, repairing, creating, planning and/or maintaining the aforesaid roadway; in failing to provide proper warnings, signs, lights and/or other warning devices to give notice to motorists in the area; in allowing, causing and/or permitting the aforesaid roadway to be, become and remain in a hazardous, unsafe and dangerous condition; in failing to properly construct, reconstruct, maintain and/or repair the aforesaid roadway; in failing to provide a safe speed limit commensurate with the existing conditions upon said roadway; in failing to provide warning speeds commensurate with the existing conditions upon said roadway; in failing to take cognizance of the notorious and dangerous conditions of said roadway, which in the due exercise of reasonable diligence, they knew or should have known and recognized; in failing to warn persons using said roadway of the existing conditions; in failing to properly design, redesign, create, grade, surface and plan

said roadway; in allowing, permitting, constructing, designing, maintaining a curve on said roadway without placing proper warnings as well as using inappropriate signs or markings alerting motorist as to the existence, length, duration or extent of said curve; in failing to keep the curve warning sign from being obstructed by vegetation; in failing to utilize a reverse curve sign at the location in question; in failing to have a uniform cross-slope; in failing to have uniform pavement/road surface on the roadway; in failing to design, construct, maintain and/or repair the proper gradient between the edge of the pavement and the shoulder of the roadway; in allowing a drop-off to exist at the edge of the pavement and the shoulder of the roadway; in failing to provide the proper traffic control devices, in failing to properly maintain the traffic control devices, in failing to properly place the traffic control devices, in failing to provide the proper height and lateral locations of traffic sign installations, for failing to provide guide signs for intersection approach, in failing to establish multi-way stop applications, improperly placing STOP sign or YIELD sign in placing unsignalized pedestrian crosswalk signs, failing to place speed limit and photo enforcement signs and plaques, in failing to provide Passing and Slow Traffic signs and plaques, in failing to place and/or properly place Pass With Care signs or plaques, in failing to place and/or properly place Do Not Drive on Shoulder and Do Not Pass on Shoulder signs or plaques, in failing to place and/or properly place Parking, Standing and Stopping signs or plaques, in failing to place and/or properly place Pedestrian signs or plaques regarding the area located on the street and/or roadway area; in failing to properly design, construct, maintain and/or repair the shoulder of the roadway; in failing to take those steps necessary to avoid the contingency which herein occurred; in failing to warn persons of the dangerous, hazardous and unsafe conditions existing; in failing to use that degree of caution, prudence and care which was reasonable and proper under the controlling circumstances; in creating a trap; in failing to properly check, maintain and/or inspect said roadway; in acting with reckless disregard for the safety of others; and **THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP., COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE**, their agents, servants and/or employees were in other ways negligent, wanton, reckless and careless. That the, **THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP., COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE** their agents, servants and/or employees had actual and/or constructive notice of the dangerous and/or defective conditions in that the conditions existed for a sufficient length of time prior to the happening of the accident and in the exercise of reasonable care; that the conditions were made know to the Respondents based on prior studies, reports, plans and investigations; **THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP., COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE** could have and should have had knowledge and notice thereof and further, the defendant, their agents, servants and/or employees created said conditions. That the defendant, **THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP., COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE**, has a non-delegable duty pursuant

to the laws of the State of New York, including but not limited to, Sections 102 and 139 of the Highway Law, to maintain its roads in a reasonable safe condition.

Additionally, **THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP., COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE** its agents, servants, representatives and/or employees were negligent, careless, reckless and grossly negligent in the ownership of the roadway in that they failed to adequately safeguard and maintain the roadway and its shoulders; failed to post adequate and sufficient warnings to avoid accidents in the area; failed to provide, install and use adequate barriers, dividers or guide rails between opposing lanes of traffic; allowed the roadway to be opened and traveled upon, when it knew or should have know that it was unsafe for traffic; provided improper traffic channelization; created, maintained, designed the steep grade on Hudson Avenue; breached its duty to adequately and timely operate, maintain, manage, supervise and control construction and repair work on the roadway; created and designed a dangerous and defective roadway; failed to provide adequate signs and warnings on the roadway; failed to meet requisite standards and use requirements; knew or should have known of the confusing intersection, traffic lights, narrow lanes, winding roadway and defective design on the roadway; failed to inspect the roadway and repair its defective design periodically and observe that the area was unsafe for traffic; failed to conduct adequate studies of the traffic on the roadway; failed to act in a timely manner on any traffic plan it had for the roadway; allowed the roadway to be in a defective condition and manner; negligently and improperly delayed the implementation of corrective measures; allowed its agents, servants, representatives and/or employees to negligently supervise, manage and control the roadway to ensure that it was in a reasonable, safe and suitable condition for public travel under the provisions of the statutes of the State of New York in such cases made and provided; failed to establish an adequate speed limit in the roadway; and failed to provide and supervise the provision of traffic control devices necessary to insure proper traffic flow, traffic speed and traffic channelization. Failed to take reasonable measures in the initial planning, designing and creation of the subject roadways; failed to perform sufficient planning investigation prior to implementation of the eventual road design; negligent in the hiring of those who designed the subject roadways; in designing and creating subject roadways and more particularly Hudson Avenue between Washington and Smith Streets as it proceeds from Washington Street towards Smith Street with too uneven and severe of a road angle and with insufficient coefficient of friction on the roadway surface; negligence in the perpetuation of the condition, failure to take reasonable steps to review the design of Hudson Avenue between Washington and Smith Streets after notice and knowledge of automobile accidents at the location; failure to implement a new designed measures and allocate funds available for the modification of the roadway; in failing to foresee the obvious dangers created by the numerous prior accidents. **THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP., COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE** its agents, servants, representatives and/or employees were negligent, careless, reckless and grossly negligent in allowing a New York State Police trooper to be improperly stopped, standing, parked in a manner that created a blockade of on the aforementioned roadway at the aforementioned time. That **THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP.,**

COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE its agents, servants, representatives and/or employees were negligent in hiring, training, educating, contracting, sub-contracting any work associated with the design, planning, managing, maintaining, owning, controlling and possessing the aforementioned roadway and its surrounding area.

Furthermore, **THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP., COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE** its agents, servants, representatives and/or employees were negligent, careless, reckless and grossly negligent in allowing the Claimant, **ZOLIA FLORENCIA ZHINGRE ARPI**, to experience conscious pain and suffering for an extended period of time; for negligently allowing, forcing, keeping the Claimant to remain at the scene of the accident for a duration of time that was not medically responsible; delayed in transporting the Claimant from the accident location to the hospital; in depriving the Claimant from adequate and essential medical attention, treatment and care.

4. The items of damage or injuries claimed are (include dollar amounts): As a result of the above, claimants, , sustained multiple serious injuries, including but not limited to, death, surgery, multiple lacerations, fractures, contusions, severe pain, damage to tendons, joints and nerves, weakness, disability, instability, future degenerative changes, necessity for extensive medical, physiological and mental treatment and medical expenses and future medical care and treatment and additional surgeries, medical expenses and diverse general and special damages, the exact amounts which cannot be fully determined at this time. The Claimants demand that a judgment be entered against **THE CITY OF PEEKSKILL, CITY OF PEEKSKILL POLICE DEPARTMENT, PEEKSKILL FIRE DEPARTMENT, PEEKSKILL COMMUNITY VOLUNTEER AMBULANCE CORP., COUNTY OF WESTCHESTER, STATE OF NEW YORK, NEW YORK STATE POLICE and NEW YORK STATE DEPARTMENT OF TRANSPORTATION** their agents, servants and/or employees, both jointly and separately, based upon the causes of action, in an amount exceeding the jurisdictional limitations of all lower courts which would have jurisdiction over this case; that they be awarded the costs and disbursements of this action and such other and further relief as the Court determines to be just and proper under the circumstances.

TOTAL AMOUNT CLAIMED: \$30,000,000.00 (Thirty Million Dollars).

Dated: Brooklyn, New York

August 7, 2017