

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

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LAURA WEISS, as PROPOSED ADMINISTRATOR OF
THE ESTATE OF DARRYL SAVAGE,

AMENDED NOTICE OF
CLAIM

Claimant,

- against -

CITY OF KINGSTON,

Respondent.

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To: City of Kingston
City Hall
420 Broadway
Kingston, NY 12401

PLEASE TAKE NOTICE that the claimant, LAURA WEISS, as
PROPOSED ADMINISTRATOR OF THE ESTATE OF DARRYL SAVAGE,
hereby files a claim against the CITY OF KINGSTON, as a result of tortious
injuries suffered by DARRYL SAVAGE and caused by the above entity.

The claim for said tortious injuries is herewith presented to you for
personal damages suffered by claimant's decedent as a result of injuries resulting
from the negligence of the above-mentioned respondent.

1. The claimant resides at 8 Pine Street, Kingston, New York 12401.
2. The claimant is the proposed Administrator of the Estate of Darryl Savage.
3. Claimant's decedent, Darryl Savage died on November 4, 2020.
4. Claimant's decedent resided at 8 Pine Street, Kingston, New York 12401.
5. The claimant's attorneys, O'Connor & Partners, PLLC have their offices at

255 Wall Street, Kingston, New York 12401.

6. The injury for which this claim is made occurred on November 4, 2020, on Greenkill Avenue at or near the intersection with Wilbur Avenue, Kingston, New York 12401.
7. At the time of the injury the claimant's decedent was riding his bicycle northbound on Greenkill Avenue at the intersection of Wilbur Avenue, Kingston, New York, when he collided with a school bus that was making a right-hand turn into the decedent's lane of travel. This condition occurred because of a dangerous, defective and hazardous condition, more specifically, improper road markings and signage causing confusion by vehicles and bicycles traveling on Greenkill Avenue. More specifically, the decedent approached the intersection controlled by a traffic signal that was green, giving northbound traffic the right of way, with the apparent intention of proceeding on Greenkill Avenue across the intersection of Wilbur Avenue, when a school bus crossed into his lane of travel causing a collision.
8. Furthermore, employees and/or agents of the City of Kingston affirmatively removed the original stop sign controlling traffic and placed it in a dangerous location. The traffic control is not appropriate for the functional usage and current design of the intersection.
9. This dangerous, defective, and hazardous condition was, upon information and belief affirmatively created by the City of Kingston, its employees,

agents, servants and/or residents with authority from the City of Kingston.

10. The negligence against the respondent, its officers, agents, servants, employees of the City of Kingston, includes failing and/or improperly maintaining, repairing, designing, constructing, creating, monitoring and failing to warn of the dangerous condition of the roadway at Greenkill Avenue at the intersection of Wilbur Avenue, Kingston, New York 12401, at the aforesaid location and in failing to maintain the roadway and surrounding area therein, and in creating the dangerous condition through improper maintenance and in failing to provide warning of the same.
11. The negligence against the respondent, its officers, agents, servants, and/or employees with authority from the City of Kingston, includes failing and/or improperly maintaining, repairing, designing, constructing, creating, monitoring and failing to warn of the dangerous condition of the roadway at Greenkill Avenue at the intersection of Wilbur Avenue, Kingston, New York 12401, at the aforesaid location and in use of side paths adjacent to roadways with multiple intersections and driveways.
12. The negligence against the respondent, its officers, agents, servants, and/or employees is further evidenced by failing to respond to complaints and suggestions from elected officials, employees and the general public. The “Bike Path” was dangerous, causing confusion and was the location of several collisions and near collisions prior to the instant accident.
13. The negligence against the respondent, its officers, agents, servants, and/or

employees with authority from the City of Kingston, includes the failure to follow guidance as set forth by the American Association of State Highway and Transportation Officials (AASHTO) and utilized by New York State Department of Transportation for the design of bicycle facilities within the state.

14. The negligence against the respondent, its officers, agents, servants, and/or employees with authority from the City of Kingston, includes failing to appreciate AASHTO design concerns related to two-way side paths (§5.2.2) including the following:

- Motorists entering or crossing the roadway from intersections or driveways may not notice bicyclists approaching from their right, as they are not expecting traffic that is different from the normal flow and that the ability to view bicyclist and for the bicyclist to view vehicular traffic is obstructed by negligently placed parking lane dividing the respective road/path;
- Bicyclists traveling on side paths may cross intersections and driveways at unexpected speeds;
- Attempts to require bicyclists to yield or stop at each cross-street are inappropriate and are not effective;
- Bicyclists on the side path are not within the normal scanning area of drivers turning right or left from the adjacent roadway;
- Even if the number of intersections and driveway crossings are

reduced, bicycle-motor vehicle crashes may still occur at the remaining crossings located along the side path due to the geography and conditions present;

- Traffic control devices such as signs and markings have not been shown as effective at changing road or path user behavior at side path intersections and, in this instant, signs are insufficiently placed and of insufficient size.

15. The negligence of the respondent consisted of approving and monitoring a “Bike Path” that is adjacent to multiple intersecting roadways and driveways, therefore, creating obvious dangerous operational issues.
16. The negligence against the respondent, its officers, agents, servants, and/or employees with authority from the City of Kingston, includes failure to consider another type of bikeway along Greenkill Avenue in the City of Kingston.
17. The negligence of the respondent consisted of among other things previously listed above, was in failing to properly maintain the roadway, and in improperly removing, repairing, and maintaining the area upon which claimant was injured, in failing to warn and in allowing the street to remain in a dangerous and unsafe condition at said location at Greenkill Avenue at the intersection of Wilbur Avenue in the City of Kingston, County of Ulster, and State of New York.
18. The City of Kingston was further negligent by permitting the modification,

excavation, and/or alteration of an existing roadway without submitting an appropriate plan for approval or have modifications, excavation, and/or alterations performed under the direction of a New York State Certified Engineer and in failing to examine the work done to determine whether it was done correctly.

19. The negligence of the respondent consisted of among other things previously listed above and includes failing to properly conduct public outreach to educate the community and the intended users of a design where the functionality of the roadway is so drastically changed necessitating extensive public outreach and education for its intended users. The city failed to provide such instruction.
20. The above-named respondent had knowledge or by the exercise of reasonable care and due diligence should have had knowledge of the dangerous condition existing at the aforementioned location and/or caused and/or contributed to said condition at the aforementioned location.
21. The claimant's decedent suffered **pre-impact terror, conscious pain and suffering and** fatal injuries as a result of the accident.
22. The accident and injuries which resulted were incurred entirely through the negligence and culpable conduct of the above respondent, its officers, agents, servants and/or employees without any comparative negligence on the part of the complainant.
23. This action falls under one or more of the exceptions of Article 16 of the

Civil Practice Law and Rules of the State of New York.

24. As a result of the forgoing, the claimant demands compensatory damages for the wrongful death of claimant's decedent, and for the **pre-impact terror and conscious pain and suffering** incurred in a fair and compensatory sum, along with medical expenses, pecuniary damages, costs, disbursements of this action and interest thereon.

Dated: December __, 2020
Kingston, New York

O'CONNOR & PARTNERS, PLLC

Joseph E. O'Connor
Attorneys for Claimant
255 Wall Street
Kingston, New York 12401
(845) 303-8777

LAURA WEISS, as PROPOSED
ADMINISTRATOR OF THE ESTATE
OF DARRYL SAVAGE, Claimant

VERIFICATION

STATE OF NEW YORK)
) ss.
COUNTY OF ULSTER)

LAURA WEISS, as PROPOSED ADMINISTRATOR OF THE ESTATE OF DARRYL SAVAGE, being duly sworn says:

I am the Claimant in the action herein; I have read the annexed AMENDED NOTICE OF CLAIM, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

LAURA WEISS, as PROPOSED
ADMINISTRATOR OF THE ESTATE
OF DARRYL SAVAGE

Sworn to before me this
_____ day of December, 2020

Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

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LAURA WEISS, as PROPOSED ADMINISTRATOR
OF THE ESTATE OF DARRYL SAVAGE,

Claimant,

AFFIDAVIT OF SERVICE

- against -

CITY OF KINGSTON,

Respondent.

-----X

STATE OF NEW YORK)
) ss:
COUNTY OF ULSTER)

Corina J. Skidmore, being duly sworn, says: I am not a party to the action, am over 18 years of age and reside in Ulster County, State of New York.

On December __, 2020, I served a true copy of the annexed NOTICE OF CLAIM in the following manner:

By mailing same in a sealed envelope, with postage prepaid thereon, via United States Postal Service – CERTIFIED MAIL – RETURN RECEIPT REQUESTED within the State of New York, addressed to the last known address of the addressees as indicated below:

To: CITY OF KINGSTON
City Hall
420 Broadway
Kingston, New York 12401

Corina J. Skidmore

Sworn to before me on
December __, 2020

NOTARY PUBLIC