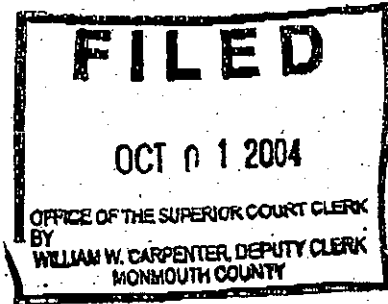


MAGGS & MCDERMOTT, LLC
800 Old Bridge Road
Brielle, NJ 08730
(732) 223-9870
Attorneys for Plaintiffs
Our File Number: 3104.0001



Plaintiffs, : SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION/MONMOUTH COUNTY
: :
JOSEPH M. LYNAM and ELIZABETH R. LYNAM, as Administrators of the Estate of : DOCKET NUMBER: MON-L-4522-04
Allison M. Lynam; JOSEPH M. LYNAM : Civil Action
and ELIZABETH R. LYNAM, individually, :
: :
v. : COMPLAINT, JURY DEMAND AND
: DESIGNATION OF TRIAL COUNSEL
: :
Defendants, :
: :
THE BOROUGH OF EATONTOWN; :
THE BOROUGH OF EATONTOWN :
POLICE DEPARTMENT; PATROLMAN :
ROBERT GREEN; PATROLMAN JAMES :
DIGIOVANNI; JOHN DOES 1-10 :
(fictitious names); and ABC CORPS. 1-10 :
(fictitious names). :

The Plaintiffs, JOSEPH M. LYNAM and ELIZABETH R. LYNAM, individually and as Administrators of the Estate of Allison M. Lynam, by way of complaint against the Defendants, say:

THE PARTIES

1. The Plaintiffs, Joseph M. Lynam and Elizabeth R. Lynam, are the administrators of the Estate of their daughter, Allison M. Lynam (the "Decedent"), who is deceased as a result of an automobile accident which occurred on November 19, 2003.
2. The Plaintiffs, Joseph M. Lynam ("J. Lynam") and Elizabeth Lynam ("E. Lynam"), are the parents of the Decedent and the intestate heirs of the Decedent.
3. The Plaintiffs, Joseph M. Lynam and Elizabeth R. Lynam, as Administrators of the

Estate of Allison M. Lynam, J. Lynam and E. Lynam, are collectively referred to herein as the "Plaintiffs".

4. The Defendant, the Borough of Eatontown (the "Borough"), is a Municipal Corporation with an address of Boro Hall, 47 Broad Street, Borough of Eatontown, County of Monmouth and State of New Jersey.

5. The Defendant, the Eatontown Police Department (the "Eatontown PD"), is a body politic with an address of 47 Broad Street, in the Borough of Eatontown, County of Monmouth and State of New Jersey.

6. The Defendant, Patrolman Robert Green ("Patrolman Green"), is an individual whose address is 47 Broad Street, in the Borough of Eatontown, County of Monmouth and State of New Jersey. At all relevant times herein, Patrolman Green was a police officer employed by the Borough and/or the Eatontown PD, and acting within the scope of his employment. As such, the Borough and/or the Eatontown PD are liable for the conduct of Patrolman Green based upon the legal principle of *respondent superior* and as set forth herein pursuant to N.J.S.A. 59:2-2(a).

7. The Defendant, Patrolman James DiGiovanni ("Patrolman DiGiovanni"), is an individual whose address is 47 Broad Street, in the Borough of Eatontown, County of Monmouth and State of New Jersey. At all relevant times herein, Patrolman DiGiovanni was a police officer employed by the Borough and/or the Eatontown PD, and acting within the scope of his employment. As such, the Borough and/or the Eatontown PD are liable for the conduct of Patrolman DiGiovanni based upon the legal principle of *respondent superior* and as set forth herein pursuant to N.J.S.A. 59:2-2(a).

8. The Defendants, John Does 1-10 ("John Does") and ABC Corps. 1-10 ("ABC Corps."), are fictitious defendants whose identities are presently unknown, said fictitious names

representing persons and entities who are responsible for the injuries suffered by the Decedent as described herein and who shall be identified as the Plaintiffs' investigation progresses.

9. The Borough, the Eatontown PD, Patrolman Green, Patrolman DiGiovanni, John Does and ABC Corps. are collectively referred to herein as the "Defendants".

FIRST COUNT

10. The Plaintiffs repeat and reallege the allegations set forth in the preceding paragraphs of this Complaint as if set forth at length herein.

11. At approximately 9:25 p.m. on November 19, 2003, the Decedent was the operator of a 2001 Volkswagen Jetta, which was traveling northbound on State Highway 35 in the Borough of Eatontown, County of Monmouth and State of New Jersey (the "Accident Site").

12. At the aforementioned time, rainfall caused a large body of water to accumulate in or about the Accident Site, creating a dangerous condition.

13. At the aforementioned time, the Decedent lost control of her motor vehicle as a result of the large accumulation of water in or about the Accident Site, causing the Decedent's motor vehicle to leave the roadway and strike a utility pole.

14. Prior to and at the time of the accident, Patrolman DiGiovanni was the police dispatcher on duty for the Eatontown PD.

15. Upon information and belief, prior to the accident Patrolman DiGiovanni received a report that Highway 35 in or about the Accident Site was flooded and represented a dangerous condition to passing motorists.

16. Upon information and belief, Patrolman Green was then dispatched by Patrolman DiGiovanni to the Accident Site to evaluate the flooded roadway and to take appropriate action to protect passing motorists.

17. Upon information and belief, Officer Green traveled to the Accident Site and confirmed that the roadway was indeed flooded, observing the accumulation of at least two (2) to three (3) inches of water on both northbound lanes of travel of Route 35 and the shoulder of the roadway.

18. Patrolman Green notified Patrolman DiGiovanni of the existing flooding and dangerous condition located at the Accident Site and then left the accident scene without attempting to correct the dangerous condition or to warn the public of its existence. Upon information and belief, Patrolman DiGiovanni's sole response upon hearing of the existence of the dangerous condition was to notify the State of New Jersey, Department of Transportation of the flooding and to request that flood signs to be placed at the Accident Site.

19. Once Patrolman Green and Patrolman DiGiovanni knew of the flooding of Route 35 at the Accident Site as described above, they had a duty to warn passing motorists, including the Decedent, of the roadway flooding and to take the necessary action to prevent the Decedent from being exposed to such a dangerous condition.

20. Patrolman Green and Patrolman DiGiovanni breached their duty by failing to take appropriate action in response to the roadway flooding in or about the Accident Site, including, but not limited to, failing to adequately warn the Decedent of the roadway flooding at the Accident Site and to take the appropriate action to prevent the Decedent from being exposed to such a dangerous condition.

21. As a direct and proximate result of the Defendants' negligence as aforesaid, the Decedent was caused severe, painful and ultimately fatal injuries.

WHEREFORE, the Plaintiffs demand judgment against the Defendants in an amount that will compensate the Plaintiffs for their damages, including interest, reasonable attorneys' fees and

costs of suit.

SECOND COUNT

22. The Plaintiffs repeat and reiterate the allegations set forth in the preceding paragraphs of this Complaint as if set forth at length herein.

23. The Borough and the Eatontown PD had a duty to properly train, educate and supervise Patrolman Green and Patrolman DiGiovanni in the response to a roadway flooding and the existence of a dangerous condition to the public.

24. The Borough and the Eatontown PD failed to properly train, educate and supervise Patrolman Green and Patrolman DiGiovanni in the appropriate response to a roadway flooding and the existence of a dangerous condition to the public.

25. As a direct and proximate cause of the negligence of the Borough and the Eatontown PD as aforesaid, Patrolman Green and Patrolman DiGiovanni failed to take appropriate action in response to the roadway flooding in or about the Accident Site, including, but not limited to, failing to adequately warn the Decedent of the roadway flooding at the Accident Site and to take the appropriate action to prevent the Decedent from being exposed to such a dangerous condition.

26. As a direct and proximate result of the Defendants' negligence as aforesaid, the Decedent was caused severe, painful and ultimately fatal injuries.

WHEREFORE, the Plaintiffs demand judgment against the Defendants in an amount that will compensate the Plaintiffs for their damages, including interest, reasonable attorneys' fees and costs of suit.

THIRD COUNT

27. The Plaintiffs repeat and reiterate the allegations set forth in the preceding paragraphs of this Complaint as if set forth at length herein.

28. As a result of the injuries and subsequent death of the Decedent, J. Lynam and E. Lynam are entitled to damages under the New Jersey Wrongful Death Act, *N.J.S.A. 2A:31-5 et. seq.*

WHEREFORE, the Plaintiffs demand judgment against the Defendants in an amount that will compensate the Plaintiffs for their damages, including interest, reasonable attorneys' fees and costs of suit.

FOURTH COUNT

29. The Plaintiffs repeat and reiterate the allegations set forth in the preceding paragraphs of this Complaint as if set forth at length herein.

30. As a result of the injuries and resulting pain, suffering and ultimate death of the Decedent, the Plaintiffs are entitled to damages under the New Jersey Survival Act, *N.J.S.A. 2A:31-1, et. seq.*

WHEREFORE, the Plaintiffs demand judgment against the Defendants in an amount that will compensate the Plaintiffs for their damages, including interest, reasonable attorneys' fees and costs of suit.

DEMAND FOR TRIAL BY JURY

Please take notice that pursuant to Rule 4:35-1, the Plaintiffs demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, James A. Maggs, Esquire, is designated as trial counsel for Plaintiffs in the above matter.

CERTIFICATION

Pursuant to Rule 4:5-1, the undersigned hereby certifies that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding with the

exception of *Joseph Lynam, et al v. State of New Jersey, et al.*, Docket No. MON-L-5589-03. No other action or arbitration proceeding is contemplated.

The undersigned acknowledges that I shall have a continuing obligation during the course of the litigation to file and serve on all other parties and with the Court an amended certification if there is a change in the facts stated herein.

MAGGS & MC DERMOTT, LLC
Attorneys for Plaintiffs

BY:



JAMES A. MAGGS

DATED: September 24, 2004

RELEASE

This Release, dated the ^{25th} Day of January, 2010 is given BY The Releasor(s) JOSEPH M. LYNAM AND ELIZABETH R. LYNAM AS ADMINISTRATORS OF THE ESTATE OF ALLISON LYNAM,; JOSEPH M. LYNAM AND ELIZABETH R. LYNAM, INDIVIDUALLY

referred to as "I" ("We") or "Releasors"

TO: THE BOROUGH OF EATONTOWN POLICE DEPARTMENT, PATROLMAN ROBERT GREEN, PATROLMAN JAMES DIGIOVANNI, PATROLMAN, JOHN FAY AND THE BOROUGH OF EATONTOWN and any and all of their insureds, employees, agents, servants and assigns, and any and all employees, partners, co-workers or employees of the above-named organizations(s) (referred to as "You" or "Releasee")

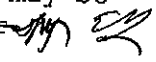
1. RELEASE. I release and give up any and all rights and claims which I may have against You arising out of or in any way related to the facts and circumstances underlying the lawsuit referred to below. This releases all claims, including those of which I am not aware and those not mentioned in the Release. This Release applies to all such claims resulting from anything which has happened up to now. I specifically release the following such claims:

Any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses, and compensation of any nature whatsoever based on a tort, contract, or other theory of recovery, and whether for compensation or punitive damages I now have, or which may hereafter accrue or otherwise be acquired against You or your agents, servants and employees directly or indirectly, including by way of example and not limitation, those which may be or could have been the subject matter of a lawsuit instituted in the Superior Court of New Jersey, Monmouth County, bearing Docket Number MON L-4522-04.

This Release is for compensation of any and all injuries I have sustained, known, unknown or unknowable, and in full compensation for any and all personal injuries, past, present or future, physical pain and suffering, mental suffering, psychological injuries, emotional distress, loss of consortium, services or society, loss of wages now or in the future, and for any development, whether foreseen or

unforeseen, which may or may not relate to the life, death, or life expectancy of Releasor including, but not limited to, any and all potential damages which could possibly be recovered pursuant to the decision of Alfone v. Sarno, 87 N.J. 99 (1980), Mauro v. Raymark Industries, Inc., 116 N.J. 126 (1989), the Wrongful Death Act, N.J.S.A. 2A:3-1, et seq., the Survival Act, N.J.S.A. 2A:15-3, et seq., or other legal authority which absent this Release might permit me or any other person authorized by law to make such a claim or claims. It is expressly understood that this Release is for the settlement, release, discharge and elimination of any and all such claims. I hereby acknowledge that by executing this Release and accepting the monies paid hereunder I and those who otherwise might be entitled to make such a claim or claims in the future have received fair, just and adequate compensation for all such claims in exchange for which all such claims, past, present and future are forever released and discharged. This Release also specifically covers any potential future lawsuit for the alleged wrongful death of Allison Lynam. This Release also specifically releases any claims for the cost of past, present or future medical care, living, educational and/or occupational needs or assistance. Even if additional facts become known which were not known at the time this Release was executed, I waive my right to bring a lawsuit against the Releasees.

2. NONADMISSION OF LIABILITY. It is expressly understood that this Release shall not constitute an admission of liability on the part of the Releasee or any admission by Releasee that care and treatment rendered was, in any way, negligent or below the accepted standards of practice.

3. NONDISCLOSURE. It is further understood and agreed as an honorable undertaking that neither I nor any agents, servants, attorneys or representatives of Releasor shall, in any way, at any time disclose for any reason or purpose whatsoever to any other person or entity (other than Releasor's immediate family, Releasor's attorneys, accountants or financial advisors, or as otherwise may be required by law), the ~~terms of the consideration or~~ compensation reached with You. 

4. CLAIMS and/or LIENS. All claims and/or liens, past, current and/or future arising out of this settlement or asserted against the proceeds of this settlement are to be satisfied by Releasor, including but not limited to any Medicare or Medicaid claims and/or liens, Worker's

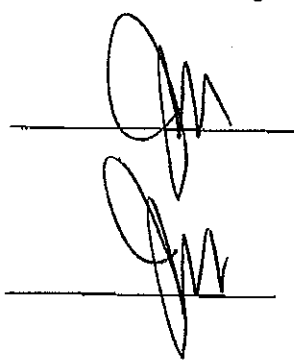
Compensation claims and/or liens, Social Security claims and/or liens, hospital/healthcare insurer claims and/or liens, physician or attorney claims and/or liens, or any of the statutory equitable, common law or judgment claims and/or liens, including but not limited to claims based on subrogation or any other legal or equitable theory. I therefore agree, upon prompt presentation of any such claims and or liens, to defend You against any such claims and/or liens, and to indemnify and hold You harmless against any judgment entered against you based on such claims and/or liens.

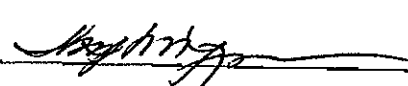
5. INDEMNIFICATION. In the event I shall recover or seek to recover any monies from any person who thereafter seeks defense and/or indemnification from You arising from claims released in this document, I shall, upon prompt presentation of that claim, defend You against that claim and to indemnify and hold You harmless against any judgment entered against You based on that claim.

6. PAYMENT. I have been paid a total of **TWO HUNDRED THOUSAND (\$200,000.00) DOLLARS** in full and final payment for agreeing to and executing this Release. I agree that I will not seek anything further including any other payments(s) from You.

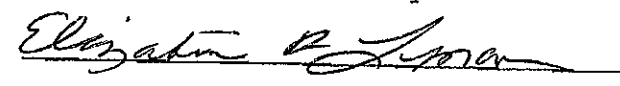
7. WHO IS BOUND. I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor(trix) of my estate, is also bound. This Release is made for the benefit of You, and all who succeed to the rights and responsibilities of Releasee, such as Releasee's heirs or the executor(trix) of Releasee's estate.

8. SIGNATURE. I have read, understand and agree to the terms of this Release. I have consulted with counsel prior to signing this Release.

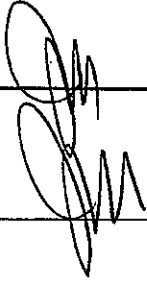


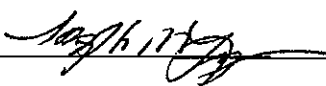


JOSEPH M. LYNAM Administrator of
The Estate of Allison Lynam

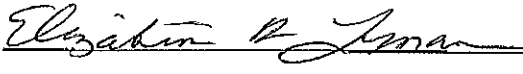


ELIZABETH R. LYNAM, Administrator
Of the Estate of Allison Lynam






JOSEPH M. LYNAM Individually



ELIZABETH R. LYNAM Individually

Witnesses or Attested by:



Prepared by:

Russell J. Malta Esq.