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June 21, 2018

Our File Number: 304245-00001

BY PROCESS SERVER

City of Scottsdale
c/o City Clerk and Mayor
3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

Re: Reiss v. City of Scottsdale
Date of Loss: 2/3/18
Deceased: Joseph R. Reiss
NOTICE OF CLAIM FOR WRONGFUL DEATH AND NEGLIGENT INFLICTION
OF EMOTIONAL DISTRESS

To Whom It May Concern:

This Notice of Claim is submitted on behalf of Daniel and Courtney Reiss for wrongful death of their son, Joseph ("Joey") R. Reiss, on February 3, 2018 at the Scottsdale Fire Station no. 1, located at 1901 N. Miller Road, Scottsdale AZ 85257. I represent Daniel Reiss on behalf of the wrongful death beneficiaries. Concurrently, Evan Goldstein hereby submits a Notice of Claim for Courtney Reiss and for her separate claim for negligent infliction of emotional distress.

In light of the City's rejection of our efforts to resolve this claim informally and the City's insistence that we submit a formal Notice of Claim laying out our case, we hereby submit the following pursuant to A.R.S. § 12-821.01 and *Keck v. Jackson*, 122 Ariz. 114, 593 P.2d 668 (1979). The exhibits are attached, and include a settlement video (Ex. 17). This letter and settlement offer, with the enclosures and video, are sent pursuant to Arizona Evidence Rule 408.

Facts: Dan and Courtney Reiss were the devoted and proud parents of their 16-month-old son, Joey. He was to be their only child and was the center of their lives until he was tragically taken from them at a Scottsdale Fire Station.

On February 3, 2018, Courtney took Joey out for a play date. She thought she was taking him to one of the safest places in Scottsdale - a fire station. Courtney and Joey were among four mothers and seven children visiting Station 601 that day. As an invitee and guest, Joey was able to walk through the station, check out two big fire trucks, and see the firemen who are sworn to protect and save people from harm. (Ex. 1, photos from that day.)

What happened next was a disaster. One of the two fire trucks left the station, from Bay 1, taking some of the mothers and children on a quick ride through the park. The fire truck's departure silently triggered a sensor pre-programed to automatically close the heavy, four-fold fire station door 3 minutes and 47 seconds later. In the interim, Courtney played with Joey and took photos of him sitting on the fire truck remaining in the station, in Bay 2. As she got him

down to walk the floor, he continued to play, in the area vacated by Engine 601 while the doors were still open door at Bay 1. The door had previously been open for quite some time, while the truck was in that stall. At the same time, other fire personnel and visitors were moving about the station. Captain MD Clark was giving a tour to another family, showing them the truck on which Courtney had been photographing Joey just moments before. By all appearances, it was business and life as usual. But the timer on the automated door-closer was silently counting down Joey's last 3 minutes and 47 seconds as a happy, healthy little boy. (See Ex. 2, police reports and supplements, all of which are incorporated by this reference; see also Ex. 3, screen shot of timer from door closing.)

With no warning whatsoever, the doors at Bay 1 quickly and violently slammed shut on Joey. Courtney in disbelief stood by helplessly; it happened so fast she had no time to react and save her little boy. She tried to pull the doors apart, but wasn't strong enough. When the doors finally parted, with help from others, Joey crumpled at her feet, bleeding from the ears and making no sounds at all. His little head was crushed so forcefully that blood flowed from his ears, leaving a puddle of blood on the floor.

Despite resuscitation efforts at the station and the hospital, Joey was never revived. He suffered multiple skull fractures and a massive brain injury. His Glasgow Coma Scale at the hospital was, at most times, only 3. He was officially declared dead at the hospital two days after admission, after his organs were donated.

There is no question the hazardous condition at Fire Station 601 killed Joey Reiss. He was a healthy young child, with a full life ahead of him. Excerpts of the medical records include:

Chief Complaint: head crushed by door

History of Present Illness:

Previously healthy 16 mo boy who presents as severe TBI. Pt visiting uncle at fire station for tour when tri-fold door crushed his head, immediate gush of blood and coded on scene. Chest compressions started and pt given 5 doses of epinephrine. Pt immediately transferred to PCH ED for further evaluation. On arrival to PCH ED, pt with pupils 6mm dilated and fixed bilaterally. He was unresponsive with GCS of 4 (point given for triple flexion). Bogginess on top of head, boggy and tense in parietal/temporal area with blood coming from ears bilaterally. CTH with multiple skull fractures, scattered tSAH, and likely sagittal sinus injury.

CT head reveals bicoronal skull fracture that extends up across the midline. There is cerebral edema with effacement of the sulci and cisterns. There is minimal hemorrhage along the convexities which does cause some compression of brain underneath the region of fracture.

CT angio suspicious for sagittal sinus laceration with extravasation of blood.

• Problem List:

- Diffuse traumatic brain injury with loss of consciousness of unspecified duration, initial encounter (Acute Issue)

• Plan:

16 mo boy with cranial crush injury in sliding door resulting in multiple skull

fractures, diffuse cerebral edema, traumatic subarachnoid/subdural hemorrhage, likely superior sagittal sinus laceration, severe traumatic brain injury. This most likely represents a non-survivable injury.

Firefighter Bruns' first incident report to his superiors puts it more bluntly and succinctly: "We killed a kid at station 601." (Ex. 3, police report supplement.)

Liability: It is well settled Arizona law that a possessor of land, including a municipality, is required to use reasonable care to safeguard, remedy and warn of an unreasonably dangerous condition when it created the condition, or when it knew or should have known the condition existed. See RAJI (Civil), Premises Liability 1. This is black letter law from the Restatement (Second) of Torts, which Arizona courts follow:

§ 343: Dangerous Condition Known to or Discoverable by Possessor

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he:

- (a) Knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
- (b) Should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
- (c) Fails to exercise reasonable care to protect them against the danger.

Restatement (Second) of Torts § 343.

The City's duty to make the premises safe for its invitees is non-delegable. See *Wiggs v. City of Phoenix*, 198 Ariz. 367, 369, 10 P.3d 625, 627 (2000) (City of Phoenix had "a non-delegable duty to maintain its highways in a reasonably safe condition," and thus was vicariously liable for its independent contractor's negligence in maintaining a streetlight; City was not permitted to allocate fault to the independent contractor under comparative fault principles); *Ft. Lowell-NSS Limited Partnership v. Kelly*, 166 Ariz. 96, 105, 800 P.2d 962, 971 (1990) (possessor of land owes a duty to make the premises reasonably safe for an invitee, and this duty may not be delegated to another; property owner remains liable for the negligence of an independent contractor even though the owner personally has taken every precaution and does not know of the dangerous condition created by the independent contractor); *Simon v. Safeway, Inc.*, 217 Ariz. 330, 337, ¶ 19, 173 P.3d 1031, 1038 (App. 2007) ("a business owner may not escape liability for his failure to exercise reasonable care merely because the aggrieved party was injured by an independent contractor who was employed to provide services for the business owner on the business premises"). Again quoting the Restatement (Second) of Torts:

§ 422 Work on Buildings and Other Structures on Land

A possessor of land who entrusts to an independent contractor construction, repair, or other work on the land, or on a building or other structure upon it, is subject to the same

liability as though he had retained the work in his own hands to others on or outside of the land for physical harm caused to them by the unsafe condition of the structure

(a) while the possessor has retained possession of the land during the progress of the work, or

(b) after he has resumed possession of the land upon its completion.

Restatement (Second) of Torts § 422(b).

Applying the to the facts of this case, the City is liable for Joey Reiss' death. This was a disaster the City should and easily could have prevented. The door was an extreme hazard. There was a 9-inch gap between an accordion-style, power garage door and the wall. This was coupled with an automatic door closing sensor with a 3 minute, 47 second delay, and a complete lack of any warnings or other safety precautions such as training of the fire personnel in the station. (Ex. 4, photos.)

The danger was foreseeable. The danger of pinch points has been common knowledge to employers, public entities and safety professionals for decades, and is the subject of safety standards such as OSHA. It is also well known to risk managers and safety professionals that doors pose a huge danger to toddlers. The *National Safety Council* reports over 300,000 ER or urgent care visits door from door injuries every year in the U.S. Most of these are finger injuries, with more than 25,000 amputations or fractures a year. And most of those injuries are to toddlers, outnumbering all other age groups. (Ex. 5.) If small pinch points on everyday doors cause that much harm to little fingers, how much more dangerous is a 9" pinch point to a toddler's head, especially when coupled with a power door that closes automatically and quickly with no warning whatsoever? Or how much damage could this do to a firefighter's hand or arm in the pinch point at the time the doors suddenly close?

This was an obvious problem with inexpensive solutions. The hazard could have been easily avoided by a variety of simple safety steps:

1. A guard over the 9" pinch point. Guards are well-known and routinely used in the workplace as effective safety precautions. A quick Google search revealed several companies discussing door pinch point hazards in detail, and offering inexpensive guards to go over the pinch points on doors. (Ex. 6.)
2. Any other type of physical barrier in front of the 9-inch gap, such as the pole that already exists but is positioned too far from the pinch points to be of any use as an obstacle or a warning. (Ex. 7.)
3. Warning signs on the doors. Another quick Google search revealed inexpensive warning signs about automatically closing doors. (Ex. 8.) Other fire stations, such as one in Gilbert, with the same doors, have warning signs such as we have proposed here. (Ex. 9.) Even in this fire station, there were warning signs on the roll-up doors at the entrance; but none on the exit doors. (Ex. 10.) Everywhere the jurors go they will see examples of the type of signage absent from this fire station. (See Ex. 11, photos I have taken in the last few weeks while doing my ordinary activities.) Had proper signs

been put in place, they would have been directly in Courtney's line of sight, and we expect she would have kept Joey away from the doors.

4. An audible and/or visual warning before the closure, such as a horn or buzzer and/or a flashing light. The jury will be familiar with this concept from their daily lives. The baggage carousel at the airport, for example, has a buzzer and a flashing light before it starts to run.
5. A word of caution from any of the fire personnel. They knew from experience, while receiving no actual training on the doors, about the automatic closing feature and the lack of any other warnings before the doors slammed shut. Yet, no one warned Courtney or the other mothers and children in the station that day. At least one of the fire personnel, Captain Clark, saw Courtney and Joey playing near the door, just before the door timed out. He said nothing. Proper training from City management could easily have raised awareness and addressed this issue, but the City has recently admitted it has no protocols or policies relating to garage doors in fire stations. We are all in favor of allowing families to tour the City's fire stations, but these tours must be accompanied with a simple safety orientation about the doors and perhaps other hazards.
6. Proper training may also have allowed Joey's life to be saved in the critical seconds once the door started closing. But as evident from the Scottsdale Police Department's investigation, not a single firefighter at Station 601 was trained in the use or operation of the doors that crushed Joey to death. When Detective Heinzelman asked Captain Heagney about the safety features on the doors, the captain responded, "he was not sure of any safety features on the front bifold doors." Even the facilities manager did not know the necessary details of how the doors worked. Captain Clark, on seeing the doors closing on Joey – in his words, "the door timed out and closed . . . on the little guy" – ran to the manual control panels for Bay doors 1 and 2. Those panels are side by side on the wall near the Bay 1 door. (See photo at end of Ex. 4.) While a well-trained fireman would have known precisely what button to push, Captain Clark did not. His various accounts are unclear about which buttons he pushed in which order, but it is clear that he was frantically pushing buttons in those critical seconds when Joey's life hung in the balance. He first opened the Bay 2 door, and thought he had solved the problem. Realizing his mistake, he apparently hit the open button on Bay 1's door, which he says "pancaked" Joey in the "V gap" in the accordion door. He then hit the close button and finally the stop button. We believe the few second delay caused by his lack of training could have made all the difference in the world in saving Joey.

Joey Reiss would be alive and well today if any of these simple steps had been taken to protect the public and the City's employees.

The City has no excuse for not implementing these simple measures. We hired a well-qualified safety engineer, Mark Cannon, to inspect Station 601. He identified multiple safety violations that led directly to Joey's death. He felt it was his ethical duty as a professional engineer to report these violations for the safety of the general public. He wrote a letter that says, for example, "the design and operation of the fire station doors present an ongoing hazard, and I am obligated to submit this letter." The letter also says the 9-inch gap at the hinge point is a danger to visiting to children and "presents an ongoing hazard to workers at the station as well," in violation of federal OSHA standards. (Ex. 12.)

A simple hazard assessment would have disclosed all of these deficiencies. We can only assume the City and the Fire Department did not perform any such hazard assessment. This is reprehensible given the City's responsibilities to the public of providing safe environments, especially for a fire department whose job includes identifying and remediating hazards.

The City failed in its responsibilities to the public in multiple ways outlined above. The City, for example, purchased the doors and had them installed, thereby creating the condition. The City also had a facilities manager and fire personnel who knew about the hazard. The City had a risk management department whose job it was to identify and rectify hazards on City property, and to properly train its employees. Scottsdale's Fire and Risk Management Departments must make their own firehouse safe, as they expect City residents to make their homes safe. It is unconscionable that those individuals operating that fire station lacked the necessary understanding of the doors, which resulted in Joey's death. Perhaps tellingly, after the incident, when the police notified the risk management person responsible for this station, he responded that he was too drunk to respond to the scene. The police told him he needed to come to the station, but the police report says no one from risk management responded.

In our discussions with your defense counsel, however, they have suggested the City may blame other parties, such as the manufacturer and installer of the doors. As established above, however, the City's non-delegable duty precludes this argument. The City is 100% liable even if it can show it took "every precaution and d[id] not know of the dangerous condition." *Ft. Lowell-NSS, supra*. There is, therefore, no comparative fault defense available; rather, the City's only remedy against other entities is for indemnity or contribution. *Wiggs & Ft. Lowell-NSS, supra*. This means the City cannot blame others for the lack of guarding or warnings on the doors, even if the City somehow claims it didn't know the risk those doors created. The law says the City is responsible just as if it used its own employees to construct and install the doors.

Based on these facts and Arizona law, we expect the City of Scottsdale will be found negligent and 100% responsible for Joey's death.

Damages: Enclosed are the following materials regarding Dan and Courtney's damages: (1) photos of Joey and his parents before the incident, Ex. 13; (2) photos of Joey at the hospital, Ex. 14; (3) the death certificate, Ex. 15; and (4) the autopsy report, Ex. 16.

The anguish suffered by Dan and Courtney is immeasurable. The apple of their eyes was taken from them in a mere 3 minutes and 47 seconds. Without warning, 16 months of love and joy ended. His loss leaves Dan and Courtney struggling to imagine how they can find hope and joy in their lives ever again. While their lost income pales in comparison to their grief and emotional loss, they have missed a tremendous amount of time from work. They are both in counseling, struggling just to get by day to day; merely existing.

No parent should experience the death of a child; but Dan and Courtney lost their only child in a tragic instant. Their lives, obviously, will never be the same. There will be no more hugs and kisses from Joey, no more baths, no more hearing his infectious laugh, no more books to read him at bed time, no more watching him fall asleep in their arms, no more animal noises, no more snuggling with him after a long day, no more Saturday morning pancake

breakfasts, no more sliding down the slide at the park. No first words, no first days of school, no more memories made. No birthday parties or family gatherings with him. And no graduations, weddings or grandchildren. Holidays and birthdays will be painful, empty events that reinforce their loss. Their joy and dream is gone. Their plans and hopes for Joey and their family are gone, snatched from them in seconds.

Courtney has a separate claim for negligent infliction of emotional distress. She saw any parent's worst nightmare unfold right before her eyes. Her baby boy was crushed - just out of her arms' reach. Even two seconds' warning would have been enough time to save him. Every day and night she sees it all happen in her mind, and she feels the terror, the helplessness, the desperation. Some things can never be unseen, and this is as bad as it gets. No one should have to endure losing a child, much less watching them crushed to death without warning. The resulting grief and depression, even with medication and therapy, is something that will last forever.

Claimants: The two potential claimants, under Arizona's wrongful death statute, are Daniel Reiss (my client) and Courtney Reiss (represented by Evan Goldstein).

Settlement Offer: The Reisses have authorized Mr. Goldstein and me to jointly settle with the City of Scottsdale (and all subdivisions) for \$9,000,000 in exchange for a complete release of all claims. To the extent you wish to have separate numbers per claim, the Reisses are willing to settle all claims as follows: (1) Daniel Reiss for wrongful death, \$3,000,000; (2) Courtney Reiss for wrongful death, \$3,000,000; (3) Courtney Reiss for negligent infliction of emotional distress, \$3,000,000. This offer is open for 60 days, pursuant to A.R.S. § 12-821.01(E), after which it automatically expires unless agreed in writing otherwise.

We will gladly provide any additional information you believe may be helpful. We look forward to hearing from you.

Very truly yours,


Steven J. Hulsman
Lewis Roca Rothgerber Christie LLP

for
Evan S. Goldstein
Herman | Goldstein

SJH/fl

cc: Bruce Washburn (via email; w/o encls.)
Peter C. Kelly (via email; w/o encls.)
Evan Goldstein (via email; w/o encls.)
Daniel & Courtney Reiss (via email; w/o encls.)