

STATE OF NEW YORK
COURT OF CLAIMS

-----X Claim No.

DANIEL SCHULER, as Administrator of the Estate of DIANE
SCHULER, Deceased,

VERIFIED CLAIM

Claimant,

-against-

THE STATE OF NEW YORK,

Defendant.

-----X

Claimant, by his attorneys, LAW OFFICES OF DAVID E. WATERBURY, as and for his
Verified Claim, respectfully alleges, upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION

1. The Post Office address of the Claimant herein is 805 14th Street, West Babylon, New York..
2. The attorney for the Claimants herein is LAW OFFICES OF DAVID E. WATERBURY, 50 Broadway, Suite 1601, New York, New York and telephone number is (347) 850-0040.
3. On July 20, 2011, the claimant, DANIEL SCHULER, was issued Letters of Administration to serve as administrator of the Estate of DIANE SCHULER, decedent, by order of the Surrogate's Court, Suffolk County. The Letters of Administration heretofore issued to DANIEL SCHULER are still in full force and effect.
4. The decedent died a resident of Suffolk County, State of New York on July 26, 2009.
5. This action is commenced within ninety (90) days after the appointment of an administrator with power to commence an action on behalf of the estate and within two (2) years from July 26, 2009, the date of death of claimant's decedent, DIANE SCHULER.
6. The claim accrued on July 26, 2009 at approximately 1:33 p.m. on the Taconic State Parkway, northbound, including but not limited to the Pleasantville Road exit ramp off the northbound Parkway in Briarcliff Manor in the County of Westchester and State of New York.

6. At all times herein mentioned, the defendant THE STATE OF NEW YORK owned the Taconic State Parkway, including but not limited to the Pleasantville Road exit ramp off the northbound Parkway in Briarcliff Manor located at, Mt. Pleasant, New York.

7. At all times herein mentioned, the defendant THE STATE OF NEW YORK was one of the owners of the Taconic State Parkway, including but not limited to the Pleasantville Road exit ramp off the northbound Parkway in Briarcliff Manor located at Mt. Pleasant, New York.

8. At all times herein mentioned, the defendant THE STATE OF NEW YORK was a lessee of the Taconic State Parkway, including but not limited to the Pleasantville Road exit ramp off the northbound Parkway in Briarcliff Manor located at Mt. Pleasant, New York.

9. At all times herein mentioned, the defendant THE STATE OF NEW YORK was a general contractor at the Taconic State Parkway, including but not limited to the Pleasantville Road exit ramp off the northbound Parkway in Briarcliff Manor located at Mt. Pleasant, New York.

10. At all times herein mentioned, the defendant THE STATE OF NEW YORK, defendant's servants, agents and/or employees operated the Taconic State Parkway, including but not limited to the Pleasantville Road exit ramp off the northbound Parkway in Briarcliff Manor located at Mt. Pleasant, New York.

11. At all times herein mentioned, the defendant THE STATE OF NEW YORK, defendant's servants, agents and/or employees maintained the Taconic State Parkway, including but not limited to the Pleasantville Road exit ramp off the northbound Parkway in Briarcliff Manor located at Mt. Pleasant, New York.

12. At all times herein mentioned, the defendant THE STATE OF NEW YORK, defendant's servants, agents and/or employees managed the Taconic State Parkway located at Mt. Pleasant, New York.

13. At all times herein mentioned, the defendant THE STATE OF NEW YORK, defendant's servants, agents and/or employees controlled the Taconic State Parkway located at Mt. Pleasant, New York.

14. At all times herein mentioned, the defendant THE STATE OF NEW YORK,

defendant's servants, agents and/or employees supervised the Taconic State Parkway located at Mt. Pleasant, New York.

15. On or before July 26, 2009, the defendant THE STATE OF NEW YORK, defendant's servants, agents and/or employees repaired the Taconic State Parkway located at Mt. Pleasant, New York.

16. On or before July 26, 2009, the defendant THE STATE OF NEW YORK, defendant's servants, agents and/or employees inspected the Taconic State Parkway located at Mt. Pleasant, New York.

17. On or before July 26, 2009, the defendant THE STATE OF NEW YORK, defendant's servants, agents and/or employees constructed the Taconic State Parkway located at Mt. Pleasant, New York.

18. On or before July 26, 2009, the defendant THE STATE OF NEW YORK, defendant's servants, agents and/or employees designed the Taconic State Parkway located at Mt. Pleasant, New York.

19. At all times herein mentioned, it was the duty of the defendant THE STATE OF NEW YORK, defendant's servants, agents and/or employees to maintain said Taconic State Parkway located at Mt. Pleasant, New York, in a reasonably safe and suitable condition and in good repair.

20. That upon information and belief, on or about July 26, 2009 and prior thereto, THE STATE OF NEW YORK was the general contractor in connection with the construction, erection, alteration, reconstruction, renovation, repair, maintenance, supervision, inspection, design, redesign, engineering, demolition, pavement markings, temporary and permanent pavement markings, signage, detours, maintenance and protection of traffic and/or repaving work being performed at or about the aforesaid location.

21. That upon information and belief, on or about July 26, 2009, and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees constructed, reconstructed, altered and/or erected a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

22. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees maintained a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

23. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees operated a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

24. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees managed a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

25. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees controlled a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

26. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees supervised a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, including but not limited to the Taconic State Parkway at or about the aforesaid location.

27. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees inspected a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

28. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or

licensees owned a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

29. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees repaired a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

30. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees created a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

31. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees designed a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

32. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees re-designed a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

33. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees engineered a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

34. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees serviced a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

35. That upon information and belief, on or about July 26, 2009 and prior thereto,

Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees reconstructed a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

36. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees renovated a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

37. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees repaved a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

38. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees constructed, reconstructed, erected, altered, maintained, operated, managed, controlled, supervised, inspected, owned, repaired, created, designed, re-designed, engineered, renovated, repaved and/or serviced a public roadway for the travel and use of motor vehicles more particularly the Taconic State Parkway, at or about the aforesaid location.

39. That upon information and belief, on or about July 26, 2009 and prior thereto, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers and/or licensees prepared contract drawings, plans and/or specifications for the aforesaid location

40. That upon information and belief, on or about July 26, 2009, and prior thereto, Defendants negligently caused and allowed unsafe conditions to exist at the aforesaid location.

41. That upon information and belief, on or about July 26, 2009, and prior thereto, Defendants disregarded their duty, negligently permitted unsafe, dangerous and hazardous conditions to exist and wholly failed to properly safeguard the public at the aforesaid location in that they failed to properly mark and/or delineate the appropriate lanes of travel for the vehicles traveling and/or merging at the aforesaid location and failed to place and/or properly place and position proper

warnings, warning signals, flashing arrow boards, signs, barriers, barricades, cones, warning signs, barrels, detours, lights, lane markings, permanent and temporary lane markings or otherwise alert the public traveling at the aforesaid location of the dangerous and defective conditions existing thereat.

42. That upon information and belief, on or about July 26, 2009, and prior thereto, Defendants caused said roadway at the aforesaid location to be, become and remain in an unsafe, hazardous and dangerous condition in that they permitted said conditions to exist at the aforesaid location in that they failed to properly mark and/or delineate the appropriate lanes of travel for the vehicles traveling and/or merging at the aforesaid location and failed to place and/or properly place and position warning signals, flashing arrow boards, signs, barriers, barricades, cones, warning signs, barrels, lights, lane markings, permanent and temporary lane markings or otherwise alert the public traveling at the aforesaid location of the dangerous and defective conditions existing thereat.

43. On or about July 26, 2009, the vehicle operated by the plaintiff's decedent came into contact with another vehicle traveling northbound on the Taconic State Parkway.

44. The aforesaid occurred when the vehicle operated by the plaintiff's decedent was traveling in a southbound direction within the northbound lanes of the Taconic State Parkway.

45. Upon information and belief, the vehicle operated by the plaintiff's decedent entered the northbound lanes of the Taconic State Parkway traveling in a southbound direction via the Pleasantville Road exit ramp at the intersection with Pleasantville Road., Briarcliff Manor, New York.

46. The aforesaid occurrence and resulting injuries to DIANE SCHULER was caused solely by the negligence, carelessness and recklessness of the defendant, THE STATE OF NEW YORK, in the in the ownership, leasing, operation, design, maintenance, management, control, supervision, construction, demolition, alteration, repair and/or inspection of the Taconic State Parkway at and in the vicinity of the aforesaid location, including, but not limited to, the Pleasantville Road exit ramp from the northbound lanes of the Taconic State Parkway.

47. The defendant, THE SATE OF NEW YORK, was careless, reckless and/or negligent

in failing to have reasonable, necessary, proper, sufficient and/or adequate signs, roadway markings and other devices which were so designed constructed placed, installed, affixed or otherwise present at the aforesaid location so as to give to vehicle operators, in general, and the plaintiff's decedent, in particular, that entering upon the Pleasantville Road exit ramp of the northbound Taconic State Parkway from the intersection of Pleasantville Road was improper, not permitted and would result in the vehicle entering the moving traffic lanes of the northbound Taconic State Parkway in the wrong direction.

48. The defendant, THE STATE OF NEW YORK, had actual notice of the aforesaid dangerous, defective, improper, inadequate and unsafe design of the aforesaid section of the roadway, including the lack of reasonable, necessary, proper, sufficient and/or adequate signs, roadway markings and other devices at the aforesaid location.

49. The defendant, THE STATE OF NEW YORK, had actual and constructive notice of the dangerous, defective, improper, inadequate and unsafe condition of the Taconic State Parkway at the aforesaid location which resulted from the lack of reasonable, necessary, proper, sufficient and/or adequate signs, roadway markings and other devices at the aforesaid location.

50. That upon information and belief, and at all times herein mentioned, the Defendants, their agents, servants, employees, contractors, subcontractors, engineers and/or licensees were wrongful, negligent, wanton, careless, reckless, misfeasant and tortious in the ownership, operation, control, management, creation, inspection, construction, reconstruction, design, redesign, engineering, servicing, supervision, repair, repaving, renovation, alteration, erection and maintenance of the Taconic State Parkway, including but not limited to the aforesaid location; in permitting to exist, creating and maintaining and/or allowing a dangerous and hazardous condition which constituted a nuisance; in causing the accident and injuries sustained by the claimants including but not limited to the death of the decedent; in contributing to the accident and injuries of the claimants, including but not limited to the death of the decedent; in failing to provide the claimants with the proper and safe means of ingress, egress and passage about said Taconic State Parkway, including but not limited to the aforesaid location; in causing, permitting and allowing said Taconic State

Parkway to be opened to the motoring public without proper lane markings, barricades, cones, signs, warning signs, barrels, lights, lane dividers, barriers, flashing arrow boards, warning signals and/or other devices necessary to provide for the proper and safe operation of motor vehicles on said Taconic State Parkway and in failing to designate which lanes were available for motor vehicle travel for the safe and proper operation thereof; in failing to place warning signals, flashing arrow boards, barriers, barricades, cones, signs, warning signs, hazard signs, barrels, lights, detours, lane markings, lane dividers and/or other devices to direct traffic into its proper flow pattern; in failing to place warning signals, flashing arrow boards, barriers, barricades, cones, signs, warning signs, hazard signs, barrels, detours, lights, lane markings, lane dividers and/or other devices to direct merging traffic; in being negligent in the placement of barriers, cones, barrels, barricades, signs, warning signs, flashing arrow boards, lights, lane markings and lane dividers, warning signals and other devices; in having improper lane changes; in failing to have proper barriers, cones, barrels, barricades, signs, warning signs, flashing arrow boards, lights, lane markings, warning signals, lane dividers and other devices; in not placing barriers, cones, barrels, signs, warning signs, flashing arrow boards, lane markings, lights, barricades, warning signals, lane dividers and/or such other necessary devices; in failing to warn the motoring public that said Taconic State Parkway merged from three lanes to two lanes and then to one lane; in failing to properly designate the lanes of said highway; in failing to properly mark the road surface so as to afford persons motoring thereon in the proper and safe operation required thereat; in failing to provide notice and/or warning of upcoming construction, merging lanes, lane changes, the elimination of lanes and/or detours; in failing to adequately warn travelers on the public highway of its unsafe and dangerous condition; in failing to properly alert, warn and advise the motoring public which were the proper lanes for travel on said highway; in having knowledge and notice of the dangerous and defective conditions then and there existing and in failing to remedy same and in failing to advise the traveling public and Claimants of same; in creating the dangerous and defective conditions; in failing to have proper detours, in failing to and/or negligently detouring and diverting traffic, in having improper and inadequate traffic flow patterns; in failing to have adequate highway studies, safety plans and sign plans; in failing to have

a reasonable highway study, safety plan and sign plans; in having an inadequate highway study, safety plan and sign plans; in failing to review its highway study, safety plan and sign plans in light of the actual operation of the Taconic State Parkway; in failing to take remedial action; in unreasonably delaying remedial action; in undertaking a study and failing to take action dictated or recommended in said study; in failing to review highway safety studies and plans; in failing to timely implement plans to remedy dangerous conditions on said roadway; in failing to construct, design and maintain said highway in a reasonably safe condition; in causing and permitting said roadway to be in a dangerous, defective and unsafe condition; in failing to follow proper guidelines, rules and regulations; in failing to follow proper State, County and Town guidelines, rules and regulations; in violating the laws, rules, statutes, regulations and ordinances of the State of New York, Federal and Local Governments and in such cases made and provided and the rules and regulations promulgated thereunder; in failing to conform and/or comply with Federal and New York State standards; in failing to conform and/or comply with the New York State Manual of Uniform Traffic Control Devices; in failing to conform and/or comply with the Federal Manual on Uniform Traffic Control Devices; in failing to conform and/or comply with good engineering practice and standards; in violating its own specifications and standards; in negligently, carelessly and recklessly preparing contract drawings, plans and specifications; in negligently, carelessly and recklessly implementing and using the contract drawings, plans and specifications; in failing to properly implement and use the contract drawings, plans and specifications; in failing to make said Taconic State Parkway safe and suitable for vehicular traffic either during or following said work; in failing to properly protect and warn vehicular traffic; in causing, permitting and allowing the aforesaid location and the Taconic State Parkway preceding the aforesaid location and the area in which construction, reconstruction, erection, alteration, renovation, repair and repaving and maintenance work was being performed to become and remain in a dangerous, negligent, defective, improper and unlawful condition; in failing to properly control traffic, regulate speed, maintain and install adequate traffic warning signs and advance traffic warnings signs; in failing to take any and every precaution to correct and remedy the dangerous and unsafe condition; in causing, permitting and

allowing the general motoring public to operate upon a roadway which was inherently dangerous, confusing and misleading; in failing to take those steps necessary to avoid the contingency that occurred; in failing to observe that degree of caution, prudence and care which was reasonable and proper under the controlling circumstances; in acting with reckless disregard for the safety of others; in failing to repair or correct; in failing to properly repair or correct; in failing to correct or remove the unsafe dangerous and defective conditions; in permitting a dangerous and unsafe traffic condition to exist for long periods of time; in creating the aforesaid conditions and Defendants were in other ways negligent, wanton, reckless and careless.

51. That upon information and belief, on or about July 26, 2009, the aforesaid accident and injuries which resulted in the death of Decedent were caused by the negligence, wantonness, recklessness, misfeasance, tortious, and carelessness of the Defendants, their agents, servants, employees, contractors, sub-contractors, engineers and/or licensees.

52. That upon information and belief, at all times hereinafter mentioned, Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees had actual and constructive notice of the dangerous and defective conditions in that the conditions existed for a sufficient length of time prior to the happening of the within accident and in the exercise of reasonable care, the Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees could have and should have had knowledge and notice thereof, and further, the Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees created said conditions, and further, the Defendants, their agents, servants, employees, contractors, sub-contractors, engineers, and/or licensees were made aware of the dangerous conditions prior to the happening of the accident.

53. That by reason of the negligent, wanton, reckless, misfeasance and careless actions of the Defendants, as aforesaid, the Decedent, DIANE SCHULER, sustained serious injury as defined in the Insurance Law, Section 5102(d) of the State of New York.

54. As a result of the accident, the claimant's decedent, DIANE SCHULER, suffered catastrophic physical injuries which resulted in her death on July 26, 2009.

55. The decedent was born on or about November 13, 1972.

56. The decedent was survived by heirs-at-law and next of kin. The heirs-at-law and next of kin of the decedent sustained pecuniary loss as a result of the death of the decedent, including, but not limited to, loss of income, loss of benefits, loss of household services, loss of parental guidance, loss of spousal guidance and support, care, services, parental supervision, care, society, services, training, assistance, advice, love, nurture, earnings and inheritance.

57. The decedent's estate incurred funeral and administrative expenses.

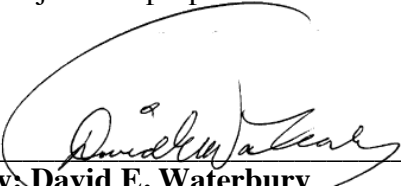
58. Due to defendant's negligence, decedent's distributees are entitled to damages for wrongful death as set forth in EPTL 5-4.1 and 5-4.3.

WHEREFORE, the claimant demands:

- a. judgment awarding damages on the first cause of action;
- b. judgment awarding damages on the second cause of action;
- c. interest, the costs and disbursements of this action, together with such other and

further relief as to this Court seems just and proper.

Dated: New York, New York
July 20, 2011



By: David E. Waterbury
LAW OFFICES OF DAVID E. WATERBURY
Attorneys for Claimant
50 Broadway
Suite 1601
New York, New York 10004
(347) 850-0040

STATE OF NEW YORK
COURT OF CLAIMS

-----X INDEX NO.

DANIEL SCHULER, as Administrator of the Estate of DIANE
SCHULER, Deceased,

Claimant,

**ATTORNEY'S
VERIFICATION**

-against-

THE STATE OF NEW YORK,

Defendant.

-----X

David E. Waterbury, an attorney duly admitted to practice law in the State of New York, makes the following affirmation under the penalty of perjury:

I am of the firm of LAW OFFICES OF DAVID E. WATERBURY, the attorneys of record for the claimant.

I have read the foregoing Complaint and know the contents thereof; the same is true to my own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters, I believe them to be true.

This verification is made by affirmant and not by claimant because he is not in the County of New York, which is the County where your affirmant maintains offices.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are correspondence had with the said claimant, information contained in the said claimant's file, which is in affirmant's possession, and other pertinent data relating thereto.

Dated: New York, New York
July 20, 2011



DAVID E. WATERBURY

STATE OF NEW YORK
COURT OF CLAIMS

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DANIEL SCHULER, as Administrator of the Estate of DIANE SCHULER, Deceased,

Claimant,

-against-

THE STATE OF NEW YORK,

Defendant.

=====

VERIFIED CLAIM

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LAW OFFICES OF DAVID E. WATERBURY

Attorneys for Claimant

Office and Post Office Address and Telephone

50 Broadway

Suite 1601

New York, New York 10004

(347) 850-0040

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Service of a copy of the within VERIFIED CLAIM is hereby admitted.

Dated, _____

.....
Attorney(s) for

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Please take notice

NOTICE OF ENTRY

that the within is a (certified) true copy of
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that _____, of which the within is a true copy will be presented for
settlement to the HON. _____, one of the judges of the
within named court, at _____ on

Dated: New York, New York

July 20, 2011

Yours, etc.,

LAW OFFICES OF DAVID E. WATERBURY

Attorneys for Claimant

50 Broadway, Suite 1601

New York, New York 10004