

AMENDED THIS
MODIFIÉ CE

Sept-22/19

PURSUANT TO
CONFORMEMENT A

RULE/LA RÈGLE 26.02 (1)
 THE ORDER OF
L'ORDONNANCE DU

DATED / FAIT LE
REGISTRAR
SUPERIOR COURT OF JUSTICE

Sopano
GREFFIER
COUR SUPÉRIEURE DE JUSTICE

~~SCHEDULE A~~

Court File No. CV-09-383542

ONTARIO
SUPERIOR COURT OF JUSTICE

AURELIO SAM. ROTOLO on his own behalf and as the Administrator of the Estate of Orlando Rotolo, Deceased, GRACE ROTOLO, IDA ROTOLO
Plaintiffs

-and-

NIAGARA REGIONAL POLICE SERVICES BOARD, NIAGARA REGIONAL POLICE SERVICE OFFICERS JOHN AND/OR JANE DOE, CHIEF OF POLICE WENDY SOUTHALL, NIAGARA EMERGENCY MEDICAL SERVICES PARAMEDICS JOHN AND/OR JANE DOE, NIAGARA EMERGENCY MEDICAL SERVICES, REGIONAL MUNICIPALITY OF NIAGARA, NIAGARA HEALTH SYSTEM CORPORATION and DOCTOR DOUGLAS MUNKLEY

Defendants

AMENDED

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$10,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$1,000 for costs and have the costs assessed by the court.

Date: July 22, 2009

Issued by

S. GATTI
Local registrar

Address of court office: Ontario Superior Court of Justice
393 University Avenue
Toronto, Ontario
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TO: Niagara Regional Police Services Board
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AND TO: Chief of Police Wendy Southall
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110 James Street
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AND TO: NIAGARA REGIONAL POLICE SERVICE OFFICERS JOHN AND/OR JANE
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AND TO: NIAGARA EMERGENCY MEDICAL SERVICES
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AND TO: NIAGARA HEALTH SYSTEM CORPORATION
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Fax: 905-358-8435

AND TO: DOCTOR DOUGLAS MUNKLEY
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Fax: (905) 358-4930

CLAIM

1. The plaintiff, the Estate of Orlando Rotolo, claims:

- a. Damages for assault, battery, false arrest, false imprisonment, misfeasance in public office and negligence in the amount of \$5,000,000.00 (five million dollars);
- b. Special damages in an amount to be determined with particulars to be provided prior to trial;
- c. Punitive, exemplary and/or aggravated damages in the amount of \$5,000,000.00 (five million dollars);
- d. Pre- and post-judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- e. Costs of this action on a substantial indemnity scale; together with Goods and Services Tax payable pursuant to the *Excise Act*;
- f. Such further and other relief as this Honourable Court deems just.

2. The plaintiffs, Grace Rotolo, ~~Ida Rotolo~~ and Aurelio Sam Rotolo, each claim:

- a. Damages for misfeasance in public office in the amount of \$5,000,000.00 (five million dollars);
- b. Special damages in an amount to be determined with particulars to be provided prior to trial;
- c. Punitive, exemplary and/or aggravated damages in the amount of \$5,000,000.00 (five million dollars);

- d. Damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3 in the amount of \$1,000,000.00 (one million dollars);
- e. Pre- and post-judgment interest pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- f. Costs of this action on a substantial indemnity scale; together with Goods and Services Tax payable pursuant to the *Excise Act*;
- g. Costs of legal representation at the Inquest into the Death of Orlando Rotolo;
- h. Such further and other relief as this Honourable Court deems just.

INTRODUCTION

3. This claim arises from events which occurred during the early morning hours of July 25, 2007. In the midst of a health crisis precipitated by the use of cocaine, Orlando Rotolo, a 29 year-old resident of Oakville, Ontario, sought the assistance of the Niagara Regional Police Service. The officers who responded to his call for help unlawfully arrested and imprisoned him. During the course of the arrest the officers violently assaulted and restrained him. They pepper sprayed him as he knelt helplessly on the ground with his hands in handcuffs and while in obvious respiratory distress. Orlando Rotolo was asthmatic.

4. An ambulance was called. The paramedics sought and obtained permission by telephone from an emergency doctor, Dr. Munkley, to administer a large dose of a pre-operative sedative, Versed.

5. The cumulative impact of the violent assaults, the restraint, the pepper spraying and sedative caused Orlando Rotolo to collapse, lose consciousness and die. The involved officers, paramedics and physician knew, or ought to have known, that death was the likely result of their acts and omissions.

THE PARTIES

6. Orlando Rotolo was born on August 23, 1977 and was a resident of the City of Oakville in the Province of Ontario. Orlando Rotolo was asthmatic, had been prescribed painkillers and was receiving treatment for an addiction to cocaine. At the time of his death, he was receiving benefits from the Workplace Safety and Insurance Board due to a knee injury and was re-training to become a chef. He planned to open his own restaurant when he completed his training.

7. Grace Rotolo was Orlando Rotolo's mother. Orlando Rotolo and his family resided with Grace Rotolo. ~~Ida Rotolo was Orlando Rotolo's grandmother.~~ Aurelio Sam Rotolo was Orlando Rotolo's brother. All of these plaintiffs enjoyed a close and loving relationship with Orlando Rotolo.

8. The defendant police officers John Doe and/or Jane Doe are one or more officers who, at all material times, were employed by the Niagara Regional Police Services Board. The defendant(s) identity is unknown to the plaintiffs and is within the unique knowledge of the defendants. The tortious actions of the defendant(s), acting individually or collectively with other police officers, whose identities are unknown to the plaintiffs resulted in Orlando Rotolo's suffering and ultimate death.

9. The defendant Chief of Police Wendy Southall (hereinafter "Chief") was at all material times the Chief of Police of the Niagara Regional Police Service and was responsible for the supervision, training, direction and control of police officers employed by the Niagara Falls Regional Police Service, including the defendant police officers John and/or Jane Doe.

10. The defendant Niagara Falls Regional Police Services Board (hereinafter "Police Services Board") is a municipal police services board incorporated pursuant to the provisions of the *Police Services Act*, R.S.O. 1990, Chap. P.15 and was at all material times responsible for the provision of police services, law enforcement and crime prevention in the City of Niagara Falls. The Board, by virtue of section 50(1) of the *Police Services Act*, R.S.O. 1990, c.P.15 as amended, and the common law, is liable in respect of torts committed by members of the Niagara Regional Police Service, including the defendant police officers and the Chief.

11. The defendant Paramedics John Doe and/or Jane Doe are one or more paramedics employed at all material times by Niagara Emergency Medical Services. The defendant(s) identity is unknown to the plaintiffs and is within the unique knowledge of the defendants. The tortious actions of the defendant Paramedic(s), acting individually or collectively with other paramedics, whose identities are unknown to the plaintiffs, individually and collectively resulted in Orlando Rotolo's suffering and ultimate death.

12. The defendant, Niagara Emergency Medical Services ("Niagara EMS"), is a corporation operating in the Province of Ontario. Niagara EMS was at all materials times the employer of the

defendant paramedics and is liable for its own conduct and in respect of torts by members of the Niagara Emergency Medical Services, including the defendant(s) Paramedic John and/or Jane Doe.

13. The defendant, Regional Municipality of Niagara ("Niagara"), is an upper-tier municipality in the Province of Ontario and as such is responsible, pursuant to the *Ambulance Act*, R.S.O. 1990, CHAPTER A.19 for ensuring the proper provision of land ambulance services in the municipality in accordance with the needs of persons in the municipality. Niagara owns and operates the Niagara EMS and is liable for its own conduct and in respect of torts by members of the Niagara Emergency Medical Services, including the defendant(s) Paramedic John and/or Jane Doe.

14. The defendant, Niagara Health System, is an Ontario Health Services Corporation that was the corporate entity for the Greater Niagara General Hospital and is responsible in law for the acts and omissions of its agents, servants and employees as well as the training and supervision of its agents, servants and employees.

15. The defendant, Dr. Douglas Munkley, is a licensed physician practicing in the Province of Ontario.

The events of July 25, 2007

16. In the early morning hours of July 25, 2007, Orlando Rotolo was in the midst of a health crisis precipitated by the use of cocaine. At approximately 5:30 a.m., he was walking by himself in the City of Niagara Falls.

17. Orlando Rotolo became concerned that an unknown individual was seeking to harm him. He called 911 and requested assistance.

18. In response, two or more police officers with the Niagara Regional Police Service attended at the scene and approached Orlando Rotolo. These officers spoke briefly with Orlando Rotolo. The officers decided to take Orlando Rotolo into custody pursuant to the *Mental Health Act*, R.S.O. 1990 Chapter M.7 ("*Mental Health Act*").

19. Orlando Rotolo had not committed any offence and did not pose a threat to himself or others and thus the officers had no lawful authority upon which to detain him pursuant to the *Criminal Code of Canada*, R.S., 1985, c. C-46 ("*Criminal Code*") or the *Mental Health Act*.

20. When the officers attempted to take him into custody, Orlando Rotolo ran away. He was under no obligation to remain on the scene or to submit to the unlawful detention.

21. The officers requested further police assistance. One or more other officers with the Niagara Regional Police Service attended at the scene.

22. One or more of the officers gave chase, and caught up with Orlando Rotolo. One or more officers proceeded to strike Orlando Rotolo repeatedly about his body with batons, fists, boots and knees in order to restrain him. The officers successfully restrained him, handcuffed him and placed him on his knees.

23. At no time did Orlando Rotolo assault any of the defendants or threaten or provoke the defendant police officers. Orlando Rotolo did not present a threat of serious bodily harm at any time to the defendant police officers nor did the defendant police officers perceive him as a threat.

24. The responding officers were constables. There was no sergeant or other supervisory officer on the scene. The officers made no request for the presence of a supervisory officer until approximately 5:39 a.m., by which time Orlando Rotolo had been restrained.

25. While Orlando Rotolo was restrained on his knees, in handcuffs, and unable to protect himself, one or more of the defendant officers sprayed him in the face with pepper spray.

26. At approximately 5:45 a.m. one or more of the officer(s) requested the assistance of an ambulance.

27. One or more paramedics employed by Niagara Emergency Medical Services arrived at the scene approximately seven minutes later. However the paramedic(s) did not attend to Orlando Rotolo until approximately twenty minutes later. By that time, Orlando Rotolo was

obviously injured by blunt force trauma and was in respiratory distress due to the assaults upon him and his underlying asthmatic condition. He was compliant and in handcuff restraints. He was exhibiting signs of disorientation and was rubbing his heels as though they were in pain.

28. One or more of the paramedics consulted with Dr. Douglas Munkley who was working in the course of his employment as an emergency room physician. One or more of the paramedics requested permission to administer eight milligrams of Versed, a larger than normal dose of a powerful pre-operative sedative. One or more of the paramedics advised Dr. Munkley that Orlando Rotolo was being restrained and was extremely agitated but did not advise that it was suspected that Orlando Rotolo was under the influence of a narcotic, that he was believed to be exhibiting signs of "Excited Delirium" or that he was experiencing respiratory difficulty.

29. Dr. Munkley did not seek any further information concerning the circumstances or Orlando Rotolo's condition and authorized the administration of eight milligrams of Versed.

30. Versed is known to cause respiratory difficulty and cardiac arrest. It is counter-indicated for individuals who are experiencing respiratory difficulty or who have a heart condition. Vital signs are to be closely monitored both before and after administration. It is normally used as a pre-operative drug. It is not normally used as a sedative. It was entirely inappropriate for such a drug to be administered to Orlando Rotolo in the circumstances.

31. One or more of the paramedics administered Versed by way of injection into Orlando Rotolo's buttocks. The moment the needle was removed, Orlando Rotolo collapsed, went into medical distress and his vital signs became absent.

32. Orlando Rotolo was placed in the ambulance and taken to the Greater Niagara General Hospital. He was pronounced dead at 7:15 a.m.

33. At all material times, the defendant police officers, Paramedic(s) and Dr. Munkley, knew or ought to have known that Orlando Rotolo was in the midst of a mental health or narcotic induced crisis.

34. The defendant police officers, Paramedic(s) and Dr. Munkley, knew or ought to have known that Orlando Rotolo was exhibiting respiratory difficulty and distress at all material times.

35. The plaintiffs state that the death of Orlando Rotolo was caused individually and/or in combination by the assault and battery perpetrated collectively and/or individually by the defendant police officers, the negligent restraint of the deceased by the defendant police officers, and the administration by the defendant Paramedic(s), on the instruction of the defendant Dr. Munkley, of a large dose of Versed.

36. Orlando Rotolo endured both physical and mental suffering prior to his death.

Liability of the Defendant Police Officers

a. Assault and Battery

37. The Defendant police officers intentionally applied force to the person of Orlando Rotolo without his consent.

38. The force used upon Orlando Rotolo was not justifiable at law. This force was applied in circumstances where the police officer defendants knew or ought to have known that the said force was excessive and would and/or could cause the aforesaid death.

b. False Arrest and False Imprisonment

39. The Defendant police officers arrested and detained Orlando Rotolo. The detention constituted an imprisonment.

40. The Defendants police officers did not have the lawful authority to arrest and imprison Orlando Rotolo. Without limiting the generality of the foregoing, the Defendant police officers lacked legal authority to arrest Orlando Rotolo because:

- a. Orlando Rotolo had not committed and was not suspected of having committing any offence;
- b. There was no warrant for Orlando Rotolo's arrest;
- c. The arrest was not necessary in the public interest as defined by section 495(2) of the *Criminal Code*;
- d. The police officers did not have reasonable and probable grounds to believe that Orlando Rotolo was acting or had acted in a disorderly manner;

- e. The police officers did not have reasonable cause to believe that Orlando Rotolo had threatened or attempted or was threatening or attempting to cause bodily harm to himself or others;
- f. The police officers did not have reasonable cause to believe that Orlando Rotolo had behaved or was behaving violently towards another person or had caused or was causing another person to fear bodily harm;
- g. The police officers did not have reasonable cause to believe that Orlando Rotolo had shown or was showing a lack of competence to care for himself;
- h. The police officers were not of the opinion that Orlando Rotolo was apparently suffering from a mental disorder of a nature or quality that would likely result in serious bodily harm to himself, serious bodily harm to another person or serious physical impairment to himself;
- i. It would not have been dangerous to have proceeded under section 16 of the *Mental Health Act* by bringing an information before a Justice of the Peace.

41. In the absence of lawful authority to arrest and imprison him, Orlando Rotolo was legally justified in resisting the arrest and imprisonment.

42. Orlando Rotolo was detained and arrested by the defendant police officers against his will and without consent. As a result, the police Defendants are liable to the Plaintiffs for the false arrest and detention of Orlando Rotolo.

c. Misfeasance in Public Office

43. The defendant police officers are holders of a public office.

44. The plaintiffs repeat and rely upon the facts as set out above and state that the defendant police officers deliberately violated the law in arresting and imprisoning Orlando Rotolo and in committing an assault on Orlando Rotolo. In the alternative, the defendant police officers were reckless and/or wilfully blind to whether their actions violated the law.

45. The defendant police officers acted with malice and/or for an improper purpose in that they knew, or were recklessly indifferent to whether, their actions would probably cause injury to the plaintiffs and their actions did so cause injury to the plaintiffs. Without restricting the generality of the foregoing, these defendant police officers' actions were motivated by anger at the conduct of Orlando Rotolo in attempting to leave the scene and/or were motivated by a belief that Orlando Rotolo was mentally ill and/or a discriminatory belief that individuals who are mentally ill pose a danger to themselves or others.

46. The conduct of the defendant police officers constitutes misfeasance in public office.

d. Negligence

47. The defendant police officers owe a duty of care to individuals they detain, arrest and/or imprison, including a duty to deal in a safe manner with mentally ill and/or drug impaired individuals.

48. The defendant police officers breached the duty of care they owed to Orlando Rotolo and the other plaintiffs and, accordingly, are liable in negligence to the plaintiffs. The injuries and suffering by Orlando Rotolo on July 25, 2007 arose as a direct result of the negligence of these defendants. The negligent actions and/or inactions of these defendants as plead herein each and/or collectively caused the death of Orlando Rotolo and/or injury to the plaintiffs, a consequence the defendants knew or ought to have known would occur as a result of their negligence.

49. Without restricting the generality of the foregoing, some of the particulars of the negligence are as follows:

- a. Approached an individual exhibiting signs that he was experiencing a mental health and/or narcotic induced crisis in an aggressive manner, contrary to their training, and in circumstances in which they knew or ought to know that their actions would escalate rather than de-escalate the crisis;
- b. In the absence of reasonable knowledge or experience in dealing with individuals exhibiting signs of a mental health and/or narcotic induced crisis, they failed to call for specialized health care or policing assistance;
- c. Negligently employed force in circumstances in which they knew or ought to know that their actions would escalate rather than de-escalate the crisis;
- d. Delayed seeking emergency care for Orlando Rotolo in circumstances in which they knew or ought to have known that he was in medical distress;
- e. These defendants failed at all material times to exercise the standard of care required by their position as police officers with the Niagara Regional Police Service;

- f. These defendants acted with reckless disregard for the life of Orlando Rotolo; and
- g. These defendants were incompetent to carry out the duties of police officers and lacked the reasonable care, skill, ability and training necessary to perform the duties of a police officer, and ought not to have been assuming the responsibilities and obligations of their positions.

Liability of Chief Southall and the Police Services Board

50. The defendants Chief and Police Services Board owed a duty of care to the deceased to ensure that the defendant police officers were properly trained for, and supervised in respect of, their duties as police officers, including their duty to deal in a safe manner with mentally ill and/or drug impaired individuals.

51. The Chief and Police Services Board breached this duty of care, and were negligent in supervising the defendant police officers. The negligent actions and/or inaction of the Chief and Police Services Board caused injury to the plaintiffs, a consequence these defendants knew or ought to have known would occur as a result of their negligence.

52. Without restricting the generality of the foregoing, some of the particulars of the negligence are as follows:

- a. The Chief and Police Services Board failed to implement adequate training for responding to individuals who are perceived to exhibit indicators that they are experiencing a mental health and/or narcotic induced crisis, including training on

police powers to detain pursuant to the *Mental Health Act* and techniques for de-escalation;

- b. The Chief and Police Services Board failed to put in place adequate specialized services for responding to individuals exhibiting indicators that they are experiencing a mental health and/or narcotic-induced crisis, for example, an emergency mental health team including a mental health nurse;
- c. The Chief and Police Services Board failed to implement adequate training on the use of force and restraints particularly as it relates to the use of force against individuals exhibiting indicators that they are experiencing a mental health and/or narcotic induced crisis;
- d. The Chief and Police Services Board failed to maintain appropriate supervision and control over the defendant police officers;
- e. The Chief and Police Services Board knew or ought to have known that the defendant police officers were unfit to perform duties reasonably expected of police officers;
- f. The Board and the Chief failed to ensure that the defendant police officers carried out their duties in accordance with the provisions of the *Police Services Act*; and
- g. The Chief and Police Services Board failed to ensure the presence of a senior supervisory officer on scene to provide direction to the inexperienced defendant police officers.

Liability of the Paramedic(s), Niagara EMS and Niagara

53. **The defendant Paramedic(s) are liable to the plaintiffs for negligence. These defendants owed Orlando Rotolo and the other plaintiffs a duty of care. These defendants**

breached the duty of care which they owed to Orlando Rotolo and the plaintiffs. The negligent actions and/or inaction of the defendant Paramedic(s) caused injury to the plaintiffs, a consequence the defendant Paramedic(s) knew or ought to have known would occur as a result of their negligence.

54. Without restricting the generality of the foregoing, the plaintiffs state that the defendant Paramedic(s) failed to meet the standard of the reasonable paramedic by:

- a. Failing to immediately provide emergency medical assistance to Orlando Rotolo upon arriving at the scene;
- b. Failing to promptly transport Orlando Rotolo to the hospital;
- c. Recommending and then administering an excessive dose of Versed which was not appropriate to the circumstances or to the patient;
- d. Failing to provide full and relevant information to Dr. Munkley in seeking authorization to administer an excessive dose of Versed to Orlando Rotolo;
- e. Failing to closely monitor Orlando Rotolo's respiratory condition and vital signs both before and after administering Versed;
- f. Failing to obtain a patient history prior to administering Versed;
- g. Administering Versed to a patient who was in obvious respiratory distress;
- h. Administering Versed in uncontrolled conditions; and
- i. Were incompetent to carry out the duties of a paramedic and lacked the reasonable care, skill, ability and training necessary to perform the duties of a

paramedic, and ought not to have been assuming the responsibilities and obligations of their positions.

55. Orlando Rotolo did not consent to the medical treatment provided by the defendant Paramedic(s).

56. The Niagara EMS, as the employer of the defendant Paramedic(s), is vicariously liable for the torts of the defendant Paramedic(s).

57. In addition, Niagara EMS and Niagara owed a duty of care to the deceased to ensure that the defendant Paramedic(s) were properly trained for, and supervised in respect of, their duties as paramedics. Niagara EMS breached this duty of care, and was negligent in supervising the defendant Paramedic(s). The negligent actions and/or inaction of the Niagara EMS and Niagara caused injury to the plaintiffs, a consequence these defendants knew or ought to have known would occur as a result of their negligence. Without restricting the generality of the foregoing, some of the particulars of the negligence are as follows:

- a. They failed to implement adequate training on the use of Versed and other sedatives;
- b. They failed to maintain appropriate supervision and control over the defendant Paramedic(s);
- c. They knew or ought to have known that the defendant Paramedic(s) were unfit to perform duties reasonably expected of paramedics;

- d. They failed to ensure that the defendant Paramedic(s) carried out their duties in accordance with the provisions of the *Ambulance Act*, R.S.O. 1990, CHAPTER A.19.

Liability of Dr. Munkley and the Niagara Health System

58. Dr. Munkley and the Niagara Health System are liable to the plaintiffs for negligence. Specifically, the plaintiffs state that Dr. Munkley and the Niagara Health System owed Orlando Rotolo and the plaintiffs a duty of care. The negligent actions and/or inaction of the defendants Dr. Munkley and the Niagara Health System caused injury to the plaintiffs, a consequence the defendants Dr. Munkley and Niagara Health System knew or ought to have known would occur as a result of their negligence.

59. Without restricting the generality of the foregoing, the plaintiffs state that the defendant Dr. Munkley failed to meet the standard of the reasonable emergency physician by:

- a. Ordering the administration of an excessive and lethal dose of Versed which was not appropriate to the circumstances or to the patient;
- b. Failing to obtain information concerning Orlando Rotolo's respiratory condition and vital signs prior to ordering the administration of Versed;
- c. Failing to obtain a patient history prior to ordering the administration of Versed;
- d. Ordering the administration of Versed to a patient who was in obvious respiratory distress and in uncontrolled conditions;

60. As to the defendant Niagara Health System, its servants, agents and employees, and without restricting the generality of the foregoing, this defendant failed to ensure that the defendant Dr. Munkley was adequately trained to competently respond to the emergency and was otherwise competent to carry out the duties of an emergency physician and were negligent in supervising Dr. Munkley in the course of his duties.

Damages

61. By reason of these matters, the plaintiffs have undergone pain and suffering which they would otherwise not have endured, their injuries have been greatly aggravated and the consequences thereof have been prolonged. Orlando Rotolo suffered further severe injuries and death, and all the plaintiffs have thereby suffered loss and damage.

62. The plaintiffs state that the negligence and intentional torts of the defendants individually and/or collectively caused the death of Orlando Rotolo.

63. The Estate Administrator claims the damages in paragraph 1 herein pursuant to section 38 of the *Trustee Act*, R.S.O. 1990, c. T.23 arising from the deceased's wrongful death and the defendant's assault, battery, false arrest, false imprisonment, misfeasance in public office and negligence as plead aforesaid.

64. The plaintiffs have suffered, and continue to suffer physically, psychologically and emotionally as a direct result of the conduct of the defendants as plead aforesaid. The damages

suffered by these plaintiffs are all consequences which the defendants intended or knew, or ought to have known, would result from their wrongful conduct in causing the death of Orlando Rotolo.

65. The plaintiffs plead and rely upon the relevant portions of the *Family Law Act*, R.S.O. 1990, c. F.3. In particular, Orlando Rotolo's mother, ~~grandmother~~ and brother enjoyed a close and loving relationship with Orlando Rotolo and have suffered the loss of his guidance, care and companionship as a result of his wrongful death. These plaintiffs have also suffered pecuniary loss.

66. The plaintiffs have been out-of-pocket as a direct result of the wrongful acts of the defendants, including, and without restricting the generality of the foregoing:

- a. Funeral and associated expenses;
- b. Loss of employment income; and
- c. Legal fees in respect of proceedings other than the herein claimed, including a Coroner's Inquest.

67. By reason of the facts set out herein, and in particular the highhanded, shocking, contemptuous conduct of the defendants, the plaintiffs claim exemplary, aggravated and/or punitive damages.

68. The plaintiffs rely upon the *Negligence Act*, R.S.O. 1990, c. N.1. as amended, the *Police Services Act*, R.S.O. 1990, c. P.16, as amended; the *Mental Health Act*, R.S.O. Chapter M.7, as

amended; the *Criminal Code of Canada*, the *Family Law Act*, R.S.O. 1990, c. F.3, the *Ambulance Act*, R.S.O. 1990, CHAPTER A.19.

69. The Plaintiffs propose that this action be tried in Toronto, Ontario.

DATE: July 22, 2009

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