JEFFREY S. LISABETH

54 WILLIS AVENUE MINEOLA, NY 11501 (516) 877-1233

HOURS BY APPOINTMENT 299 BROADWAY NEW YORK, N Y 10007

ALSO ADMITTED
 IN PENNSYLVANIA

Horrifying Video of Mother and Child Crushed Between Car and Wendy's

On December 4, 2012, after a day of Christmas shopping Theresa DiMilia and her 11 year old daughter Samantha were exiting the Wendy's on Hillside Avenue in Williston Park when 75 year old Margaret Hogarty of Mineola, apparently confused by bright lights on the side of Wendy's drove her car onto a walkway smashing Theresa and Samantha into and through the side of the Wendy's. (Surveillance video depicting the bright lights and the impact available on DVD). (Police report attached) *There were no curb stops or required bollards in place that would have prevented the tragedy.*

The Law Offices of Jeffrey S. Lisabeth of Mineola has filed a multi million dollar law suit naming Hogarty and her husband, Lynn, the owner of the car, along with Wendy's International. (A copy of the Supreme Court Summons and Complaint is attached) Wendy's lighting scheme and parking configuration were woefully deficient from both engineering and safety perspectives. Only after the accident did Wendy's place proper pedestrian protection (steel and cement bollards.) (These are seen on the DVD to be distributed.)

Samantha was treated and released from Winthrop Hospital for a severely fractured leg. Among other injuries Theresa had both legs fractured and remained in Winthrop Hospital until February 5 where she underwent nine surgeries trying to save her right leg.

Theresa and Samantha will be available for on camera interview at press conference at The Glengariff Healthcare Center, 141 Dosoris Lane, Glen Cove, NY 11542 on Monday, February 11, 2013 at 10:30 AM.

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NASSAU

Date File: 1/15/13 Index No.: 000 577/13

Plaintiff(s) designates(s)

----X NASSAU

county as place of trial

THERESA F. DIMILIA and JOHN P. DIMILIA, individually and as parent and natural guardian of SAMANTHA DiMILIA, an infant under the age of fourteen years,

The basis of the venue is Plaintiff's residence

Plaintiffs,

-against-

SUMMONS

Plaintiff resides at 18 Astor Place Mineola, NY

MARGARET HOGARTY, LYNN HOGARTY, WENDY'S INTERNATIONAL, INC. and WESTBURY PROPERTIES, LLC,

RECENED

JAN 15 2013

Nassau Guenty COUNTY CLERK'S OFFICE

Defendants.

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff(s) Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Mineola, New York January 15, 2013

By: Jeffrey S. Lishbeth, Esq.

Law Offices of JEFFREY S. LISABETH

Attorney for Plaintiffs 54 Willis Avenue Mineola, New York 11501 (516) 877-1233

Defendant(s) address(es):

MARGARET HOGARTY 179 Lake Run Road Mineola, New York 11501

LYNN HOGARTY 179 Lake Run Road Mineola, New York 11501 WENDY'S INTERNATIONAL, INC. 4288 West Dublin Granville Road Dublin, Ohio 43017

WESTBURY PROPERTIES, LLC 220 Westbury Avenue Carle Place, New York 11514

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
------X
THERESA F. DiMILIA and JOHN P. DiMILIA,
individually and as parent and natural guardian of
SAMANTHA DiMILIA, an infant under the age of

Index No.: 000577/13

VERIFIED COMPLAINT

Plaintiffs,

-against-

fourteen years,

MARGARET HOGARTY, LYNN HOGARTY, WENDY'S INTERNATIONAL, INC. and WESTBURY PROPERTIES, LLC,

Defendants.

Plaintiffs, THERESA F. DiMILIA and JOHN P. DiMILIA, individually and as parent and natural guardian of SAMANTHA DiMILIA, an infant under the age of fourteen years, by their attorney, *JEFFREY S. LISABETH, ESQ.*, complaining of the Defendants, respectfully sets forth and alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: That at all times hereinafter mentioned, Plaintiffs, THERESA F. DiMILIA, JOHN P. DiMILIA and SAMANNTHA DiMILIA, were and are residents of the County of Nassau, State of New York.

SECOND: That at all times hereinafter mentioned, Plaintiff, JOHN P. DiMILIA was and is the lawful husband of the Plaintiff, THERESA F. DiMILIA.

THIRD: That at all times hereinafter mentioned, Plaintiffs, THERESA F. DiMILIA and JOHN P. DiMILIA were and are parents of the infant Plaintiff, SAMANTHA DiMILIA, an infant under the age of fourteen years.

FOURTH: That at all times hereinafter mentioned, and upon information and belief, Defendants, MARGARET HOGARTY and LYNN HOGARTY were and are residents of the County of Nassau, State of New York.

FIFTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, MARGARET HOGARTY was the lawful wife of Defendant, LYNN HOGARTY.

SIXTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WENDY'S INTERNATIONAL INC. hereinafter referred to as WENDY'S, was and is a foreign corporation duly operating within the State of New York.

SEVENTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WENDY'S, is a domestic corporation duly authorized and existing by virtue and under the laws of the State of New York.

EIGHTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WENDY'S, operated a certain restaurant located at a premises commonly known as 259 Hillside Avenue, Williston Park, County of Nassau, State of New York.

NINTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WENDY'S, owned a certain premises commonly known as 259 Hillside Avenue, Williston Park, County of Nassau, State of New York.

TENTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WENDY'S, maintained a certain premises commonly known as 259 Hillside Avenue, Williston Park, County of Nassau, State of New York.

ELEVENTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WENDY'S, managed a certain premises commonly known as 259 Hillside Avenue, Williston Park, County of Nassau, State of New York.

TWELFTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WENDY'S, controlled a certain premises commonly known as 259 Hillside Avenue, Williston Park, County of Nassau, State of New York.

THIRTEENTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WESTBURY PROPERTIES, LLC, hereinafter referred to as WESTBURY PROPERTIES, owned a certain premises commonly known as 259 Hillside Avenue, Williston Park, County of Nassau, State of New York.

FOURTEENTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WESBURY PROPERTIES, operated a certain premises commonly known as 259 Hillside Avenue, Williston Park, County of Nassau, State of New York.

FIFTEENTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WENDY'S, maintained a certain premises commonly known as 259 Hillside Avenue, Williston Park, County of Nassau, State of New York.

SIXTEENTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WESTBURY PROPERTIES, managed a certain premises commonly known as 259 Hillside Avenue, Williston Park, County of Nassau, State of New York.

SEVENTEENTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WESTBURY PROPERTIES, controlled a certain premises commonly known as 259 Hillside Avenue, Williston Park, County of Nassau, State of New York.

EIGHTEENTH: That at all times hereinafter mentioned, and upon information and belief, Defendant, WENDY'S, owned, operated, maintained, managed and/or controlled the aforesaid property under a lease with Defendant, WESTBURY PROPERTIES.

NINTEENTH: That at all times hereinafter mentioned, and upon information and

belief, Defendant, WESTBURY PROPERTIES, owned, operated, maintained, managed and/or controlled the aforesaid property under a lease with Defendant, WENDY'S.

TWENTIETH: That at all times hereinafter mentioned, and upon information and belief, Defendant, MARGARET HOGARTY, operated a certain motor vehicle bearing a New York State registration number for 2012.

TWENTY-FIRST: That at all times hereinafter mentioned, and upon information and belief, Defendant, LYNN HOGARTY, was the owner of a certain motor vehicle bearing a New York State registration number for 2012.

TWENTY-SECOND: That at all times hereinafter mentioned, and upon information and belief, Defendant, MARGARET HOGARTY, operated, maintained, managed and controlled the aforesaid motor vehicle with the consent, knowledge and permission of Defendant, LYNN HOGARTY.

TWENTY-THIRD: That at all times hereinafter mentioned, and upon information and belief, Plaintiffs, THERESA F. DiMILIA and SAMANTHA DiMILIA, were lawfully and properly pedestrians on the premises of and outside the restaurant located at 259 Hillside Avenue, Williston Park, New York.

TWENTY-FOURTH: That on or about the 4th day of December, 2012, at approximately 6:30 p.m. at or about the westerly exit of the premises commonly known as 259 Hillside Avenue, Williston Park, New York the motor vehicle owned and operated by Defendants, LYNN HOGARTY and MARGARET HOGARTY, struck Plaintiffs, THERESA F. DiMILIA and SAMANTHA DiMILIA pinning them against the restaurant located thereat.

TWENTY-FIFTH: The negligence of the Defendants, MARGARET HOGARTY and LYNN HOGARTY, consisted of owning and operating their motor vehicle in a dangerous manner;

failing to keep a proper lookout ahead and behind; failing to obey and heed the Road, Traffic and pedestrian conditions then and there existing; failing to give warning or signal of approach; violating the "Rules of the Road" and the Vehicle and Traffic Regulations of the State of New York; failing to be provided with or timely utilize adequate, sufficient, braking and/or other safety devices; placing Plaintiffs in imminent hazard; failing to comprehend, apprehend and/or anticipate a hazardous and dangerous situation; failing to take reasonable steps to avoid the accident; in colliding with and striking the Plaintiffs; in failing to be properly equipped with adequate, sufficient and reasonable safety and warning devices; in failing to see what there was to be seen and appropriately reacting thereto; and the Defendants were reckless, careless and negligent in the premises.

TWENTY-SIXTH: That solely by reason of the negligence of the Defendants as hereinbefore alleged, the said Plaintiffs, THERESA F. DiMILIA and SAMANTHA DiMILIA, were rendered sick, sore, lame and disabled and suffered and still continues to suffer great pain and anguish and sustained severe and serious injuries in and about her head, body, limbs, nerves and nervous system and was obliged to and did seek medical treatment, aid and assistance and was incapacitated and disabled in the performance of her normal duties for a considerable period of time and her normal habits and pattern of life were varied.

TWENTY-SEVENTH: Plaintiffs, THERESA F. DiMILIA and SAMANTHA DiMILIA have sustained a serious injury as defined in Subdivision "D" of Section 5102 of the Insurance Law of the State of New York; or economic loss greater than basic economic loss as defined in Subdivision "A" of Section 5102 of the Insurance Law.

TWENTY-EIGHTH: That this action falls within one (1) or more of the exceptions set forth in C.P.L.R. Section 1602.

TWENTY-NINTH: That as a result of the foregoing, Plaintiffs, THERESA F. DiMILIA

and SAMANTHA DiMILIA, have been damaged in a sum in excess of the jurisdictional limits of all of the lower courts.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF PLAINTIFFS

THIRTIETH: Plaintiffs, THERESA F. DiMILIA, JOHN P. DiMILIA and SAMANNTHA DiMILIA, repeats, reiterates and realleges each and every allegation contained in the paragraphs of the complaint marked "FIRST" through "TWENTY-NINTH" inclusive as though the same were set forth herein at length.

THIRTY-FIRST: That Defendants, WENDY'S and WESTBURY PROPERTIES, their agents, servants and/or employees were reckless, careless and negligent in that they failed and omitted to apprehend and comprehend an immanent dangerous, hazardous and perilous accident situation and failed to take the necessary steps to remedy the same; failed and omitted to employ adequately skilled personnel, to own, operate, maintain, manage, control, construct and design its premises and in particular a "handicap parking space and ramp" on the westerly side of their premises as of foresaid; failed and omitted to properly, reasonably and adequately design, fabricate, construct and maintain the aforesaid westerly side of the premises all with the direct result that the height of the sidewalk curb, the lighting, the "handicap parking space and ramp" were wholly inadequate and presented and caused heightened danger to pedestrians, lawfully and properly upon the premises; caused, allowed and permitted their premises to be and remain of a composition and constructed such that they were dangerous, hazardous, defective and of an improper design and constitute a trap, nuisance and hazard to those lawfully upon the premises, including Plaintiffs. THERESA F. DIMILIA and SAMANTHA DIMILIA; failed and omitted to warn those lawfully using the premises of the aforesaid conditions; caused, allowed and permitted the aforesaid conditions to become and remain in a dangerous hazardous and defective condition as of foresaid; which condition constituted a trap, nuisance and hazard to those lawfully upon the premises including the Plaintiffs herein although the Defendants knew of said condition for a long period of

time and failed to take the necessary steps to remedy the same or should have know of same; failed and omitted to adequately, reasonably and properly operate a restaurant and violated the statues, rules and regulations made and provided for in the same or similar circumstances.

THIRTY-SECOND: That solely by reason of the negligence of the Defendants as hereinbefore alleged, the said Plaintiffs, THERESA F. DiMILIA and SAMANTHA DiMILIA, were rendered sick, sore, lame and disabled and suffered and still continues to suffer great pain and anguish and sustained severe and serious injuries in and about her head, body, limbs, nerves and nervous system and was obliged to and did seek medical treatment, aid and assistance and was incapacitated and disabled in the performance of her normal duties for a considerable period of time and her normal habits and pattern of life were varied.

THIRTY-THIRD: That this action falls within one (1) or more of the exceptions set forth in C.P.L.R. Section 1602.

THIRTY-FOURTH: That as a result of the foregoing, Plaintiffs, THERESA F. DiMILIA and SAMANTHA DiMILIA, have been damaged in a sum in excess of the jurisdictional limits of all of the lower courts.

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF PLAINTIFF JOHN P. DIMILIA

THIRTY-FIFTH: Plaintiff, JOHN P. DiMILIA repeats, reiterates and realleges each and every allegation contained in the paragraphs of the complaint marked "FIRST" through "THIRTY-FOURTH" inclusive as though the same were set forth herein at length.

THIRTY-SIXTH: That at all times here and after mentioned Plaintiff, JOHN P. DiMILIA, was and is the husband of Plaintiff, THERESA F. DiMILIA, and was obliged to and did expend various sums of money for medical treatment, aid and assistance for his wife and was deprived of the society, sex and companionship of his said wife, lost her services for a considerable period of time.

THIRTY-SEVENTH: That as a result of the foregoing, Plaintiff, JOHN P. DiMILIA, has been damaged in a sum in excess of the jurisdictional limits of all of the lower courts.

AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF PLAINTIFFS THERESA F. DIMILIA and JOHN P. DIMILIA

THIRTY-EIGHTH: Plaintiffs, THERESA F. DiMILIA and JOHN P. DiMILIA, repeats, reiterates and realleges each and every allegation contained in the paragraphs of the complaint marked "FIRST" through "THIRTY-SEVENTH" inclusive as though the same were set forth herein at length.

THIRTY-NINTH: That at all times hereinafter mentioned, Plaintiffs, THERESA F. DiMILIA and JOHN P. DiMILIA, were and are the parents of the infant Plaintiff, SAMANTHA DiMILIA, and were obliged to and did expend various sums of money for medical treatment, aid and assistance for SAMANTHA DiMILIA and were deprived of the society and companionship of their daughter and lost services for a considerable period of time.

WHEREFORE, Plaintiffs, THERESA F. DiMILIA, JOHN P. DiMILIA and SAMANNTHA DiMILIA, demands Judgment against the Defendants in the First, Second, Third and Fourth Causes of Action in a sum in excess of the jurisdictional limits of all lower Courts, together with the costs and disbursements of this action, which would otherwise have jurisdiction.

Yours, etc.,

By: Jeffrey S. Lisabeth, Esq.

Law Offices of JEFFREY S. LISABETH

Attorney for Plaintiffs
54 Willis Avenue
Mineola, New York 11501

(516) 877-1233

VERIFICATION

STATE OF NEW YORK) COUNTY OF NASSAU)ss.:

I, THERESA F. DiMILIA, being duly sworn, say: I am one of the Plaintiff(s) in the within action; I have read the foregoing *SUMMONS and VERIFIED COMPLAINT* and know the contents thereof; the same is true to my own knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

THERESA F. DIMILIA

SWORN TO BEFORE ME THIS LOND DECEMBER, 2012

NOTARY PUBLIC

MARGARET E. CRAFA
Notary Public, State of New York
No. 01CR6043435
Qualified in Nassau County
Commission Expires June 19, 209

Index No.: 000577/13

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NASSAU

THERESAF. DIMMEA:and TORINP, DIMILIA, individually and as parent and natural guardian of SAMANTHA DIMILIA, an infant under the age of fourteen years,

Plaintiffs,

-against-

MARGARETHOGARTY, LYNN HOGARTY, WENDY'S INDERNATIONAL, INC. and WESTBURY PROPERTIES, LLC

Defendants.

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Law Offices of JEFFREY S. LISABETH Attorney for Plaintiffs 54 Willis Avenue Mineola, New York, 11501 (516) 877-1233 (516) 877-0235 - Fast

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To the best of the undersigned's knowledge. Information and belief, formed after an inquiry Reasonable under the circumstances, the within Documents and contentions contained herein are Not throtons as defined in 22, NYC kir. [30:4] tha

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	Local Codes 3-8313-12		POLICI	E AC		TV	REPO				19
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[3	WILLISTON PARK Date of Birth Sex	NY	Zip Cox 11596 Occupants Pu		Date of	Birth		Sex Unlicor	State No. of Occupa	Zip Code	22
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5	Plate Number State of Reg Veli		Vehicle Type PED	lns. Code	Plate N		State o	Reg. Vehicle Ye	ar & Make Vehicle	Type Ins. Coda	
	Number(s) Violation		***************************************		Numbe Violatio	r(ś)					- SCHOOL S
6	Section(s) Check if involved vehicle is: V		ck if involved nore than 95 nore than 34 operated with	Inches wid feet long:		d		ace #9. Number	ohl Angle Right Tun	t, or draw your own	25
7	Operated with an overdimens C VEHICLE 1 DAMAGE CO Box 1 - Point of Impact Box 2 - Most Damage	ion permit. C G	operated with VEHICLE 2	an overdir DAMAGE	iension po CODES	mit 1	Sideswipo Sama direction	Les Turn	5. Prohi Tun	7. Sidesvips (opposite direction)	26
L.,,	Enter up to three more damage codes 1 Vehicle By Towed To	2 Vehic	lo By. d. To.	3	4	3 7	CCIDENT D	IAGRAM			27
	VEHICLE DAMAGE CODING: 1-13 SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMC 15. TRAILER 18. NO D 16. OVERTURNED 19. OTHE	AMAGE 2		"		7 B). Cost of repair	s to any one veh	icle will be more than	\$1000.	- 28
9.	Reference Marker Coordinates	(if available) Plac	12 a Mhara Acc	12 11 10 9 Unknown/Unable to determine Yes							EIVEE.
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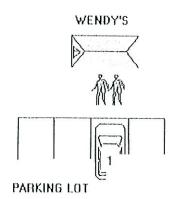
Page 3 of 3 Pages Local Codes 3-8313-12

New York State Department of Motor Vehicles POLICE ACCIDENT REPORT

G8D286000367

MENDEDIREZORII

Month Day Year	Day of Week	Military Time	No of	No. Injured	No. Killed	Not Investigated at Scene	☐ Left Scene	Police Pholos
12 4 201		18:55	Vehicles	2	0	Accident Reconstructed		☐ Yes 図 No



HILLSIDE AVENUE