

NOTICE OF CLAIMS PURSUANT TO A.R.S. §12-821.01

**TO: CITY OF PHOENIX
City Clerk Department
200 W Washington Street, 15th Floor
Phoenix, Arizona 85003**

NOTICE OF CLAIM is hereby given by Katalin and George Metro, by and through their attorneys, Beale, Micheaels, Slack & Shughart, P.C., pursuant to A.R.S. Section 12-821.01, that claims are made against the City of Phoenix, for injuries sustained and damages suffered by Katalin Metro as the result of a failed helicopter transport attempt by the Phoenix Police Department Air Support Unit and Phoenix Fire Department from Piestewa Peak/Phoenix Mountain Preserve in Phoenix, Arizona on June 4, 2019.

Katalin Metro's injuries were caused or contributed to by the negligence, negligence per se, gross negligence, carelessness and/or other fault on the part of the City of Phoenix, through its agents, employees, agencies, and departments, with respect to its failure to reasonably and safely prepare and execute the transport of Katalin Metro off a trail in the Phoenix Mountain Preserve in such a manner to avoid causing her additional and significant injuries and damages. The fault of the City of Phoenix is described in further detail throughout this Notice of Claim.

This Notice of Claim is made in accordance with Rule 408, Arizona Rules of Evidence. This Notice of Claim is only a preliminary statement of the information contained herein, as formal discovery has not yet commenced. The information herein is subject to supplementation, amendment, change, and/or amplification as more information is obtained.

For example, the City of Phoenix and its agents, employees, agencies, and departments may have important information, documentation and materials concerning the occurrence giving rise to this Notice and such information is not available to Claimants until litigation commences. If any part of this Notice is ever read to a jury, fairness requires that the jury be read this preliminary statement and be informed that the matter was in the pre-litigation stage when this Notice of Claim was required to be prepared and submitted, and that Claimants lacked the information within the control of the entities listed in this Notice.

1. CLAIMANTS:

Katalin Metro
c/o Beale, Micheaels, Slack & Shughart, P.C.
7012 North 18th Street
Phoenix, AZ 85020

George Metro
c/o Beale, Micheaels, Slack & Shughart, P.C.
7012 North 18th Street
Phoenix, AZ 85020

Katalin Metro suffered physical, emotional, and psychological injuries and damages as a result of the June 4, 2019 failed helicopter transport attempt. George Metro suffered loss of consortium as a result of the injuries and damages his wife suffered as a result of the June 4, 2019 failed helicopter transport attempt.

2. FACTUAL BASES UPON WHICH CLAIMS ARE MADE:

The factual bases upon which these claims are being made are as follows:

The following is a "summary" of the factual bases of the Claimants' claims in this action. It is not intended as a comprehensive recitation of all facts and circumstances that

are, or might be, relevant to all issues in this matter. Instead, the following is intended to provide the City of Phoenix with a "basic overview" of the facts relevant to these claims. The following is intended, in good faith, to satisfy the requirements mandated by A.R.S. § 12-821.01, as Claimants had limited access to all information at the time this Notice of Claim was served. Given the foregoing explanation and qualification, the factual bases for these claims are as follows.

A. The Incident.

On June 4, 2019, Katalin and George Metro, both of whom are avid hikers, set out on their daily hike along the Circumference Trail of Piestewa Peak in Phoenix, Arizona. The Metros were on their way back down a mountain trail when Katalin lost her footing, falling to the ground. As a result of the fall, Katalin injured the left side of her body, including her left arm and hip. Katalin also suffered an injury to her nose and broke her glasses in the fall.

Deciding that Katalin was too sore to continue down the mountain, George Metro contacted 911 requesting assistance. Phoenix Fire Department personnel were dispatched, and arrived on scene at 8:57 a.m. The EMS incident report documents that when Phoenix Fire Department personnel arrived on the trail, paramedics found Katalin on the trail in no obvious distress. Paramedics documented that Katalin was experiencing left sided wrist, arm, hip, leg, and side pain. She had no nausea or vomiting, and confirmed that she had not lost consciousness as a result of the fall. (Phoenix Fire Department EMS Incident Report, **Exhibit 1**)

Once Phoenix Fire Department personnel evaluated Katalin, it was clear that she was in no apparent distress, and that her condition did not constitute a medical emergency requiring any type of emergency transport. In addition, Katalin expressed to City of Phoenix first responders that she did not want to be taken off the trail by helicopter. Despite these findings and Claimant's wishes, the City of Phoenix paramedics/firefighters made the decision to transport Katalin off the trail by helicopter air rescue rather than using a Big Wheel unit or other ground-based method to transport her.

The Phoenix Police Department Air Support Unit was called in to air lift Katalin Metro from the Phoenix Mountain Preserve Circumference Trail. The Air Support Unit Special Operations Form identifies pilot Derek Geisel, co-pilot Sergeant Steele, and hoist tech Troy Caskey. The Special Operations Form also documents that the following problems occurred during the transport attempt:

Problems/Specify: Patient in Bauman bag had a lot of spin on the way up and trail line broke

(Air Support Unit Special Operations Form, **Exhibit 2**)

Once the Air Support Unit arrived on scene, Katalin Metro was placed in a Bauman bag set inside a Stokes litter which was then hooked to the line that would hoist the Bauman bag, litter, and Katalin up to the helicopter. According to City of Phoenix personnel, as Katalin was being hoisted up and was approximately 20 meters from the helicopter, the litter and Katalin began to spin, continuing to speed up, spinning at higher and higher speeds. Helicopter crew personnel purportedly attempted to stop the spinning, but their efforts failed. Thereafter, the crew reports that the trail line broke and Katalin continued spinning wildly. The Air Support

Unit was eventually able to slow the spin enough to bring Katalin to the helicopter and were able to land where paramedics could transfer her for ground transport to the hospital. Video documenting the event can be reviewed at <https://youtu.be/zf67PSdpwMU>, and is incorporated into this Notice of Claim.

B. Liability of City of Phoenix.

The City of Phoenix, by and through its actual agents, ostensible agents, employees, agencies, departments, and/or representatives, including the Phoenix Police Department and its Air Support Unit and Phoenix Fire Department (hereinafter collectively referred to as the “City of Phoenix”), was responsible for the safety and protection of Katalin Metro, and owed a non-delegable duty to transport her in a reasonably safe and appropriate manner so as to prevent additional injuries, trauma, and damages to Katalin Metro. The City of Phoenix was required to properly evaluate an injured hiker like Katalin Metro, and in the event that transportation of the hiker was required, the City owed a duty to do so in a reasonably safe manner and through appropriate means. The City of Phoenix, through its actual and ostensible agents, employees and/or representatives, was grossly negligent and breached its duty to properly assess the condition of the patient, the accessibility of the location, the terrain of the trail, and the time of day and environmental conditions prior to choosing a high risk helicopter transport rather than a ground-level transport. The City’s acts and omissions caused or contributed to Claimant Katalin Metro suffering additional significant and permanent injuries and damages, and its conduct amounted to negligence, negligence per se, gross negligence, and/or other fault which was a cause of Claimants’ injuries and damages.

The City of Phoenix, through its actual and ostensible agents, employees and/or representatives, was responsible for the operation of the helicopter, personnel, and equipment used in Claimant's transport. The City was required to (1) act in a reasonably safe manner, (2) comply with the standard of care in the assignment and placement of personnel and equipment to safely prepare, hoist, and transport injured patients, including the Claimant, (3) owed a duty to injured patients to properly train its personnel, maintain its equipment in a reasonably safe condition, and (4) owed a duty to safely and properly evaluate, prepare, staff, equip, hoist, and transport patients, including Claimant Katalin Metro, in a reasonably safe manner. The City of Phoenix breached all of these responsibilities and duties in this matter.

The City of Phoenix was on notice of the potential to have a spinning event like the one which caused injury and damages to Claimants if it failed to comply with safety standards, procedures, and protocols for conducting such a transport. As a result, the City of Phoenix was required to adequately train, prepare for, and execute air transport by following well-known safety standards and protocols for such transports, and to be able to promptly respond and stop a spinning event should it begin.

The City of Phoenix failed to comply with its non-delegable duties to use reasonable care, violated the standard of care, and instead acted in a reckless, negligent, and grossly negligent manner with respect to the evaluation, preparation, staffing, equipment usage, hoisting, and transportation of Katalin Metro.

The City of Phoenix failed to comply with the standard of care with respect to the City's decision to evacuate Katalin Metro by helicopter. The City of Phoenix' agents,

employees, and/or representatives improperly attached and maintained the tagline during the operation, preventing the proper control of the basket and patient Katalin Metro. The City of Phoenix personnel were improperly positioned to safely and appropriately hoist the patient, in violation of the standard of care and safe practices. City of Phoenix personnel failed to promptly respond as required by the standard of care and safe practices to stop the uncontrolled spinning when it began. All of its above described failures were breaches of the City of Phoenix' duty owed to Claimants, and constituted negligence, gross negligence, and other fault which caused or contributed to Claimants' injuries and damages described herein.

3. DAMAGES:

A. Katalin Metro's Injuries and Treatment.¹

Upon arrival to the emergency department at John C Lincoln Medical Center on June 4, 2019, Katalin Metro was evaluated by Hannah Rose Malashock, M.D. Dr. Malashock noted on physical exam that Katalin had petechiae to her bilateral shoulders and feet, swelling and bruising to bilateral eyes, gross blood in right TM and blood in external auditory canals bilaterally. CT scans performed in the emergency department revealed the following:

CT Head/Brain w/o Contrast, CT Cervical Spine w/o Contrast, and CT Facial Bones w/o Contrast

Findings:

- 1) Soft tissue swelling over the right anterolateral frontal calvarium. No acute intracranial hemorrhage or extra-axial collection.
- 2) No evidence of cervical spine fracture or subluxation. Chronic changes, as above. Central and left paracentral disc herniation at C4-C5 resulting in at least moderate central canal stenosis.

¹ Pertinent copies of Katalin Metro's medical records are attached hereto. Additional medical records have been requested; however, those records are not available at this time.

- 3) Bilateral nasal bone fractures with overlying soft tissue swelling.
- 4) Paranasal sinus mucosal thickening and partial opacification, as above.

Katalin was admitted to the trauma surgery service for further evaluation and management.

On June 6, 2019, Katalin was seen by Abhishiek Sharma, M.D. for a neurosurgical consult due to the cervical cord edema and signal change revealed during the cervical CT scan.

Dr. Sharma evaluated Katalin, reviewed the imaging studies, and gave the following orders:

1. Bed rest. HOB at 30 degrees at all times.
2. Require operative decompression and fusion at C4-6.
3. Miami J on at all times.
4. Patient likely require 8 weeks of bracing and outpatient follow up.
5. Consult placed for Orthosis to be ordered/measured.
6. MAP goals >85.
7. Transfer to ICU.

On June 6, 2019, Katalin was also seen by Frank Louis Mitchell, III, M.D. for placement of a right subclavian triple lumen catheter due to the need for central venous pressure monitoring.

On June 7, 2019, Katalin was taken to surgery by Dr. Sharma for her cervical stenosis and spinal cord injury. Dr. Sharma performed an anterior cervical discectomy of C5-6, 4-5; an anterior arthrodesis C5-6, 4-5; an anterior instrumentation C5-6, 4-5 with synthes plate and Nexxspine interbody; and spinal fusion. (Medical records of John C. Lincoln North Mountain,

Exhibit 3)

On June 11, 2019, Katalin was seen by Michelle Baribault, D.O. Dr. Baribault noted in her discharge summary that Katalin had persistent left wrist drop and triceps/wrist extension weakness. Katalin also had persistent petechia and edema to her face and neck, with bilateral conjunctival hemorrhage. Katalin was transferred that afternoon to the rehabilitation unit at St. Joseph's Hospital and Medical Center. The plan was for Katalin to undergo 3 hours of therapy 5 days a week, which included physical therapy, occupational therapy, speech for cognitive evaluation, 24-hour rehab nursing and rehab physician management.

Katalin was discharged from St. Joseph's Hospital and Medical Center Rehabilitation Unit on June 28, 2019. Katalin was to continue physical therapy, occupational therapy and self-catheterization. She was advised to follow up with Dr. Sharma in 1 to 2 weeks for neurosurgery follow up, her primary care physician as soon as possible, Dr. Lipson in 1 to 2 weeks for urology follow up for neurogenic bladder, and Dr. Kwasnica in six weeks for further rehabilitation care. (Medical records of St. Joseph's Hospital and Medical Center Rehabilitation Unit, **Exhibit 4**)

Katalin continued outpatient physical and occupational therapy with Dr. Kwasnica beginning on July 2, 2019. The plan was for Katalin to be able to use her left arm better, to decrease her pain, increase her balance and increase activity tolerance. To date, Katalin is still receiving outpatient skilled physical therapy and occupational therapy with Dr. Kwasnica for weakness and balance issues and inability to grip objects with her left hand.

On July 2, 2019, Katalin was seen by Robert Lipson, M.D. at Affiliated Urologists for follow up of urinary retention issues since her injury. Katalin was given a prescription for

Tamsulosin and Bethanechol and reported spontaneously voiding since beginning those medications. (Medical records of Affiliated Urologists, **Exhibit 5**)

On July 5, 2019, Katalin was seen for follow up with Dr. Sharma in his offices at the Atlas Neurosurgery and Spine Center. Records document that Katalin was 4 weeks post surgery and reporting improvement in left hand weakness, with numbness mostly in the left distal fingertips. Katalin reported to Dr. Sharma that she was still experiencing lower extremity edema, significant nausea and neurogenic bladder resulting in her need for self-cathing. (Medical records of Atlas Neurosurgery and Spine Center, **Exhibit 6**)

On July 18, 2019, Katalin returned for follow up with Dr. Lipson at Affiliated Urologists. Katalin reported that she was currently on Tamsulosin but had discontinued Bethanechol due to nausea. During this visit, Dr. Lipson advised Katalin she could discontinue the Tamsulosin and self-cathing.

On July 24, 2019, Katalin was seen for follow up by Dr. Sharma. Records document Katalin was still wearing her Miami J collar, and her incision was healing well and showed no signs of infection.

On August 21, 2019, Dr. Sharma notes that during his office visit with her, Katalin reported interval worsening of her left arm numbness and tingling. Dr Sharma recommended Katalin discontinue physical therapy and other activities that worsen her left arm symptoms, and ordered a repeat MRI of her cervical spine to evaluate for any changes that may have occurred post-surgery.

In addition to the physical injuries Katalin suffered, Katalin also suffered severe psychological injuries and damages. While Katalin was strapped into the Bauman Bag and spinning out of control, she had no idea what was going on and was in fear for her life. With the continued spinning, Katalin felt intense pressure on her head and neck. Due to the fact that she was packed into the Bauman bag and could not see out other than through a narrow opening, she believed the helicopter may have been spinning out of control and was going to crash. She became so nauseous from the spinning she was fearful she would vomit, which would lead to aspiration. Following this terrifying ordeal, the doctors believed that Katalin was suffering from depression and ordered her to be seen by a psychologist twice a week while she was in the Rehabilitation Unit. Katalin continues to experience anxiety caused by the flashbacks of her terrifying experience in the Bauman bag, during times she is suddenly awakened in the middle of the night due to bilateral pain in her arms and legs.

B. Katalin Metro’s – Medical Expenses

Katalin Metro’s medical expenses to date for treatment related to the failed helicopter rescue attempt of June 4, 2019 are listed below. Copies of all bills currently in our possession are attached as **Exhibit 7**.

Provider	Dates of Service	Amount
John C Lincoln Medical Center – North Mountain	6/4/19-6/11/19	\$265,930.67
Acute Care Surgical Specialties	6/4/19-6/11/19	\$3,756.00
Medical Diagnostic Imaging	6/4/19	\$2,027.00
Atlas Neurosurgery	6/7/19	\$17,766.85
Affiliated Urologists	6/24/19-7/18/19	\$695.00
TOTAL:		\$290,184.52

C. George Metro's – Loss of Consortium

George Metro suffered a loss of consortium due to his wife's severe injuries. Katalin had limited use of the left side of her body, and it fell to George to help her with bathing, dressing, styling her hair, self-cathing, putting on her Miami J collar, and driving her to all of her doctors and therapy appointments. It also fell on George to take over the household chores for which Katalin was responsible prior to her injury.

4. RELIEF SOUGHT:

Katalin and George Metro seek monetary damages. These include special damages and general damages arising from the personal injuries Katalin Metro suffered, which were caused by the negligence, gross negligence and other fault of the City of Phoenix, including all items of recovery set forth in the Revised Arizona Jury Instructions (CIVIL), 6th, Personal Injury Damages 1. These items include reasonable expenses of necessary medical care, treatment, and services rendered (past and future), pain and suffering, and the loss of enjoyment of life. They also include George's claim for loss of consortium. The failed helicopter rescue attempt caused Katalin to suffer serious injuries, and for several months lost the ability to perform activities of daily living on her own. As a result, George was required to care for Katalin and perform activities that would have been performed by Katalin but for her injuries.

5. SUM CERTAIN FOR WHICH THE PERSONAL INJURY CLAIM CAN BE SETTLED:

Claimants hereby provide the City of Phoenix with a sum certain for which it may settle the Claimants' claims. Claimants hereby offer to settle all claims in total against the City of

Phoenix, for the sum certain of \$2,000,000. Should the City of Phoenix choose to settle the claims individually, the following is a “specific amount” sum certain for which the City may settle the claims individually: (1) the specific amount for which Katalin Metro’s claim can be settled is \$1,750,000; and (2) the specific amount for which George Metro’s claim can be settled is \$250,000.

The above settlement figures are based upon the facts currently known to the Claimants, as set forth above, and may be revised upward after the time limit to accept these sum certain demands expires, and as investigation and discovery continue. To the extent that additional information is needed to assist in analyzing these claims, please contact this office and we will comply with any and all reasonable requests for additional information.

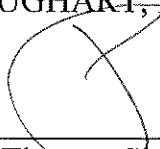
It is our belief that Claimants have completely complied with the Notice of Claim Statute. If you believe that this Notice of Claim is somehow procedurally deficient, please advise us immediately. If, however, we do not hear from you then we will assume that our Notice of Claim is procedurally appropriate, and that we have in every way complied with A.R.S. § 12-821.01. In addition, if you do not advise us of any deficiency then we will be taking the position in any ensuing litigation that you are estopped from asserting any alleged procedural inadequacy due to your failure to disclose any such contention within the 180 day time period set forth in the statute.

If you require any further information, please contact me.

DATED this 26th day of November, 2019.

BEALE, MICHEAELS, SLACK
& SHUGHART, P.C.

By



K. Thomas Slack
7012 North 18th Street
Phoenix, AZ 85020
Attorneys for Claimants