

A. Michael Barker, Esquire
Barker, Scott & Gelfand
A PROFESSIONAL CORPORATION
Linwood Greene – Suite 12
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
AMBarker@BarkerLawFirm.net
AMB/lw - Our File Number: 47733-182
Attorney for Defendant, City of Sea Isle City

FILED
JUL 15 2010
CIVIL DIVISION
SUPERIOR COURT-CAPE MAY COUNTY

SAMANTHA MULLER
Plaintiff

v.

CITY OF SEA ISLE CITY
Defendant

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAPE MAY COUNTY

Docket Number
CPM-L-~~2090~~-10
20⁰

Civil Action

ANSWER TO PLAINTIFF'S
COMPLAINT

On Behalf of Defendant,
City of Sea Isle City

Now comes the Defendant, the City of Sea Isle City, by and through its attorney, A. Michael Barker, Esquire of the Law Offices of Barker, Scott & Gelfand, and by way of Answer to the Plaintiff's Complaint hereby states as follows:

FIRST COUNT

1. Admitted.
2. Denied as to date; otherwise, admitted.

3. Denied as to "permanent"; otherwise, admitted.
4. Admitted as to continuing employment; otherwise, denied.
5. Admitted.
6. Denied.
7. Admitted.
8. Admitted as to Public Works Department employees.
9. Denied.
10. Denied.
11. Denied.
12. Denied.
13. Admitted.
14. Denied.
15. Denied.
16. Admitted.
17. Admitted.
18. through 116. Denied.

WHEREFORE, The Defendant, the City of Sea Isle City, hereby demands judgment dismissing the Plaintiff's Complaint with Prejudice, and for such further relief as the Court deems to be just and equitable, including an award of counsel fees and costs.

SEPARATE and AFFIRMATIVE DEFENSES
Pled by the City of Sea Isle City

1. Any injuries or damages sustained by the Plaintiff are the result of the act or acts of independent, intervening agencies over which the answering Defendant had no power or control.

2. The answering Defendant did not breach any duty which may have been owed to the Plaintiff in this action.

3. The Plaintiff's Complaint fails to set forth a cause of action upon which relief can be granted, and the answering Defendant reserves the right to move to dismiss the Plaintiff's Complaint on that ground.

4. This action is barred by reason of the Statutory Immunity of the answering Defendant and the answering Defendant reserves the right to move to dismiss the Plaintiff's Complaint on that ground.

5. As to any common law claim alleged by the Plaintiff, the Plaintiff's Complaint is barred by the provisions of the New Jersey Tort Claims Act, [NJSA 59:1-1, *et. seq.*].

6. As to any common law claim alleged by the Plaintiff, the answering Defendant is immune from liability pursuant to the provisions of NJSA 59:2-1, *et. seq.*

7. As to any common law claim alleged by the Plaintiff, the answering Defendant asserts the applicability of the provisions of NJSA

59:2-1, and NJSA 59:2-2, as to the immunities available to a public entity and/or a public employee.

8. As to any common law claim alleged by the Plaintiff, the answering Defendant is not liable to the Plaintiff in that there is no liability upon any public employees pursuant to the provisions of NJSA 59:2-2(b).

9. As to any common law claim alleged by the Plaintiff, the answering Defendant is immune from liability pursuant to the provision of NJSA 59:3-1, *et. seq.*

10. As to any common law claim alleged by the Plaintiff, the answering Defendant asserts the applicability of the provisions of NJSA 59:2-3 through NJSA 59:3-2 as to the absence of liability from the exercise of judgment or discretion.

11. As to any common law claim alleged by the Plaintiff, the answering Defendant asserts the applicability of the provision of NJSA 59:8-3 through NJSA 59:8-7 regarding failure to provide adequate and timely notice of claim.

12. As to any common law claim alleged by the Plaintiff, the answering Defendant asserts the applicability of the provision of NJSA 59:8-8 through NJSA 59:8-11 regarding failure to timely file notice of

claim and/or failure to file adequate notice of claim as set forth therein.

13. As to any common law claim alleged by the Plaintiff, any recovery to which the Plaintiff might otherwise be entitled is subject to reduction in accord with the judgments, damages, and interest provided in NJSA 59:9-2.

14. As to any common law claim alleged by the Plaintiff, the answering Defendant asserts the applicability of NJSA 59:9-3, NJSA 59:9-3.1 (limitations in contribution) and NJSA 59:9-4 regarding joint tortfeasors and the comparative negligence of the plaintiff(s).

15. As to any common law claim alleged by the Plaintiff, the answering Defendant asserts the applicability of NJSA 59:9-5 to limit fees and costs.

16. As to any common law claim alleged by the Plaintiff, the answering Defendant, by pressing the aforementioned defenses, does not intend to limit its defenses and/or rights under the Act, and hereby affirmatively pleads the procedural and substantive provisions of the New Jersey Tort Claims Act [NJSA 59:1-1, *et. seq.*] which are applicable and have not been previously cited in this Answer.

17. The claims of the Plaintiff are barred by reason of the Plaintiff's failure to avail herself of administrative remedies and/or arbitration.

18. The claims of the Plaintiff are barred by reason of the Plaintiff's failure to mitigate damages.

19. The claims of the Plaintiff are barred by reason of the Doctrine of Estoppel.

20. The claims of the Plaintiff are barred by reason of the Doctrine of Unclean Hands.

21. The answering Defendant acted without malice and in good faith; and, therefore, is not responsible to the Plaintiff in damages.

22. The answering Defendant asserts that the actions taken by it were privileged, or subject to immunity or **qualified immunity**, and/or as authorized by law.

23. The answering Defendant asserts that appropriate disciplinary procedures were in place and utilized as necessary to assure protection of the rights of individuals involved.

24. All employment decisions were made for legitimate business reasons, professional considerations and concerns for the health and safety of the Plaintiff, her fellow employees, and the public.

25. At all times and places mentioned in the Plaintiff's Complaint, the answering Defendant neither committed any act, nor made any omission, in any way related to the subject matter of the Plaintiff's

Complaint, which is a basis for liability to be imposed on the answering Defendant.

26. Any and all damages alleged to have been suffered by the Plaintiff are not causally related to any act or omission alleged to be chargeable to the answering Defendant.

27. The claims of the Plaintiff are barred by the Statute of Limitations in such cases made and provided

28. The answering Defendant hereby reserves the right to proceed against the Plaintiff, pursuant to the provisions of R. 1:4-8 of the New Jersey Rules of Civil Procedure.

30. The answering Defendant hereby reserves the right to amend this Answer to assert additional Separate Defenses as revealed or suggested by the completion of on-going investigation and discovery.

RESERVATION OF RIGHTS

The Defendant reserves the right, at or before trial, to move to dismiss the Plaintiff's Complaint and/or for summary judgment, on the grounds that the Complaint fails to state a claim upon which relief can be granted and/or that the Defendant is entitled to judgment as a matter of

law, based on any or all of the above defenses.

REQUEST FOR STATEMENT OF DAMAGES

Pursuant to the provisions of R. 4:5-2, the answering Defendant, the City of Sea Isle City, demands that, within five days of service hereof, the Plaintiff furnish a written statement specifying the amount of damage claimed by the Plaintiff in the above-entitled action.

NOTICE OF DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, A. Michael Barker, Esquire of the Law Offices of Barker, Scott & Gelfand, is hereby designated as trial counsel on behalf of the Defendant, the City of Sea Isle City.

JURY DEMAND

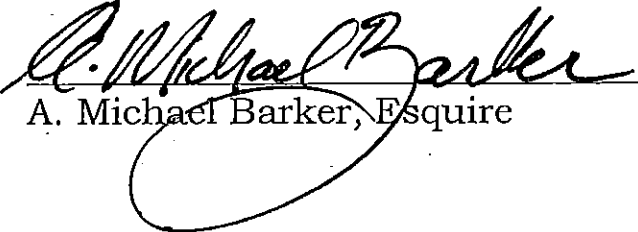
The answering Defendant, the City of Sea Isle City, hereby demands a trial by jury on all issues subject to trial by jury. Notice is hereby given that this demand shall continue and become effective upon the drawing of the jury of six persons and that the stipulation customarily deemed to have been agreed to pursuant to Rule 1:8-2(c) is specifically rejected.

The answering Defendant hereby places on the record a refusal to stipulate to a verdict by less than six jurors on any question before the jury.

NOTICE PURSUANT TO R.1:5-1(a) and R. 4:17-4(c)

Please take notice that the undersigned attorney does hereby demand, pursuant to the above-cited Rules of Court, that any party serving pleadings and interrogatories and receiving answers thereto, serve all copies of such pleadings and answered interrogatories, and all documents, papers and other material referred to therein, received from any party, upon the undersigned attorney; and take notice that this is a continuing demand.

BARKER, SCOTT & GELFAND
a Professional Corporation

By: 
A. Michael Barker, Esquire

Dated: July 12, 2010

A. Michael Barker, Esquire
Barker, Scott & Gelfand
A PROFESSIONAL CORPORATION
Linwood Greene - Suite 12
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
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AMB/lw - Our File Number: 47733-182
Attorney for Defendant, City of Sea Isle City

SAMANTHA MULLER
Plaintiff

v.

CITY OF SEA ISLE CITY
Defendant

RECEIVED
JUL 06 2010

BY:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAPE MAY COUNTY

Docket Number
CPM-L-2090-10

Civil Action

STIPULATION EXTENDING TIME
TO ANSWER OR OTHERWISE
PLEAD

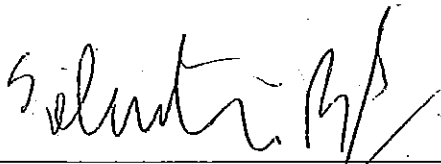
On Behalf of Defendant,
City of Sea Isle City

It is hereby stipulated and agreed between Clifford L. VanSyoc, Esquire, of the Law Offices of VanSyoc Chartered, on behalf of the Plaintiff; and A. Michael Barker, Esquire of the Law Offices of Barker, Scott & Gelfand, on behalf of the Defendant, the City of Sea Isle City, that the time within which the Defendant may serve and file a ^{n Answer only} responsive

~~pleading~~ to the Plaintiff's Complaint is hereby extended for a period of 30 days after the date of this Stipulation.

VAN SYOC CHARTERED

BARKER, SCOTT & GELFAND
a Professional Corporation



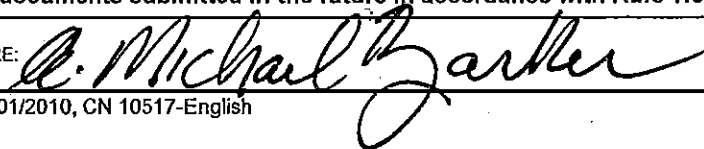
By: 
Clifford L. VanSyoc, Esquire

By: 
A. Michael Barker, Esquire

Dated:  7-6-10

Dated: 9 July 2010.

Appendix XII-B1

	<h2 style="margin:0;">CIVIL CASE INFORMATION STATEMENT</h2> <h3 style="margin:0;">(CIS)</h3> <p style="margin:0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed</p>		FOR USE BY CLERK'S OFFICE ONLY PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO. AMOUNT: OVERPAYMENT: BATCH NUMBER:
	ATTORNEY / PRO SE NAME A. Michael Barker, Esquire	TELEPHONE NUMBER (609) 601-8677	COUNTY OF VENUE Cape May
	FIRM NAME (if applicable) Barker, Scott & Gelfand	DOCKET NUMBER (when available) CPM-L-2090-10	
	OFFICE ADDRESS Linwood Greene ~ Suite 12 210 New Road, Linwood, New Jersey 08221	DOCUMENT TYPE Answer JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
NAME OF PARTY (e.g., John Doe, Plaintiff) Sea Isle City, Defendant	CAPTION Samantha Muller v Sea Isle City		
CASE TYPE NUMBER (See reverse side for listing) 005 / Civil Rights	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, LIST DOCKET NUMBERS Not Applicable		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) Self-Insured through Scibal Associates <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.			
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION			
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, IS THAT RELATIONSHIP: <input checked="" type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION None			
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, FOR WHAT LANGUAGE?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .			
ATTORNEY SIGNATURE: 			



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Centrally Managed Litigation (Track IV)

- 280 Zelnorm
- 285 Stryker Trident Hip Implants
- 288 Prudential Tort Litigation

Mass Tort (Track IV)

- | | |
|---------------------------------------|--|
| 248 CIBA GEIGY | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 282 FOSAMAX |
| 271 ACCUTANE | 283 DIGITEK |
| 272 BEXTRA/CELEBREX | 284 NUVARING |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 286 LEVAQUIN |
| 275 ORTHO EVRA | 287 YAZ/YASMIN/OCELLA |
| 277 MAHWAH TOXIC DUMP SITE | 601 ASBESTOS |
| 278 ZOMETHA/ARELIA | 619 VIOXX |
| 279 GADOLINIUM | |

If you believe this case requires a track other than that provided above, please indicate the reason on Slide 1, in the space under "Case Characteristics."

Please check off each applicable category

Verbal Threshold

Putative Class Action

Title 59