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UNITED STATES DISTRICT COURT  
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CHARLES S. HOTTENSTEIN, Administrator :  
For the Estate of Tracy Hottenstein, deceased :  
CHARLES S. HOTTENSTEIN :  
ELIZABETH K. HOTTENSTEIN :  
Telford, Pennsylvania :

Plaintiffs :

v. :

CITY OF SEA ISLE CITY :  
4416 Landis Avenue :  
Sea Isle City, NJ :

SGT. HAROLD BOYER :  
Sea Isle City Police :  
233 John F. Kennedy Blvd. :  
Sea Isle City, NJ :

THOMAS MCQUILLEN :  
Sea Isle City Police :  
233 John F. Kennedy Blvd. :  
Sea Isle City, NJ :

VINCENT HAUGH :  
Sea Isle City Police :  
233 John F. Kennedy Blvd. :  
Sea Isle City, NJ :

ATLANTICARE REGIONAL :  
MEDICAL CENTER :  
6685 Washington Avenue :  
Egg Harbor Township, New Jersey 08234 :

ATLANTICARE MICU MEDICS :  
AT BASE 3 :  
6685 Washington Avenue :  
Egg Harbor Township, New Jersey 08234 :

ATLANTIC CITY MEDICAL CENTER :  
1925 Pacific Avenue :  
Atlantic City, New Jersey :

ZAKI KHEBZOU, M.D :  
Atlantic City Medical Center :  
1925 Pacific Avenue :

CIVIL ACTION NO.

1:11-cv-00740-JEI-JS

JURY TRIAL DEMANDED

Atlantic City, New Jersey :  
:  
LANDIS THIRTY NINE, INC. DBA :  
OCEAN DRIVE RESTAURANT :  
AND LOUNGE :  
3907-09 Landis Avenue :  
Sea Isle City, NJ :  
:  
JERSEY SHORE PROPERTIES LLC :  
3907-09 Landis Avenue :  
Sea Isle City, NJ :  
:  
MICHAEL ROBERTS :  
3907-09 Landis Avenue :  
Sea Isle City, NJ :  
:  
RALPH PASCERI :  
3907-09 Landis Avenue :  
Sea Isle City, NJ :  
:  
JOSEPH ROBERTS :  
3907-09 Landis Avenue :  
Sea Isle City, NJ :  
:  
BENNETT ENTERPRISES INC. :  
T/A LACOSTA LOUNGE :  
4000 Landis Avenue :  
Sea Isle City, NJ :  
:  
PAUL BALDINI :  
4000 Landis Avenue :  
Sea Isle City, NJ :  
:  
JAMES J. BENNETT :  
4000 Landis Avenue :  
Sea Isle City, NJ :  
:  
MARK LLOYD :  
3338 43d Place :  
Sea Isle City, NJ :  
:  
PATRICIA LLOYD :  
3338 43d Place :  
Sea Isle City, NJ :  
:  
MICHAEL MILOSCIA :  
46 Abbington Lane :  
Sewell, NJ :

John Doe 1-10 are individuals :  
:  
John Doe Corporations or governmental entities 1-5 :

Defendants

**COMPLAINT**

Tracy Hottenstein, a beautiful, vibrant young woman with a career in the pharmaceutical industry, went to Sea Isle City, New Jersey the weekend of February 14, 2009, to attend the Polar Bear Plunge sponsored by Sea Isle City and local bars. She frequented the local and co-sponsors' bars and died on February 15, 2009 of hypothermia complicated by acute alcohol intoxication.

**PARTIES**

1. Plaintiff Charles S. Hottenstein, Administrator for the Estate of Tracy Hottenstein, Deceased opened the Estate in Montgomery County, Pennsylvania. He is the Administrator of the Estate of his daughter, Tracy Hottenstein and sues for the Estate.

2. Tracy was the only daughter of Charles and Elizabeth K. Hottenstein, residents of Montgomery County, Pennsylvania, who sue on their own behalf, individually. Tracy had two brothers, Charles Scott and William Troy.

3. Defendant City of Sea Isle City ("Sea Isle City" or "City") is a municipality and a state actor with a business address at 4416 Landis Avenue, Sea Isle City, NJ. Sea Isle City is governed by a City Council.

4. Defendant Harold Boyer, a sergeant with the Sea Isle City police, is believed and therefore averred to be a resident of New Jersey with a business address at 233 John F. Kennedy Blvd., Sea Isle City, NJ. He is sued in his official and individual capacity.

5. Defendant Thomas McQuillen, a patrol officer with the Sea Isle City police, is believed and therefore averred to be a resident of New Jersey with a business address at 233 John F. Kennedy Blvd., Sea Isle City, NJ. He is sued in his official and individual capacity.

6. Defendant Vincent Haugh, a patrol officer with the Sea Isle City police, is believed and therefore averred to be a resident of New Jersey with a business address at 233 John F. Kennedy Blvd., Sea Isle City, NJ. He is sued in his official and individual capacity.

7. Defendant Atlanticare Regional Medical Center is believed to be a not for profit entity whose emergency medical services are located at 6685 Washington Avenue, Egg Harbor Township, New Jersey.

8. Defendant Atlanticare MICU Medics at Base 3 provides advanced life support care and is believed and therefore averred to be a separately organized unit of Atlanticare Regional Medical Center with a business address at 6685 Washington Avenue, Egg Harbor Township, New Jersey.

9. Defendant Atlantic City Medical Center is believed and therefore averred to be a New Jersey entity with a business address at 1925 Pacific Avenue, Atlantic City, New Jersey.

10. Defendant Zaki Khebzou, M.D. is believed and therefore averred to be a New Jersey resident with a business address at 1925 Pacific Avenue, Atlantic City, New Jersey, and is a physician in Emergency Medicine at Atlanticare Regional Medical Center and believed and therefore averred to be employed as the Chief of Trauma Medicine at Atlantic City Medical Center. He is sued as an employee and in his individual capacity.

11. Landis Thirty Nine, Inc. dba Ocean Drive Restaurant and Lounge (“Ocean Drive”) located at 3907-09 Landis Avenue, Sea Isle City, NJ is a New Jersey entity, either corporate, limited liability or fictitious name owned in whole or in part by and/or operated by defendants Michael Roberts, Ralph Pasceri and Joseph J. Roberts.

12. Jersey Shore Properties LLC (“Ocean Drive”) is a New Jersey entity, either corporate, limited liability or fictitious name owned in whole or in part by and/or operated by defendants Michael Roberts, Ralph Pasceri and Joseph Roberts with a business address at 3907-09 Landis Avenue, Sea Isle City, NJ.

13. Defendant Michael Roberts, with a business address at 3907-09 Landis Avenue, Sea Isle City, NJ is believed and therefore averred to be a citizen of New Jersey who owns and operates Ocean Drive bar entities at the relevant time. He is sued in his individual capacity.

14. Defendant Ralph Pasceri, with a business address at 3907-09 Landis Avenue, Sea Isle City, NJ is believed and therefore averred to be a citizen of New Jersey who owns and operates Ocean Drive bar entities at the relevant time. He is sued in his individual capacity.

15. Defendant Joseph Roberts, with a business address at 3907-09 Landis Avenue, Sea Isle City, NJ is believed and therefore averred to be a citizen of New Jersey who owns and operates Ocean Drive bar entities at the relevant time. He is sued in his individual capacity.

16. Defendants listed in paragraphs 11-15 are also referred to as the Ocean Drive defendants.

17. Defendant Bennett Enterprises Inc. t/a LaCosta Lounge (“LaCosta”) located at 4000 Landis Avenue, Sea Isle City, NJ is a New Jersey entity, either corporate, limited liability or fictitious name owned in whole or in part by and/or operated by defendants Paul Baldini and James J. Bennett.

18. Defendant Paul Baldini, with a business address at 4000 Landis Avenue, Sea Isle City, NJ is believed and therefore averred to be a citizen of New Jersey who owns and/or operates LaCosta bar entities at the relevant time. He is sued in his individual capacity.

19. Defendant James J. Bennett, with a business address at 4000 Landis Avenue, Sea Isle City, NJ is believed and therefore averred to be a citizen of New Jersey who owns and/or operates LaCosta bar entities at the relevant time. He is sued in his individual capacity.

20. Defendants listed in paragraphs 17 through 19 are also referred to as the LaCosta defendants.

21. Defendant Mark Lloyd is an individual with a place of residence at 338 43d Place, Sea Isle City, NJ. He served alcohol to Tracy Hottenstein in his home the night she died. He is sued in his individual capacity.

22. Defendant Patricia Lloyd is an individual with a place of residence at 338 43d Place, Sea Isle City, NJ. She served alcohol to Tracy Hottenstein in her home the night she died. She is sued in her individual capacity.

23. Defendant Michael Miloscia is an individual who is a resident of New Jersey living at 46 Abbington Lane, Sewell, NJ. He is sued in his individual capacity.

24. Defendants John Doe 1-10 are individuals whose names are unknown at this time and may have responsibility under the facts of this case.

25. Defendants John Doe Corporations or governmental entities 1-5 are corporate entities or governmental entities whose names are unknown at this time and may have responsibility under the facts of this case.

#### **JURISDICTION AND VENUE**

26. The United States District Court for the District of New Jersey has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 (diversity jurisdiction) because it is between citizens of different states and the amount in controversy exceeds \$100,000, exclusive of interest and costs. The court also has jurisdiction pursuant to 28 U.S.C. § 1331 and 1343

which provides for original jurisdiction of plaintiff's claims arising under the laws of the United States.

27. Plaintiffs have given proper notice under the New Jersey Tort Claims Act where required and has taken other steps necessary to bring this action before this Court.

28. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. §§ 1391(b)(1), (b)(2) and (c) because defendants reside in and/or conduct business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

#### **FACTUAL ALLEGATIONS**

29. Sea Isle City, a New Jersey municipality, along with sponsoring businesses, advertised and hosted the Fifteenth Annual Polar Bear Plunge on Valentine's weekend, February 14-15, 2009, whose stated purpose was to benefit the town economy and allow local businesses to make money in the winter season from the thousands of visitors expected.

30. This was not the first Polar Bear Plunge hosted by the municipality, and the Sea Isle City Commissioners knew that the visitors for the weekend events would drink excessively, and would be served excessively by local bars. The Commissioners knew that public drunkenness and public alcohol consumption, both violations of City ordinances, occurred at Polar Bear Plunge events.

31. Sea Isle City either ignored or waived its own ordinances regarding public drunkenness and outdoor, public consumption of alcoholic beverages in order to attract the general public to the town and generate income for the bar owners on Polar Bear Plunge weekend.

32. Local bars teamed with Sea Isle City to sponsor the Polar Bear Plunge and were allowed to serve alcohol outdoors.



33. The Sea Isle City commissioners also knew, based on knowledge from past Polar Bear Plunge events, that visitors to the town would be drinking in public and walking the streets and areas of Sea Isle City while in an intoxicated state.

34. The Sea Isle City commissioners knew that in or about February 2009 that the marina area on 42<sup>nd</sup> Street, near the bars open for the Polar Bear Plunge, was unsafe and had let bids to reconstruct it. However, no precautions had been taken to bar access to the marina or docks by the public during the Polar Bear Plunge.

35. The weather the weekend of the 2009 Polar Bear Plunge was very cold.

36. Tracy Hottenstein, 35 years old, marathon runner and sports enthusiast, was a business invitee to Sea Isle City and its sponsoring businesses for the Polar Bear Plunge weekend of February 14-15, 2009.

37. At the time of her death, she was employed as a sales representative for a pharmaceutical company, owned a home, helped out her parents and grandfather on a regular basis, cared for her nieces and nephews, had many friends and doted on her beloved rescue cat.

38. Ms. Hottenstein attended the festivities on the beach for the Plunge, but did not jump into the water herself. Rather, she and her friends began visiting the local bars, as Sea Isle City and the co-sponsoring bars intended.

39. The first bar visited was the Springfield Carousel also known as the Springfield Inn.

40. On the afternoon of February 14, 2009, Ms. Hottenstein, was a business invitee to the LaCosta bar. She and several friends were served alcoholic beverages at the bar. Ms. Hottenstein was served even though she was visibly intoxicated.

41. The LaCosta and its owners had a duty to the business invitees not to overserve alcoholic beverages which was breached. LaCosta had an obligation under the law not to overserve alcoholic beverages to visibly intoxicated persons.

42. It is believed and therefore averred that LaCosta's owners/operators, defendants Paul Baldini and James J. Bennett were involved in the planning and co-sponsorship of the Polar Bear Plunge.

43. Ms. Hottenstein left the LaCosta with Michael Miloscia, went to Ocean Drive bar about the same time as Mark and Patti Lloyd, and by invitation went to Mark and Patti Lloyd's house on 43d Place for dinner. Ms. Hottenstein was served alcohol at Ocean Drive and at the Lloyd's while in a visibly intoxicated state.

44. Social hosts have a duty not to serve alcohol to visibly intoxicated guests.

45. Ms. Hottenstein left the Lloyd's with Miloscia and eventually reentered the Ocean Drive bar with him and he accompanied her throughout the evening.

46. Ms. Hottenstein was a business invitee to the Ocean Drive. She and several friends were served alcoholic beverages, again while Ms. Hottenstein was in a visibly intoxicated state.

47. Ocean Drive and its owners had a duty to the business invitees not to overserve alcoholic beverages which was breached. Ocean Drive had an obligation under the law not to overserve alcoholic beverages to visibly intoxicated persons.

48. It is believed and therefore averred that Ocean Drive's owners/operators, defendants Michael Roberts, Ralph Pasceri and Joseph J. Roberts were involved in the planning and co-sponsorship of the Polar Bear Plunge along with Sea Isle City.

49. Sea Isle City's General Ordinances provide at Section 6-4.5 that alcoholic beverages will not be sold, served or delivered to intoxicated persons. This ordinance is generally ignored during the Polar Bear Plunge.

50. The General Ordinances further provide at Section 6-4.13 Part A that it is unlawful to consume alcoholic beverages in any public place, which ordinance is generally ignored by the police during the Polar Bear Plunge.

51. The docks on the public pier at the Sea Isle City marina were in disrepair, unstable and were unreasonably dangerous to business invitees. The danger was not known or obvious to Ms. Hottenstein.

52. Many of the street lights leading to those public docks were not working and the lighting on the docks was either dim or nonexistent.

53. Sea Isle City had selected a contractor to upgrade and repair the dock area of the marina, but had failed to bar public access to the area, or post any caution signs warning of its dangerous condition. Sea Isle City did not provide safety patrols of the dock area even though it was in a dangerous condition. Sea Isle City violated its own Ordinances requiring that property be kept in a safe condition.

54. The Sea Isle City police department is in charge of emergency management and the marina.

55. The Sea Isle City police department was located within a half mile of the dock area but the police did not patrol the dock area after the bars closed for Polar Bear Plunge weekend in violation of Sea Isle City General Ordinances requiring police cars to cover all streets at least once each shift.

56. Sea Isle City had a duty to the public, and business invitees, which was breached to exercise reasonable care to make the premises, that is, the dock area, safe for entry and exit.

57. Sea Isle City had a duty to the public, and business invitees, which was breached to warn them of dangerous and unsafe conditions on the premises, that is, the dock area.

58. Sea Isle City knew or should have known of the unsafe condition of the docks and the dim or defective lighting, which concealed or did not disclose the unsafe condition.

59. Some time after she arrived at Ocean Drive and was served alcoholic beverages while she was visibly intoxicated, Ms. Hottenstein's friends wanted her to leave. Mr. Miloscia assured the friends that he would take care of Ms. Hottenstein and she stayed with Mr. Miloscia and continued to be served alcohol, some of which he purchased for her.

60. Video shows that Ms. Hottenstein, without any outdoor clothing on, followed Mr. Miloscia out of the Ocean Drive bar at or about 2:15 am on February 15, 2009.

61. It is believed and therefore averred that Michael Miloscia at some point abandoned Ms. Hottenstein even though Mr. Miloscia knew Ms. Hottenstein was in an intoxicated state and unable to fend for herself.

62. It is believed and therefore averred that Ms. Hottenstein in her intoxicated state wandered to the dark, dangerous public docks from the Ocean Drive bar, fell off into the dark icy water and struggled out to the location where she was found the morning of February 15, 2009.

63. Both LaCosta and Ocean Drive had a duty to properly hire, train and supervise their personnel on the appropriate service of alcoholic beverages to business invitees which was breached.

64. Michael Roberts, Ralph Pasceri and Joseph Roberts publicly hold themselves out as hands-on owners who are very involved in the day to day operation of their bar, visiting it and assuring certain standards are met. It is believed and therefore averred that by their visits to the Ocean Drive, videotapes of the bar patrons and their sponsorship of the Polar Bear Plunge, they knew that Ocean Drive business invitees are overserved alcohol.

65. It is believed and therefore averred that Ocean Drive, Michael Roberts, Joseph Roberts and Ralph Pasceri profit from the service of alcohol.

66. Paul Baldini and James J. Bennett publicly hold themselves out as hands-on owners who are very involved in the day to day operation of their bar LaCosta, visiting it and assuring certain standards are met. It is believed and therefore averred that by their visits to the LaCosta, videotapes of bar patrons and their sponsorship of the Polar Bear Plunge, they knew that LaCosta business invitees are overserved alcohol.

67. It is believed and therefore averred that LaCosta, Paul Baldini and James J. Bennett profit from the service of alcohol.

68. Early in the morning on February 15, 2009, a local fisherman discovered a female lying on her back near the shack in the parking area near the Sea Isle City public docks and called the police.

69. The weather was reported to be 35 degrees Fahrenheit and windy.

70. The Sea Isle City Volunteer Ambulance Corps responded to a call from Sea Isle City police and at 7:52 am, found "Jane Doe" on her back on the ground at the parking area near the unstable docks. She was wearing jeans, which were muddy to the knees, and a black long sleeve pullover, socks, but no footwear or outerwear.

71. One boot and her hat were later found in the water in the dock area. Sock prints were in the wet ground around her near the parking area which was within sight of the Sea Isle City police department.

72. Bruising on her arms and legs, the condition of her fingernails, the muddy jeans and the rubbed holes in her socks reflect her struggle in her intoxicated state to try to get to a place where she might be found and rescued.

73. She made it to the edge of the marina roadway area. There were no apparent fatal injuries on Ms. Hottenstein's body.

74. She had no identification on her. Sometime later Ms. Hottenstein's wallet, jacket and cell phone were located, at different times, in different places, at the Ocean Drive bar.

75. The on duty Sea Isle City police, specifically Harold Boyer, Thomas McQuillen and Vincent Haugh, would not allow the Sea Isle City Volunteer Ambulance Corps to approach or treat "Jane Doe," later learned to be Ms. Hottenstein, each having decided she was deceased solely by feeling for a carotid pulse.

76. The police by failing to allow medical treatment were deliberately indifferent to her serious medical needs and breached their duty to provide medical treatment to accident victims.

77. Sea Isle City Volunteer Ambulance Corps personnel who arrived at 7:52 am did not overrule the police and insist on treating Ms. Hottenstein themselves. No CPR was performed. The Ambulance Corps personnel viewed her from twenty feet away.

78. The Sea Isle City Volunteer Ambulance Corps reported Ms. Hottenstein "DOA", that is "Dead on Arrival" without examination.

79. The City of Sea Isle City as a public entity is liable for injury proximately caused by an act or omission of its public employees within the scope of their employment in the same manner as a private individual.

80. Atlanticare MICU medics, a mobile trauma team associated with Atlanticare Regional Medical Center, was called to the scene. Their report indicates it was on a "non-emergency" basis. They arrived at 8:13 and left at 8:24. Again the Sea Isle City police would not allow the team to approach Ms. Hottenstein, nor did the team insist on doing so, observing her from six feet away.

81. There is no indication that either the police, Ambulance Corps or medics considered that Ms. Hottenstein was suffering from hypothermia, and failed to follow standard treatment for hypothermia. The police, Ambulance Corps and Atlanticare did not follow standard procedure to determine whether Ms. Hottenstein was in a hypothermic state and could be revived.

82. These first responders had a duty to act and were responsible for providing emergency medical care to the best of their training and ability and to ensure that Ms. Hottenstein received more advanced care at the appropriate emergency facility which duty was breached.

83. Ms. Hottenstein's alcohol consumption caused a sedative effect hampering her ability to remove herself from a cold environment and contributing to her hypothermia.

84. No first responder provided appropriate prehospital care to Ms. Hottenstein. The multiple failures included that first responder EMS or medics never examined her, that EMS and medics took the information given them by police i.e. that Ms. Hottenstein was deceased, instead of treating her for hypothermia, a condition that should have been immediately considered.

85. By failing to provide care and withholding care the first responders negligently abandoned the victim, Ms. Hottenstein.

86. An Atlanticare medic, without examining the patient, telephoned Atlantic City Regional Medical Trauma Center and spoke to Zaki Khebzou, M.D., Trauma Chief, who pronounced Ms. Hottenstein dead by telephone at 8:22 am, without seeing or examining her.

87. This action by Dr. Khebzou violated protocol for communicating to medical personnel and pronouncing death in the field by an offsite physician and violated the standard of care in the recognition and treatment of hypothermia.

88. Dr. Khebzou failed to recognize, insist upon and ensure proper prehospital care of the hypothermic patient, that is, rescue, examine, insulate and transport. He violated the standard of care for hypothermia victims.

89. The issue that Dr. Khebzou should have been concerned with was whether or not to provide prehospital heat. Transport to the hospital should have been a given.

90. Dr. Khebzou negligently performed his duties and violated procedure by pronouncing death without examination of his patient and with no basis, which ended any possibility that Ms. Hottenstein would be revived.

91. Atlanticare Regional Medical Center negligently breached their duty to formulate and implement policies to assure the proper treatment of hypothermia in trauma patients, employ competent healthcare providers and properly supervise their healthcare providers.

92. Because of the low temperature, no visible fatal injuries and the Polar Bear Plunge of the preceding day, first responders should have considered that Ms. Hottenstein was a victim of hypothermia, which can manifest with no pulse and no heartbeat, and requires immediate treatment.

93. Dr. Khebzou should have considered that Ms. Hottenstein was a victim of hypothermia and insisted on transport.

94. No first responder gave Ms. Hottenstein any life preserving treatment. She was left for hours on the cold ground while an investigation commenced.

95. The Medical Examiner's vehicle arrived and eventually Ms. Hottenstein was put in a body bag and taken to the morgue at Shore Memorial Hospital.

96. Ms. Hottenstein was not the first victim of hypothermia and acute alcohol intoxication in Cape May County, whose first responders were on notice that such an accident could occur.



97. Alcohol ingestion increases the risk of hypothermia.

98. Cold temperatures and water immersion increases the risk of hypothermia.

99. The Polar Bear Plunge sponsored by Sea Isle City, LaCosta and Ocean Drive included cold temperatures, water immersion and excessive consumption of alcohol. For Sea Isle City to fail to prepare for, and recognize, injury due to hypothermia was negligent.

100. Hypothermia requires a rapid response with properly trained personnel and techniques. The clinical presentation may be such that the victim appears dead, however aggressive management may allow successful resuscitation. Lifesaving procedures should not be withheld based solely on clinical presentation.

101. Initial management should include CPR if the victim is not breathing, is pulseless and in cardiac arrest. Wet clothing should be removed and the victim prevented from becoming colder or gradually warmed while being immediately transported to a properly equipped medical center. The decision to terminate resuscitative efforts must be individualized by careful physical examination performed by the physician in charge.

102. Standard rescue parameters for hypothermia note there are no cold, dead hypothermia victims, but there can be warm, dead hypothermia victims, the training point being that a victim must be the beneficiary of a rewarming attempt before death can be accurately pronounced.

103. It is believed and therefore averred that hypothermia training of Sea Isle City employees, if given, is deficient. There are no known records that any employee of Sea Isle receives training in hypothermia recognition and treatment, even though Sea Isle City sponsors the Polar Bear Plunge which features individuals, many intoxicated, who run into the icy Atlantic Ocean.

104. If first responders employed by Sea Isle are trained in recognizing hypothermia, proper procedure was not followed in regard to Ms. Hottenstein.

105. Medical personnel, including Dr. Khebzou, failed to recognize and treat hypothermia.

106. The medical examiner performed an autopsy on February 16, 2009, which concluded Ms. Hottenstein died of hypothermia complicated by acute alcohol intoxication. The time of death was assigned as of the time of Dr. Khebzou's pronouncement of death by telephone.

107. Ms. Hottenstein consciously endured the fall, the water, the struggle, the cold and the ensuing hypothermia, in the dark marina area. When she was found, the summoned medical personnel were kept away from her. Neither the medical personnel, nor Dr. Khebzou insisted on immediate evacuation for treatment.

108. There is no indication in the City or EMT records that Dr. Khebzou considered hypothermia, or rescue treatment for it.

109. Based on the last known time Ms. Hottenstein was seen alive and the time she was found, the air temperature, her age and physical condition, the condition of the body when found and the known physical manifestations of hypothermia, it cannot be assumed Ms. Hottenstein was dead but rather was in a deep and severe hypothermic state when found and required immediate skilled medical attention to have a chance to survive.

110. No one made any rescue efforts whatsoever failing to recognize the symptoms of severe hypothermia.

111. Ms. Hottenstein was pronounced dead over the telephone by Dr. Khebzou, who had not seen or examined her in violation of New Jersey protocol.

112. Ms. Hottenstein's parents were notified of the death of their daughter in the early afternoon of February 15, 2009, by two local police officers who came to their home in Montgomery County, Pennsylvania.

113. Ms. Hottenstein as the only daughter, and without children of her own, was the child who was to care for her parents as they retired and became less able to do for themselves.

114. At the time of her death, Ms. Hottenstein performed similar visiting and caretaking services for her grandfather.

#### **COUNT ONE**

#### **NEGLIGENCE Against all defendants**

115. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

116. Defendants owed a duty of care to Ms. Hottenstein as set forth above, breached that duty and that breach caused and resulted in injury and death to Ms. Hottenstein.

117. Sea Isle City knew or should have known that the public dock was dangerous, dimly lit and unsafe in its condition on February 14-15, 2009, and violated various public safety statutes including for unsafe structures.

118. The Sea Isle City individual police officers Haugh, McQuillen and Boyer took control of the scene and took custody of Ms. Hottenstein. Those officers were not properly trained to recognize or failed to recognize the possibility of hypothermia and caused or contributed to Ms. Hottenstein's death by negligently barring medical treatment.

119. Police officers have a duty to administer emergency medical assistance and necessary treatment to persons within their custody and to victims of accidents. Here police stood by rather than allow medical assistance, even after calling EMS to the scene, which breached that duty.

120. At the time the police barred medical help from Ms. Hottenstein, they were not executing or enforcing the law.

121. Sea Isle City and the co-sponsoring bars including Ocean Drive and LaCosta, knew based on their previous experience with Polar Bear Plunge participants that those participants would engage in excessive drinking. Sea Isle City took no steps to reduce the danger to those participants by regulating public drinking as required by local ordinance.

122. The Ocean Drive and LaCosta bar defendants and their individual owners knew that business invitees to their establishments, including Ms. Hottenstein, were served alcoholic beverages and knew that business invitees, including Ms. Hottenstein, were overserved alcohol when visibly intoxicated.

123. The Ocean Drive and LaCosta bar defendants are vicariously liable for their employees who served alcohol to visibly intoxicated business invitees.

124. Those defendants deliberately and willfully overserved their business invitees, including Ms. Hottenstein, in order to make money.

125. The Ocean Drive and LaCosta bar defendants and their individual owners knew or should have known that their employees who served business invitees alcohol were not properly hired, trained, supervised, were careless or incompetent and such employment created a situation where the employee's conduct harmed Ms. Hottenstein.

126. The Ocean Drive and LaCosta bar defendants and their individual owners were negligent in their supervision and control of their personnel serving alcoholic drinks causing harm to Ms. Hottenstein.

127. Michael Miloscia as the "last friend" with Ms. Hottenstein failed to ensure that she got home safely after leaving the bars in an intoxicated state.

128. The Ocean Drive and LaCosta bar defendants and their individual owners negligently served Ms. Hottenstein alcoholic beverages which in conjunction with the alcoholic beverages she was negligently served by Mark and Patricia Lloyd caused Ms. Hottenstein's intoxication which led to the fall at the unsafe, unstable, dimly lit, dangerous public docks.

129. The first responders from Atlanticare and Dr. Khebzou failed to consider that Ms. Hottenstein was the victim of hypothermia, failed to insist on allowing rescue treatment and transport when they had a duty to do so and breach of that duty caused or contributed to her death. Those negligent acts were not in good faith, or professionally appropriate.

130. The EMT responders from Sea Isle City and Atlanticare did not take reasonable steps to access, take custody of or transport Ms. Hottenstein for the purpose of treatment. Those negligent acts were not in good faith, or professionally appropriate.

131. It is believed and therefore averred that the EMT responders and Atlanticare did not follow prescribed procedures for emergency responders set forth by New Jersey guidelines and protocol.

132. Atlantic City Regional Medical Center had no known policies or procedures in place to ensure that victims treated by their staff received the care appropriate for the condition presenting itself, here specifically hypothermia. It is believed and therefore averred that Atlantic City Regional Medical Center has no protocol for pronouncing death in the field solely based on telephone information, yet a member of its staff did so. If Atlantic City Regional Medical Center does have such protocols, they were not followed.

133. It is believed and therefore averred that Atlantic City Regional Medical Center has failed to put into place procedures to ensure that victims of hypothermia have been rewarmed before death is pronounced. If those procedures are in place they were not followed.

134. The medical defendants negligently mishandled Ms. Hottenstein when they failed to immediately treat her for hypothermia which would have given her the last chance for survival.

135. The acts of defendants caused grievous harm to Ms. Hottenstein as no trauma caused instantaneous death and she suffered conscious pain and suffering during her ordeal, all as set forth above and defendants caused emotional distress for her parents.

WHEREFORE, plaintiffs respectfully requests relief and judgment in favor of themselves and against defendants jointly and severally for actual, compensatory and consequential damages including pain and suffering according to proof in excess of \$500,000; for punitive or exemplary damages against defendants, in an amount sufficient to punish defendants and deter others from similar wrongdoing; for attorneys fees and expert fees; for prejudgment interest; for costs of suit and for such other, different or further relief as the interests of justice or equity may require.

## COUNT TWO

### NEGLIGENT HIRING, SUPERVISION AND RETENTION

**Against Ocean Drive defendants, LaCosta defendants, Atlanticare Regional Medical Center, Atlanticare MICU Medics at Base 3, Atlantic City Medical Center**

136. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

137. Each of the Sea Isle City defendants, the Ocean Drive defendants and the LaCosta defendants had a duty of care in the selection, training, supervision and retention of employees who in the course of their employment might cause harm to others, which duty was breached.

138. Each of the Ocean Drive defendants and the LaCosta defendants had a duty to properly hire, train and supervise their personnel on the appropriate service of alcoholic beverages to business invitees, which duty was breached.

139. The Sea Isle City defendants had a duty to properly hire, train and supervise their police officers in recognizing the need for emergency medical care when a victim displays symptoms of hypothermia, and had a duty to train their police officers to recognize hypothermia which duties were breached.

140. The Sea Isle City defendants had a duty to properly patrol all streets and areas in town and had a duty to train their officers to do so. The Sea Isle City defendants had a duty to control unlawful public drinking and be trained to do so, which duties were breached.

141. Each of the Atlanticare defendants and the regional medical center defendant had a duty to properly hire, train and supervise their emergency responders and physicians in recognizing the need for emergency medical care when a victim displays symptoms of hypothermia, and had a duty to train those people to recognize and respond to hypothermia which duties were breached.

142. Defendants breached their duties and plaintiff was injured as a result.

WHEREFORE, plaintiffs respectfully requests relief and judgment in favor of themselves and against defendants jointly and severally for actual, compensatory and consequential damages including pain and suffering according to proof in excess of \$500,000; for punitive or exemplary damages against defendants, in an amount sufficient to punish defendants and deter others from similar wrongdoing; for attorneys fees and expert fees; for prejudgment interest; for costs of suit and for such other, different or further relief as the interests of justice or equity may require.

### **COUNT THREE**

#### **VICARIOUS LIABILITY AND/OR ACTUAL OR APPARENT AGENCY Against Atlanticare Regional Medical Center, Atlantic City Medical Center, Ocean Drive defendants and LaCosta defendants**

143. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

144. It is believed and therefore averred that the Ocean Drive and LaCosta employees or personnel who negligently and or wrongfully served Ms. Hottenstein alcohol while she was visibly intoxicated were performing duties during the course of and within the scope of employment.

145. It is believed and therefore averred that Zaki Khebzou, MD is an employee of the Atlanticare Regional Medical Center, and is believed and therefore averred to be employed as the Chief of Trauma Medicine at Atlantic City Medical Center, who negligently treated Ms. Hottenstein for hypothermia, that is he failed to direct treatment. As an actual or apparent agent, servant or employee, he failed to comply with the standard of care for hypothermia victims.

146. As set forth above Ms. Hottenstein was injured.

WHEREFORE, plaintiffs respectfully requests relief and judgment in favor of themselves and against defendants jointly and severally for actual, compensatory and consequential damages including pain and suffering according to proof in excess of \$500,000; for punitive or exemplary damages against defendants, in an amount sufficient to punish defendants and deter others from similar wrongdoing; for attorneys fees and expert fees; for prejudgment interest; for costs of suit and for such other, different or further relief as the interests of justice or equity may require.

#### **COUNT FOUR**

##### **PREMISES LIABILITY Against City of Sea Isle City and Doe defendants**

147. Plaintiff realleges and incorporates herein b reference each of the allegations contained in the preceding paragraphs of this Complaint.

148. The condition of the public marina where Ms. Hottenstein was found, which was open and available to the public without warning or caution, was dangerous and defective. There were no railings at the docks, nails were sticking up, boards were loose and they were missing planks. The floating docks were unstable and not properly secured.



149. There was evidence that Ms. Hottenstein was on those docks and fell into the water.

150. The condition of the lighting at the public docks was dim or not working thereby hiding the dangerous and defective condition of the docks.

151. Sea Isle City knew of the dangerous or defective conditions as evidenced by the contract Sea Isle City let for bid in February 2009 to replace/repair the docks and marina area.

152. Sea Isle City had actual notice of the dangerous condition in sufficient time to take measures to protect its citizens and visitors.

153. The condition of the docks and lighting at the marina involved an unreasonable risk of harm to Ms. Hottenstein.

154. The condition of the docks was such that Ms. Hottenstein could not have discovered it by simply looking at the floating docks, which were unstable and misaligned, but because the marina lighting was dim or not working, even if it could have been seen, the darkness concealed the dangerous condition.

155. Sea Isle City failed to take reasonable steps to protect Ms. Hottenstein from the danger by, at a minimum, using required railings, posting warning signs, or stringing "caution" tape, during the Polar Bear Plunge weekend when thousands of intoxicated visitors to Sea Isle City had open access to the dangerous marina area.

156. Sea Isle City's failure to patrol, failure to warn and/or lack of action to respond to the dangerous conditions at the public docks and marina during a weekend of public intoxication, co-sponsored by Sea Isle City, centered near and around the public docks and marina was palpably unreasonable.

157. Sea Isle City's acts were palpably unreasonable because its inaction in the face of obvious danger to thousands of visitors who were intoxicated, is plainly and obviously without a

reasonable basis. The failure to act was outrageous and was a proximate and substantial factor in causing injuries to Ms. Hottenstein who died.

WHEREFORE, plaintiffs respectfully requests relief and judgment in favor of themselves and against defendants jointly and severally for actual, compensatory and consequential damages including pain and suffering according to proof in excess of \$500,000; for punitive or exemplary damages against defendants as legally allowed, in an amount sufficient to punish defendants and deter others from similar wrongdoing; for attorneys fees and expert fees; for prejudgment interest; for costs of suit and for such other, different or further relief as the interests of justice or equity may require.

#### **COUNT FIVE**

##### **INFLICTION OF EMOTIONAL DISTRESS Against all Defendants**

158. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

159. Sea Isle City defendants caused severe emotional distress to Ms. Hottenstein prior to her death by their reckless act of failing to secure the dangerous dock and marina area, failing to use railings, by recklessly failing to insure that the dangerous dock and marina area were well lit, by recklessly failing to patrol this dark dangerous area on Polar Bear Plunge weekend when they well knew that intoxicated individuals could harm themselves there and by recklessly failing to allow medical treatment for hypothermia all of which caused bodily injury.

160. Defendants negligently inflicted emotional distress upon Charles and Elizabeth Hottenstein as a result of their acts that caused the death of their only daughter and permanently breached their close parent-child relationship.

161. Defendants are liable for their acts causing emotional distress and bodily harm.

WHEREFORE, plaintiffs respectfully requests relief and judgment in favor of themselves and against defendants jointly and severally for actual, compensatory and consequential damages including pain and suffering according to proof in excess of \$500,000; for punitive or exemplary damages against defendants as legally allowed, in an amount sufficient to punish defendants and deter others from similar wrongdoing; for attorneys fees and expert fees; for prejudgment interest; for costs of suit and for such other, different or further relief as the interests of justice or equity may require.

### COUNT SIX

#### **SURVIVAL ACTION Against all defendants**

162. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

163. Plaintiff Charles Hottenstein, who is Ms. Hottenstein's father, is entitled to bring this action as her Administrator on her behalf.

164. Plaintiff's decedent's death was proximately caused by the negligence of the defendants as set forth in detail above and incorporated herein.

165. As a direct and proximate result of defendants' conduct, the decedent's beneficiaries have incurred and have been caused to incur various medical, funeral, burial and estate administration expenses for which the plaintiff is entitled to compensation in these proceedings.

166. As a direct and proximate result of defendants' conduct as set forth above, the decedent died and the Survivor's Act allows the estate administrator to bring suit on her behalf and recover damages as the decedent would have if she were living. Decedent endured pain and suffering of exposure to cold water, struggled to get herself to a spot where she could be rescued,

suffered from the painful effects of cold and hypothermia, suffered from loss of enjoyment of life and her life was prematurely terminated as a result of defendants' acts as set forth herein.

167. Plaintiff also makes claim for all damages recoverable under the applicable survival statutes both pecuniary and nonpecuniary, including for pain and suffering, and punitive damages in addition to pre and post judgment interest.

WHEREFORE, plaintiffs respectfully requests relief and judgment in favor of themselves and against defendants jointly and severally for actual, compensatory and consequential damages including pain and suffering according to proof in excess of \$500,000; for punitive or exemplary damages against defendants, in an amount sufficient to punish defendants and deter others from similar wrongdoing; for attorneys fees and expert fees; for prejudgment interest; for costs of suit and for such other, different or further relief as the interests of justice or equity may require.

#### **COUNT SEVEN**

#### **WRONGFUL DEATH ACTION Against all defendants**

168. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

169. Plaintiffs Charles Hottenstein as administrator of Ms. Hottenstein's estate and her father and Elizabeth Hottenstein who is her mother, are entitled to bring this claim to compensate them for the pecuniary losses resulting from Ms. Hottenstein's death.

170. Ms. Hottenstein was the child who assisted her grandfather and was the child who would have cared for her parents as they aged to allow them to stay in their home. Without her assistance, her parents will need to rely on paid household help or move to an independent living facility until they need to enter an assisted living facility or long term care at great expense instead of being able to remain in their home being cared for by Ms. Hottenstein.

171. Ms. Hottenstein's death was caused by negligence, that is a wrongful act, neglect and default by defendants.

172. As a direct and proximate result of defendants' conduct, the decedent's wrongful death beneficiaries have incurred and have been caused to incur various medical, funeral, burial and estate administration expenses for which the plaintiff is entitled to compensation in these proceedings.

173. Plaintiff makes claim on his own behalf and on behalf of decedent's wrongful death beneficiaries for all damages recoverable under the applicable wrongful death statutes, in addition to pre and post judgment interest.

WHEREFORE, plaintiffs respectfully request relief and judgment in favor of themselves and against defendants jointly and severally for pecuniary injuries resulting from Ms. Hottenstein's death, including loss of monies that would have been contributed to or earned for the benefit of the survivors, loss of guidance, advice, counsel and companionship, the reasonable value of loss of benefits of family and household services, assistance and care, loss of inheritance that Ms. Hottenstein's survivors would have received had she lived, together with hospital, medical and funeral expenses incurred for the deceased according to proof in excess of \$500,000; for punitive or exemplary damages against defendants, in an amount sufficient to punish defendants and deter others from similar wrongdoing; for attorneys fees and expert fees; for prejudgment interest; for costs of suit and for such other, different or further relief as the interests of justice or equity may require.

#### **COUNT EIGHT**

##### **LICENSED SERVER LIABILITY ACT**

##### **Against Ocean Drive Defendants, LaCosta defendants and Doe defendants**

174. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

185. Defendants LaCosta and Ocean Drive's breach of their duty by the service of alcohol to Ms. Hottenstein while she was visibly impaired was a proximate and substantial factor in causing her injuries.

WHEREFORE, plaintiffs respectfully requests relief and judgment in favor of themselves and against defendants jointly and severally for actual, compensatory and consequential damages according to proof in excess of \$500,000; for punitive or exemplary damages against defendants, in an amount sufficient to punish defendants and deter others from similar wrongdoing; for attorneys fees and expert fees; for prejudgment interest; for costs of suit and for such other, different or further relief as the interests of justice or equity may require.

**COUNT NINE**

**PROFESSIONAL NEGLIGENCE  
Against Zaki Khebzou M.D.**

186. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

187. Atlanticare medics, without examining the patient, telephoned Atlantic City Regional Medical Trauma Center and spoke to Zaki Khebzou, M.D., Trauma Chief, who pronounced Ms. Hottenstein dead by telephone at 8:22 am, without seeing or examining her.

188. This action by Dr. Khebzou violated state protocol for communicating to medical personnel and pronouncing death in the field by an offsite physician and violated the standard of care in the recognition and treatment of hypothermia.

189. Dr. Khebzou's acts guaranteed Ms. Hottenstein would not be revived.

190. Defendant Zaki Khebzou, M.D., deviated from the acceptable standard of medical care in pronouncing death in the field over the telephone without examining the patient to determine if in fact she was dead and this deviation from the standard of care was the direct and proximate cause of her death.

191. Dr. Khebzou knew or should have known that symptoms of severe hypothermia are faint or lack of heartbeat, no breathing, no movement, pupils fixed and dilated, skin cold and blue or mottled pink, stiff arms and legs. That description from the field should have caused him to direct the on-scene people to apply the standard of care for treating hypothermia in the field.

192. The applicable standard of care for treating hypothermia in the field, a critical phase of hypothermia management, is to rescue, examine, insulate and transport.

193. A deviation occurred from that standard of care as Dr. Khebzou did nothing to treat hypothermia, rather he pronounced death in the field by telephone.

WHEREFORE, plaintiffs respectfully request relief and judgment in favor of themselves in excess of \$500,000, and against defendant for actual, compensatory, and consequential damages including pain and suffering; for prejudgment interest; for cost of suit and for such other, different or further relief as the interests of justice or equity may require. Plaintiffs will seek punitive damages should the facts support such damages

#### **COUNT TEN**

##### **CIVIL RIGHTS, 42 U.S.C. § 1983**

**Against The City of Sea Isle City, Harold Boyer, Thomas McQuillen and Vincent Haugh  
and Doe defendants**

194. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

195. On information and belief, prior to February 2009 the City of Sea Isle City developed and maintained policies and customs exhibiting deliberate indifference to the constitutional rights of persons in Sea Isle City, which caused a violation of plaintiff's decedent's rights.

196. Alternatively, the City of Sea Isle City failed to develop and maintain policies and customs to protect the constitutional rights of persons in Sea Isle City, which caused a violation of plaintiff's decedent's rights.

197. It was the policy and/or custom of the City of Sea Isle City to inadequately supervise and train its police officers, including defendants McQuillen, Haugh and Boyer, to patrol and supervise Polar Bear Plunge festivities co-sponsored by the City, and to recognize serious medical conditions in the field that may result from festivities such as the Polar Bear Plunge, thereby failing to adequately render assistance to persons in Sea Isle City.

198. Sea Isle City police used their police powers to bar and deny medical assistance to Ms. Hottenstein.

199. These policies and customs, or lack thereof, demonstrated a deliberate indifference on the part of the City of Sea Isle City and its Police Department to the constitutional rights of persons within the City and were the cause of the violations of plaintiff's rights described in this complaint.

200. Sea Isle City ignores its own ordinances controlling public drunkenness and service of alcohol. Sea Isle City ignores that its co-sponsor bars overserve visibly intoxicated patrons during the Polar Bear Plunge.

201. It is believed and therefore averred that off-duty police officers work in bars including, it is believed and therefore averred, Ocean Drive and LaCosta, which officers failed to enforce state dram shop law.

202. It is believed, and therefore averred, that the defendant, City of Sea Isle City and its police department, knew or should have known that hypothermia and alcohol intoxication could cause death, but failed to appropriately obtain training in the recognition and emergency treatment of same.



203. Defendants City of Sea Isle City and its police officers are state actors acting under color of law and violated Ms. Hottenstein's right to life and bodily integrity in violation of the fourteenth amendment to the United States Constitution.

204. Defendants were deliberately and/or recklessly indifferent to plaintiff's constitutional rights.

205. The City of Sea Isle City and its police violated Ms. Hottenstein's due process rights to medical care by use of police power after she fell from the City's dangerous docks and was found by on duty Sea Isle City police at the Sea Isle City marina after a 911 call from a citizen. Officers Boyer, McQuillen and Haugh failed to properly determine Ms. Hottenstein's vital signs or render medical aid to her and denied emergency medical personnel immediate, or any, access to her.

206. The official acts of the police in affirmatively refusing medical personnel access rendered Ms. Hottenstein more vulnerable to the effects of hypothermia than she would have been in the absence of police intervention barring medical care.

207. The City of Sea Isle City has a policy to allow its officers to ignore public intoxication and disregard the service of alcohol by Sea Isle City bars to visibly intoxicated persons, in violation of its own local ordinance and state law.

208. The City of Sea Isle City co-sponsors the Polar Bear Plunge and encourages the alcohol-fueled behavior that ensues by its policy of ignoring public intoxication and the service of alcohol to visibly intoxicated patrons of those bars, who are the co-sponsors of the Polar Bear Plunge.

209. This course of conduct has occurred over several years and is well established. It is a direct causal link to the deprivation of Ms. Hottenstein's life by the failure to render medical care after she was found the day after the Polar Bear Plunge.

210. Plaintiffs have standing to sue because they had a liberty interest in the life of their child which was severed along with the integrity of the family.

211. This conduct by the police was at a minimum negligent imposing liability upon the City of Sea Isle City for the negligent acts of its employees' deliberate indifference to medical needs.

212. Sea Isle City failed to train and supervise its police officers in recognizing hypothermia and when to provide medical care to citizens when responding to emergency calls. They have no known guidelines to follow. In the alternative the training program and supervision was inadequate.

213. Sea Isle City was deliberately indifferent to the inadequacies and it was the inadequate training and supervision that caused the final injury and permanently severed the parent-child relationship.

214. This conduct was conscious shocking, wanton, reckless, and outside the scope of the police officer's employment, thereby imposing liability upon the individual officers as well as the City of Sea Isle City.

WHEREFORE, plaintiff respectfully requests judgment in her favor pursuant to 42 U.S.C. § 1988 with interest, costs, attorney fees, expert fees, punitive damages except as to the municipality, and other such relief as the Court may award in an amount in excess of \$100,000. Defendants are to be prohibited from continuing to maintain their illegal policy, practice, or custom and are to be ordered to promulgate an effective policy against such practices and to adhere thereto and for such other, different or further relief as the interests of justice or equity may require.

**COUNT ELEVEN**

**WRONGFUL DEATH AND SURVIVAL ACTION  
PURSUANT TO 18 U.S.C. § 1983**

**Against the City of Sea Isle City, Harold Boyer, Thomas McQuillen and Vincent Haugh,  
Ocean Drive defendants, LaCosta defendants and Doe defendants**

215. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

216. Plaintiff, who is Ms. Hottenstein's father, is entitled to bring this action as her Administrator, on his behalf and on behalf of Ms Hottenstein's mother Elizabeth Hottenstein.

217. Plaintiffs had a liberty interest in the life of a child which was severed along with the integrity of the family.

218. Plaintiffs' decedent's death was proximately caused by the deliberate indifference of the defendants who acted in concert in sponsoring the Polar Bear Plunge.

219. For purposes of this claim the Ocean Drive defendants and the LaCosta defendants are state actors who acted together with, and obtained significant aid from, the City of Sea Isle City in sponsoring the Polar Bear Plunge.

220. As a direct and proximate result of defendants' conduct, the decedent's wrongful death beneficiaries have incurred and have been caused to incur various medical, funeral, burial and estate administration expenses for which the plaintiff is entitle to compensation in these proceedings.

221. As a direct and proximate result of defendants' conduct, the decedent's wrongful death beneficiaries have been, and continue to be and will in the future, be wrongfully deprived of the decedent's companionship, society and services.

222. Plaintiff makes claim on behalf of Ms. Hottenstein and on behalf of decedent's wrongful death beneficiaries for all damages recoverable under the applicable survival and wrongful death statutes, in addition to pre and post judgment interest without limit to the types of compensatory damages available under state law.

223. Plaintiff also makes claim for all damages recoverable on behalf of Ms. Hottenstein under the applicable survival statutes in addition to pre and post judgment interest, without limit to the types of compensatory damages available under state law.

WHEREFORE, plaintiff respectfully requests judgment in her favor pursuant to 42 U.S.C. § 1988 with interest, costs, attorney fees, expert fees, punitive damages except as to the municipality, and other such relief as the Court may award in an amount in excess of \$100,000. Defendants are to be prohibited from continuing to maintain their illegal policy, practice, or custom and are to be ordered to promulgate an effective policy against such practices and to adhere thereto and for such other, different or further relief as the interests of justice or equity may require.

#### COUNT TWELVE

##### STATE CREATED DANGER PURSUANT TO 18 U.S.C. § 1983

**Against the City of Sea Isle City, Harold Boyer, Thomas McQuillen, Vincent Haugh, Ocean Drive defendants, LaCosta defendants and Doe defendants**

224. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

225. For purposes of this claim the Ocean Drive defendants and the LaCosta defendants are state actors who acted together with, and obtained significant aid from, the City of Sea Isle City in sponsoring the Polar Bear Plunge.

226. Plaintiffs have standing to sue because they have a liberty interest in the life of their child, Ms. Hottenstein.

227. The Polar Bear Plunge is a state created danger as set forth above for encouraging people to expose themselves to frigid air and water risking hypothermia, which Sea Isle City police fail to recognize and treat, and by cosponsorship with bars Sea Isle City encourages drinking, and excessive drinking and its police fail to observe local ordinances in regard to public

drinking and intoxication during the Polar Bear Plunge. It is believed and therefore averred that off duty police officers working in bars fail to enforce compliance with state statutes regulating the consumption of alcohol. Ms. Hottenstein was overserved by the cosponsoring bars.

228. The condition of the docks at the City Marina as set forth in detail in the preceding paragraphs was a state created danger for inattention to the condition and the failure to erect barriers before a February Polar Bear Plunge event weekend that these defendants knew would attract thousands who would be drinking. Ms. Hottenstein fell from these docks after a night of drinking at the cosponsoring bars.

229. Ms. Hottenstein pulled herself out of the water to the City marina parking area, which was supposed to be patrolled by Sea Isle City police. It is believed and therefore averred that the marina was not patrolled the evening after the Polar Bear Plunge at all, and if it was then it certainly was not after the last police patrol shift ended at 4 am.

230. Barring medical assistance to Ms. Hottenstein as she lay in the City marina parking area the day after the Polar Bear Plunge was a state created danger. Sea Isle City police took custody of Ms. Hottenstein's person and refused to allow medical attention to be given.

231. The City of Sea Isle City is liable for creating the dangers.

232. The harm was foreseeable, direct and preventable.

233. It was foreseeable that the officers' failure to intervene created additional danger for Ms. Hottenstein from the increased risk of harm for delay in medical attention.

234. It cannot be assumed that Ms. Hottenstein was already dead when the police arrived or that she could not have been revived from her hypothermic state.

235. Ms. Hottenstein was a particular individual for whom assistance had been called, not a general member of the public.

236. The City of Sea Isle City willfully disregarded the harm to plaintiffs.

237. Ms. Hottenstein was an invitee to the Sea Isle City Polar Bear Plunge and frequented the cosponsoring bars.

238. Ms. Hottenstein was a citizen in need of aid and the Sea Isle City police called to the scene to aid her had a duty to give her medical attention, which they denied.

239. The police officers conduct shocks the conscience as there was no reason to deny medical care and every reason to allow it.

240. The City of Sea Isle City used its authority to create a danger that otherwise would not have existed.

WHEREFORE, plaintiff respectfully requests judgment in her favor pursuant to 42 U.S.C. § 1988 with interest, costs, attorney fees, expert fees, punitive damages except as to the municipality, and other such relief as the Court may award in an amount in excess of \$100,000. Defendants are to be prohibited from continuing to maintain their illegal policy, practice, or custom and are to be ordered to promulgate an effective policy against such practices and to adhere thereto and for such other, different or further relief as the interests of justice or equity may require.

#### **COUNT THIRTEEN**

#### **NEW JERSEY CIVIL RIGHTS ACT NJSA 10:6-2(c) Against all defendants**

241. Plaintiff realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

242. New Jersey provides a remedy against private and public defendants for a person who demonstrates that he or she has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State.

243. Plaintiff claims recovery under the relevant sections of the state Civil Rights Act as warranted by the facts set forth herein.

WHEREFORE, plaintiffs respectfully request relief and judgment in favor of themselves and against defendant for actual, compensatory, and consequential and for such other, different or further relief as the interests of justice or equity may require. Plaintiffs will seek punitive damages should the law allow and facts support such damages.

**Jury Trial is Demanded on all Claims**

Respectfully submitted,

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s/  
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Dated: February 9, 2011