

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased;

Plaintiffs,

v.

CITY OF PITTSBURGH; ROBERT J. McCAUGHAN; MARK A. BOCIAN; RONALD V. ROMANO; JOSIE DIMON; ANDREW LAGOMARSINO; KIM LONG; NORMAN AUVIL; RON CURRY; ALLEGHENY COUNTY; and COUNTY OF: ALLEGHENY DEPARTMENT OF EMERGENCY SERVICES,

Defendants.

CIVIL DIVISION

No. **GD 10-018368**

**AMENDED (CORRECTED)  
COMPLAINT**

Code:

Filed on behalf of Plaintiffs

Alan H. Perer, Esquire  
Pa. Id. # 23603  
SPK - THE LA W FIRM OF  
SWENSEN PERER & KONTOS  
One Oxford Centre, Suite 250 I  
Pittsburgh, P A ] 5219  
Firm #262  
(412) 281-1970  
Attorney for Plaintiff, Theresa E. Thornton

Robert N. Peirce, III, Esquire  
ROBERT PEIRCE & ASSOCIATES, P.C.  
2500 Gulf Tower  
707 Grant Street  
Pittsburgh, P A 15219-1918  
Attorney for Plaintiff, Jeremiah C. Mitchell

Paul A. Ellis, Esquire  
1621 Bedford Avenue  
Pittsburgh, PA 15219  
(412) 512-4457  
Attorney for Plaintiff, Theresa Thornton

AM 10:56  
OCT  
III

**JURY TRIAL DEMANDED**

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED TN COURT. IF YOU WISH TO DEFEND against the claims set forth in the following pages, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS after the Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that IF YOU FAIL TO DO SO, the case may proceed without you and a JUDGMENT MA Y BE ENTERED AGAINST YOU BY THE COURT without further notice for any money claimed in the Complaint OR FOR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LA WYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE OF  
THE ALLEGHENY COUNTY BAR ASSOCIATION  
920 City-County Building  
Pittsburgh, P A 15219  
(412) 261-0518

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

THERESA E. THORNTON and JEREMIAH  
C. MITCHELL, as Co-Administrators of the  
Estate of Curtis L. Mitchell, deceased;

No. *CD 10-018368*

Plaintiffs,

v.

CITY OF PITTSBURGH; ROBERT J.  
McCAUGHAN; MARK A. BOCIAN;  
RONALD V. ROMANO; JOSIE DIMON;  
ANDREW LAGOMARSINO; KIM LONG;  
NORMAN AUVIL; RON CURRY;  
ALLEGHENY COUNTY, and COUNTY of  
ALLEGHENY, DEPARTMENT OF  
EMERGENCY SERVICES,

Defendants.

**AMENDED (CORRECTED) COMPLAINT**

AND NOW COME the Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell,  
as Co-administrators of the Estate of Curtis L. Mitchell, deceased, by and through their  
counsel, Alan H. Perer, Esquire, Swensen Perer & Kontos, Paul Ellis, Esquire, Robert N.  
Peirce, III, and Robert Peirce & Associates, P.C., and file this Amended Complaint in  
Civil Action, whereof the following is a statement:

**PARTIES**

1. Plaintiff, Theresa E. Thornton, is an adult individual residing at 1319  
Martha Street, Pittsburgh, Pennsylvania 15120. Theresa E. Thornton is the daughter of  
decedent Curtis L. Mitchell.

2. Plaintiff, Jeremiah C. Mitchell, is an adult individual residing at 37 E. Hawkins Village, Rankin, PA, 15104. Jeremiah C. Mitchell is the son of decedent Curtis L. Mitchell.

3. Plaintiffs decedent, Curtis L. Mitchell, was an adult individual residing at 5161 Chaplain Way, Pittsburgh, Pennsylvania 15207.

4. Curtis L. Mitchell died as a result of the incident described herein on February 7, 2010. Curtis Mitchell had a date of birth of June 25, 1959 and was 50 years old.

5. Letters of Administration for the Estate of Curtis L. Mitchell were granted to Decedent's daughter, Plaintiff, Theresa E. Thornton, as Administratrix, on February 23, 2010, by the Register of Wills of Allegheny County, at 02100 1114, and amended to add Jeremiah C. Mitchell as Co-Administrator.

6. The persons entitled to share in the estate of Curtis L. Mitchell are Plaintiff, Theresa E. Thornton and Plaintiff, Jeremiah C. Mitchell.

7. Defendant City of Pittsburgh is a local municipal entity located within Allegheny County, in the Commonwealth of Pennsylvania. City of Pittsburgh owns, operates, manages, directs, and controls the City of Pittsburgh Department of Public Safety Bureau of EMS ("EMS").

8. The City of Pittsburgh Department of Public Safety Bureau of EMS is a department of local municipal agency, Defendant City of Pittsburgh, located within Allegheny County, in the Commonwealth of Pennsylvania. It has a business address of 700 Filbert Street, Pittsburgh, Pennsylvania 15232.

9. The County of Allegheny, Department of Emergency Services is a local entity, located within Allegheny County, in the Commonwealth of Pennsylvania. It employs, owns, operates, manages, directs, and controls emergency 9-1-1 communications and emergency dispatchers, including the other named defendants.

10. The County of Allegheny, Department of Emergency Services is located within Allegheny County, in the Commonwealth of Pennsylvania. It has a business address of 400 North Lexington Street, Suite 200, Pittsburgh, PA 15208.

II. Defendant, Allegheny County, is a County of the Second Class, organized and existing under the laws of the Commonwealth of Pennsylvania with an office at 445 Fort Pitt Blvd., Suite 300, Pittsburgh, PA 15219.

12. Defendant Robert J. McCaughan was at all relevant times to the Complaint the Chief of EMS. He is being sued in his individual and official capacities.

13. Defendant Mark A. Bocian was at all relevant times to the Complaint the Deputy Chief of EMS. He is being sued in his individual and official capacities.

14. Defendant Ronald A. Romano was at all relevant times to the Complaint the Ambulance Division Chief of EMS. He is being sued in his individual and official capacities.

15. Defendant Josie Dimon was at all relevant times to the Complaint the acting crew chief on the second ambulance. She is being sued in her individual and official capacities.

16. Defendant Andrew Lagomarsino was at all relevant times to the Complaint the acting crew chief of Medic 7. He is being sued in his individual and official capacities.

17. Defendant Kim Long was at all relevant times to the Complaint a crew chief working at the dispatch center. She is being sued in her individual and official capacities.

18. Defendant Norman Auvil was at all relevant times to the Complaint a district chief, which is a roving field supervisor, of EMS. He is being sued in his individual and official capacities.

19. Defendant Ron Curry was at all relevant times to the Complaint a district chief, which is a roving field supervisor, of EMS. He is being sued in his individual and official capacities.

### **FACTS**

20. At or around 2 a.m. on February 6, 2010, Mr. Mitchell was experiencing severe abdominal pain at which time his girlfriend Sharon Edge called 911 for an ambulance.

21. City of Pittsburgh Emergency Medical Services ("EMS") dispatched an ambulance to Mr. Mitchell's residence, located at 5161 Chaplain Way, Pittsburgh, Pennsylvania 15207, but it never reached his residence allegedly due to heavy snow.

22. The ambulance was unable cross the Elizabeth Street Bridge, a mere one-quarter mile from Mr. Mitchell's residence.

23. Paramedics in the ambulance requested that Mr. Mitchell walk approximately one-quarter mile to meet the ambulance.

24. Ms. Edge informed 911 operators that Mr. Mitchell was unable to walk to the bridge because of severe pain and she was unable to carry him.

25. After Mr. Mitchell could not walk to the ambulance and the paramedics did not walk to Mr. Mitchell's residence to render emergency medical assistance, the first ambulance left the area.

26. Mr. Mitchell and Ms. Edge continued to make calls to 911 to request an ambulance.

27. In the early morning of February 6, 2010, the 911 dispatcher informed Mr. Mitchell that a second ambulance would be dispatched to his residence.

28. The second ambulance, Medic 8, headed by acting crew chief Defendant Josie Dimon, was also unable to cross the Elizabeth Street Bridge and stopped merely one-quarter mile from Mr. Mitchell's residence.

29. Paramedics in the second ambulance also did not attempt to walk to Mr. Mitchell's residence and Defendant Dimon asked that Mr. Mitchell walk to meet their ambulance.

30. Because of continuing severe stomach and abdominal pain, Mr. Mitchell informed 911 operators that he could not walk the steps at his home to reach the second ambulance.

31. When Mr. Mitchell was unable to walk to the ambulance, Defendant Dimon became irritated and stated on tape: "He ain't (expletive) comin' down, and I ain't waiting all day for him. I mean, what the (expletive)? This ain't no cab service."

32. Again, the ambulance left the area without rendering emergency medical care to Mr. Mitchell or attempting to walk to his residence.

33. Mr. Mitchell's condition continued to worsen, first suffering severe abdominal and stomach pains, and later experiencing difficulty breathing.

34. A third ambulance, Medic 7, headed by acting crew chief Defendant Andrew Lagomarsino, was dispatched and was able to cross the bridge and arrived approximately one block away from Mr. Mitchell's residence.

35. Paramedics in the third ambulance also did not walk to Mr. Mitchell's residence, only one block away, and requested that Mr. Mitchell walk to meet their ambulance.

36. Mr. Mitchell was unable to walk to meet the third ambulance because he had taken prescription medication and Ms. Edge could not wake him.

37. The third ambulance also left the area without assisting Mr. Mitchell in his continuing medical emergency.

38. At or around 8:00 a.m. on February 7, 2010, Ms. Edge called 911 for the last time and informed the 911 operator that Mr. Mitchell had died.

39. Firefighters dispatched to the scene arrived at Mr. Mitchell's home within two minutes.

40. During the course of this medical emergency, Mr. Mitchell and Ms. Edge made 10 calls to 911 to request an ambulance for Mr. Mitchell.

41. During the course of this medical emergency, Defendant Kim Long was working in the dispatch center and called Mr. Mitchell and Ms. Edge several times to get details.

42. Defendant Long did not inform the ambulance workers that Mr. Mitchell was in too much pain to walk to them and once told Ms. Edge that Mr. Mitchell needed to take a bus.



43. During the course of this medical emergency, Defendant Norman Auvil was working in the dispatch center and failed to review Mr. Mitchell's call to see if EMS needed more resources to reach Mr. Mitchell.

44. During the course of this medical emergency, Defendant Ron Curry was working in the dispatch center and did not research Mr. Mitchell's calls to see how long he had been waiting and did not determine if EMS needed more resources to reach Mr. Mitchell.

45. Since this incident, several EMS employees have faced disciplinary actions - Defendant Dimon was first suspended and later terminated; Kim Long, Norman Auvil and Ron Curry received three day unpaid suspensions.

46. Operators at the 911 dispatch center did not follow usual and standard policies or procedures for passing on details of Mr. Mitchell's and Ms. Edge's phone calls to other operators, so that each call was treated as a new incident.

47. As a direct and proximate cause of the Defendants' actions, Plaintiffs' decedent suffered severe physical pain and suffering, resulting in his death.

#### COUNT I

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-  
Administrators of the Estate of Curtis L. Mitchell, deceased v. CITY OF  
PITTSBURGH,**

#### **Willful Misconduct**

48. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

knowledge of EMS policies and procedures for rendering emergency medical care, specifically where EMTs could not reach a patient's home and did not exit the ambulance to walk to the home, yet City of Pittsburgh took no action or took inadequate action to correct said policies and procedures to ensure proper care to patients, resulting in inadequate care to EMS patients, including the death of Plaintiffs' decedent, Curtis L. Mitchell.

50. Decedent's death was due to the intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Defendant City of Pittsburgh, in:

- b. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care at an individual's home;
- c. Failing to establish policies and procedures to inform later ambulatory crews of the continuing medical emergency ongoing with Mr. Mitchell;
- d. Failing to train and require EMTs to leave the ambulance and walk one block to reach Mr. Mitchell to provide medical assistance to his ongoing medical emergency;
- e. Failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance;
- f. Failing to train and require EMTs to summon assistance of four wheel drive vehicles to reach persons in distress;
- g. Acting with such willful and wanton misconduct to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §8101 *et seq.* (2010); and
- h. Knowing or being substantially certain that EMS policies and procedures would lead to severe pain and suffering, including death.

51. As a result of Defendant City of Pittsburgh's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 8301, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

52. As a result of Defendant City of Pittsburgh's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

53. Defendant's conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendant City of Pittsburgh.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant, City of Pittsburgh, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

## COUNT II

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. CITY OF PITTSBURGH,**

### Gross Negligence

54. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

55. Upon information and belief, Defendant City of Pittsburgh, had notice and knowledge of EMS policies and procedures for rendering emergency medical care, specifically where EMTs could not reach a patient's home and did not exit the ambulance to walk to the home, yet Defendant City of Pittsburgh took no action or took inadequate action to correct said policies and procedures to ensure proper care to patients, resulting in inadequate care to EMS patients, including the death of Plaintiffs' decedent, Curtis L. Mitchell.

56. Decedent's death was due to the grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Defendant City of Pittsburgh in:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care at an individual's home;
- b. Failing to establish policies and procedures to inform later ambulatory crews of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to train and require EMTs to leave the ambulance and walk one block to reach Mr. Mitchell to provide medical assistance to his ongoing medical emergency;
- d. Failing to train and require EMTs to summon assistance of four wheel drive vehicles to reach persons in distress;
- e. Acting with such gross negligence to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §8101 *etseq.* (2010); and
- f. Failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance.

57. As a result of Defendant City of Pittsburgh's grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C. S.A. § 8301, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;

- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

58. As a result of Defendant City of Pittsburgh's grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

59. Defendant's conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendant City of Pittsburgh.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, requests judgment against Defendant, City of Pittsburgh, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT III**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. CITY OF PITTSBURGH,**  
**VICARIOUS LIABILITY**

60. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

61. At all times relevant hereto, Defendants Lagomarsino, Dimon, McCaughan, Bocian, and Romano were all agents, servants and/or employees of Defendant, City of Pittsburgh, acting within the scope of said agency, servitude and/or employment.

62. The conduct of these employees was grossly negligent and constituted willful misconduct, as set forth herein.

63. Therefore, Defendant, City of Pittsburgh, is vicariously liable for the actions of Defendants Lagomarsino, Dimon, McCaughan, Bocian, and Romano.

64. As a result of Defendant City of Pittsburgh's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 830 I, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

65. As a result of Defendant City of Pittsburgh's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

66. Defendant's conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendant City of Pittsburgh.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant, City of Pittsburgh, in an amount in excess of \$25,000, plus costs. JURY TRIAL DEMANDED.

COUNT IV

THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. CITY OF PITTSBURGH,

42 U.S.C. § 1983

67. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.



68. Defendant's conduct occurred under color of state law and deprived Plaintiffs' Decedent of rights, privileges and/or immunities guaranteed under federal law and/or the U.S. Constitution.

69. The danger created by Defendant is a "state created danger" as the harm was foreseeable and direct in that Defendant knew that failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care and failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance would result in harm or death.

70. The danger was state created in that the Defendant acted with a degree of culpability that shocks the conscious by failing to render emergency assistance to a person in need, abandoning such an individual and refusing to take all necessary measures to render aide.

71. There was a relationship between the defendant and the decedent wherein Curtis Mitchell was a foreseeable victim of Defendant's conduct.

72. Defendant affirmatively created a danger to Curtis Mitchell, or made Curtis Mitchell more vulnerable, in that Curtis Mitchell relied upon information and belief that emergency aide was forthcoming and therefore did not seek alternative forms of assistance.

73. Decedent's death was due to the conduct of Defendant, City of Pittsburgh,  
In:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care at an individual's home;

- b. Failing to establish policies and procedures to inform later ambulatory crews of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to train and require EMTs to leave the ambulance and walk one block to reach Mr. Mitchell to provide medical assistance to his ongoing medical emergency;
- d. Failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance;
- e. Failing to train and require EMTs to summon assistance of four wheel drive vehicles to reach persons in distress;
- f. Knowing or being substantially certain that EMS policies and procedures would lead to severe pain and suffering, including death;
- g. Failing to enact a policy, where such failure resulted in the alleged conduct; and
- h. Being aware of breakdown in communication or rescue efforts and failing to take corrective action.

74. As a result of Defendant City of Pittsburgh's conduct, Plaintiffs claim damages under 42 U.S.C § 1983 for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- g. Decedent's loss of income and earning capacity;

- h. Other financial losses suffered as a result of decedent's death; and
- i. Any and all expenses incurred by the decedent's estate.

75. Defendant's conduct as set forth above was so reckless and callously indifferent to the federally protected rights of Curtis Mitchell that Plaintiffs assert a claim for punitive damages against Defendant City of Pittsburgh.

76. Pursuant to the Civil Rights Attorney's Fee Awards Act of 1976 (42 U.S.C.A. § 1988[b]), Plaintiffs assert a claim for attorneys' fees against Defendant, City of Pittsburgh.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant City of Pittsburgh, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

COUNT V

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. ROBERT J. McCAUGHAN, MARK A. BOCIAN and RONALD V. ROMANO, Willful Misconduct**

77. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

78. Upon information and belief, Defendant Robert J. McCaughan, Chief of EMS, Mark A. Bocian, Deputy Chief of EMS, and Ronald V. Romano, Ambulance Division Chief of EMS, had notice and knowledge of EMS policies and procedures for rendering emergency medical care, specifically where EMTs could not reach a patient's

home and did not exit the ambulance to walk to the home, yet Defendants, McCaughan, Bocian, and Romano took no action or took inadequate action to correct said policies and procedures to ensure proper care to patients, resulting in inadequate care to EMS patients, including the death of Plaintiffs' decedent, Curtis L. Mitchell.

79. Decedent's death was due to the intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Defendants, McCaughan, Bocian and Romano, in:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care at an individual's home;
- b. Failing to establish policies and procedures to inform later ambulatory crews of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to train and require EMTs to leave the ambulance and walk one block to reach Mr. Mitchell to provide medical assistance to his ongoing medical emergency; and
- d. Failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance;
- e. Failing to train and require EMTs to summon assistance of four wheel drive vehicles to reach persons in distress;
- f. Acting with such willful and wanton misconduct to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §8101 *et seq.* (2010)); and
- g. Knowing or being substantially certain that EMS policies and procedures would lead to severe pain and suffering, including death.

80. As a result of Defendants, McCaughan, Bocian and Romano's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs

claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 8301, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

81. As a result of Defendants, McCaughan, Bocian and Romano's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

82. Defendants' conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendants McCaughan, Bocian and Romano.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendants, McCaughan, Bocian and Romano, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

COUNT VI

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. ROBERT J. McCAUGHAN, MARK A. BOCIAN and RONALD V. ROMANO,**

**Gross Negligence**

83. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

84. Upon information and belief, Defendants Robert J. McCaughan, Chief of EMS, Mark A. Bocian, Deputy Chief of EMS, and Ronald V. Romano, Ambulance Division Chief of EMS, had notice and knowledge of EMS policies and procedures for rendering emergency medical care, specifically where EMTs could not reach a patient's home and did not exit the ambulance to walk to the home, yet Defendants McCaughan, Bocian and Romano took no action or took inadequate action to correct said policies and procedures to ensure proper care to patients, resulting in inadequate care to EMS patients, including the death of Plaintiffs' decedent, Curtis L. Mitchell.

85. Decedent's death was due to the grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Defendants McCaughan, Bocian and Romano in:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care at an individual's home;

- b. Failing to establish policies and procedures to inform later ambulatory crews of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to train and require EMTs to leave the ambulance and walk one block to reach Mr. Mitchell to provide medical assistance to his ongoing medical emergency;
- d. Failing to train and require EMTs to summon assistance of four wheel drive vehicles to reach persons in distress;
- e. Acting with such gross negligence to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §8101 *et seq.* (2010); and
- f. Failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance.

86. As a result of Defendants McCaughan, Bocian and Romano's grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 8301, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

87. As a result of Defendants McCaughan, Bocian and Romano's grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

88. Defendants' conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendants McCaughan, Bocian and Romano.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendants McCaughan, Bocian and Romano in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT VII**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. ROBERT J. McCAUGHAN, MARK A. BOCIAN and RONALD V. ROMANO,**

**42 U.S.c. § 1983**

89. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.



Plaintiffs' Decedent of rights, privileges and/or immunities guaranteed under federal law and/or the U.S. Constitution.

91. The danger created by Defendants is a "state created danger" as the harm was foreseeable and direct in that Defendants knew that failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care and failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance would result in harm or death.

92. The danger was state created in that the Defendants acted with a degree of culpability that shocks the conscious by failing to render emergency assistance to a person in need, abandoning such an individual and refusing to take all necessary measures to render aide.

93. There was a relationship between the defendants and the decedent wherein Curtis Mitchell was a foreseeable victim of Defendants' conduct.

94. Defendants affirmatively created a danger to Curtis Mitchell, or made Curtis Mitchell more vulnerable, in that Curtis Mitchell relied upon information and belief that emergency aide was forthcoming and therefore did not seek alternative forms of assistance.

95. Decedent's death was due to the conduct of Defendants, in:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care at an individual's home;
- b. Failing to establish policies and procedures to inform later ambulatory crews of the continuing medical emergency ongoing with Mr. Mitchell;

- c. Failing to train and require EMTs to leave the ambulance and walk one block to reach Mr. Mitchell to provide medical assistance to his ongoing medical emergency;
- d. Failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance;
- e. Failing to train and require EMTs to summon assistance of four wheel drive vehicles to reach persons in distress;
- f. Knowing or being substantially certain that EMS policies and procedures would lead to severe pain and suffering, including death;
- g. Failing to enact a policy that resulted in the alleged conduct; and
- h. Being aware of breakdown in communication or rescue efforts and failing to take corrective action.

96. As a result of Defendants' conduct, Plaintiffs claim damages under 42

U.S.C § 1983 for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- g. Decedent's loss of income and earning capacity;
- h. Other financial losses suffered as a result of decedent's death; and
- i. Any and all expenses incurred by the decedent's estate.

97. Defendants' conduct as set forth above was so reckless and callously indifferent to the federally protected rights of Curtis Mitchell that Plaintiffs assert a claim for punitive damages against Defendants.

98. Pursuant to the Civil Rights Attorney's Fee Awards Act of 1976 (42 U.S.C.A. § 1988[b]), Plaintiffs assert a claim for attorneys' fees against Defendants.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendants McCaughan, Bocian and Romano, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT VIII**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. JOSIE DIMON and**

**ANDREW LAGOMARSINO,**

**Willful Misconduct**

99. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

100. Upon information and belief, Defendants Dimon and Lagomarsino had notice that Mr. Mitchell required immediate medical attention.

101. Defendants Dimon and Lagomarsino did not take appropriate and necessary actions to reach Mr. Mitchell before his death.

102. Decedent's death was due to the intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Defendants Dimon and Lagomarsino  
In:

- a. Failing to make adequate and necessary attempts to reach Mr. Mitchell's home;

- b. ~~Failing to establish policies and procedures to inform ambulance crews of the continuing medical emergency ongoing with Mr. Mitchell;~~
- c. Failing to leave the ambulance and walk one block to reach Mr. Mitchell to provide medical assistance to his ongoing medical emergency;
- d. Failing to render medical assistance to Mr. Mitchell before leaving the area;
- e. Using profanity and callous language when informed Mr. Mitchell could not walk to the ambulance;
- f. Failing to summon assistance of a four wheel drive vehicle to reach Mr. Mitchell;
- g. Acting with such willful and wanton misconduct to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §8101 *etseq.* (2010); and
- h. Knowing or being substantially certain that Mr. Mitchell was likely to die without medical treatment.

103. As a result of Defendants Dimon and Lagomarsino's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 8301, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and

- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

104. As a result of Defendants Dimon and Lagomarsino's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

105. Defendants' conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendants Dimon and Lagomarsino.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendants Dimon and Lagomarsino in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

COUNT IX

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. JOSIE DIMON and ANDREW LAGOMARSINO,**

**Gross Negligence**

106. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

107. Upon information and belief, Defendants Dimon and Lagomarsino had notice that Mr. Mitchell required immediate medical attention.

108. Defendants Dimon and Lagomarsino did not take appropriate and necessary actions to reach Mr. Mitchell before his death.

109. Decedent's death was due to the grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Defendants Dimon and Lagomarsino in:

- a. Failing to make adequate and necessary attempts to reach Mr. Mitchell's home;
- b. Failing to establish policies and procedures to inform later ambulatory crews of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to leave the ambulance and walk one block to reach Mr. Mitchell to provide medical assistance to his ongoing medical emergency;
- d. Failing to render medical assistance to Mr. Mitchell before leaving the area;
- e. Using profanity and callous language when informed Mr. Mitchell could not walk to the ambulance;
- f. Failing to summon assistance of a four wheel drive vehicle to reach Mr. Mitchell;
- g. Acting with such gross negligence to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §81 01 *et seq.* (2010); and
- h. Knowing or being substantially certain that Mr. Mitchell was likely to die without medical treatment.

110. As a result of Defendants Dimon and Lagomarsino's grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 830 I, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

111. As a result of Defendants Dimon and Lagomarsino's grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

112. Defendants' conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendants Dimon and Lagomarsino.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendants Dimon and Lagomarsino in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

COUNT X

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. JOSIE DIMON and ANDREW LAGOMARSINO,**

**42 U.S.c. § 1983**

113. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

114. Defendants' conduct occurred under color of state law and deprived Plaintiffs' Decedent of rights, privileges and/or immunities guaranteed under federal law and/or the U.S. Constitution.

115. The danger created by Defendants is a "state created danger" as the harm was foreseeable and direct in that Defendants knew that failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care and failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance would result in harm or death.

116. The danger was state created in that the Defendants acted with a degree of culpability that shocks the conscious by failing to render emergency assistance to a



person in need, abandoning such an individual and refusing to take all necessary measures to render aid.

117. There was a relationship between the defendants and the decedent wherein Curtis Mitchell was a foreseeable victim of Defendants' conduct.

118. Defendants affirmatively created a danger to Curtis Mitchell, or made Curtis Mitchell more vulnerable, in that Curtis Mitchell relied upon information and belief that emergency aid was forthcoming and therefore did not seek alternative forms of assistance.

119. Decedent's death was due to the conduct of Defendants, in:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care at an individual's home;
- b. Failing to establish policies and procedures to inform later ambulatory crews of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to train and require EMTs to leave the ambulance and walk one block to reach Mr. Mitchell to provide medical assistance to his ongoing medical emergency;
- d. Failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance;
- e. Failing to train and require EMTs to summon assistance of four wheel drive vehicles to reach persons in distress;
- f. Knowing or being substantially certain that EMS policies and procedures would lead to severe pain and suffering, including death;
- g. Failing to enact a policy that resulted in the alleged conduct; and
- h. Being aware of breakdown in communication or rescue efforts and failing to take corrective action.
- i. In failing to render assistance to Curtis Mitchell.

120. As a result of Defendants' conduct, Plaintiffs claim damages under 42

U.S.C § 1983 for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- g. Decedent's loss of income and earning capacity;
- h. Other financial losses suffered as a result of decedent's death; and
- i. Any and all expenses incurred by the decedent's estate.

121. Defendants' conduct as set forth above was so reckless and callously indifferent to the federally protected rights of Curtis Mitchell that Plaintiffs assert a claim for punitive damages against Defendants.

122. Pursuant to the Civil Rights Attorney's Fee Awards Act of 1976 (42 U.S.C.A. § 1988(b)), Plaintiffs assert a claim for attorneys' fees against Defendants.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendants, Dimon and Lagomarsino, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT XI**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-  
Administrators of the Estate of Curtis L. Mitchell, deceased v. KIM LONG,**

**Willful Misconduct**

123. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

124. Upon information and belief, Defendant Long had notice that Mr. Mitchell required immediate medical attention.

125. Defendant Long did not take appropriate and necessary actions to have an ambulance reach Mr. Mitchell before his death.

126. Decedent's death was due to the intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Defendant Long in:

- a. Failing to make adequate and necessary attempts to have an ambulance reach Mr. Mitchell's home;
- b. Failing to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to instruct ambulance workers to leave their vehicle to reach Mr. Mitchell in his residence;
- d. Failing to instruct ambulance workers to leave their vehicle to render emergency medical assistance to Mr. Mitchell;
- e. Failing to summon assistance of a four wheel drive vehicle to reach Mr. Mitchell;
- f. Acting with such willful and wanton misconduct to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §8101 *et seq.* (2010); and

- g. Knowing or being substantially certain that Mr. Mitchell was likely to die without medical treatment.

127. As a result of Defendant Long's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 830 I, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

128. As a result of Defendant Long's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendant Long.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant Long in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT XII**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. KIM LONG,**

**Gross Negligence**

130. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

131. Upon information and belief, Defendant Long had notice that Mr. Mitchell required immediate medical attention.

132. Defendant Long did not take appropriate and necessary actions to have an ambulance reach Mr. Mitchell before his death.

133. Decedent's death was due to the grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Defendant Long in:

- a. Failing to make adequate and necessary attempts to have an ambulance reach Mr. Mitchell's home;
- b. Failing to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to instruct ambulance workers to leave their vehicle to reach Mr. Mitchell in his residence;

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

136. Defendant's conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendant Long.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant Long in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT XIII**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. KIM LONG,**

**42 U.S.c. § 1983**

137. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

138. Defendant's conduct occurred under color of state law and deprived Plaintiffs' Decedent of rights, privileges and/or immunities guaranteed under federal law and/or the U.S. Constitution.

139. The danger created by Defendant is a "state created danger" as the harm was foreseeable and direct in that Defendant knew that failing to follow appropriate and necessary policies and procedures for rendering emergency medical care and failing to communicate to EMTs the continuing medical emergency and calls to 9-1-1 and that

failing to instruct EMTs not to abandon an individual clearly in need of emergency medical assistance would result in harm or death.

140. The danger was state created in that the Defendant acted with a degree of culpability that shocks the conscious by failing to render emergency assistance to a person in need, abandoning such an individual and refusing to take all necessary measures to render aide.

141. There was a relationship between the defendant and the decedent wherein Curtis Mitchell was a foreseeable victim of Defendant's conduct.

142. Defendant affirmatively created a danger to Curtis Mitchell, or made Curtis Mitchell more vulnerable, in that Curtis Mitchell relied upon information and belief that emergency aide was forthcoming and therefore did not seek alternative forms of assistance.

143. Decedent's death was due to the conduct of Defendant, in:

- a. Failing to make adequate and necessary attempts to have an ambulance reach Mr. Mitchell's home;
- b. Failing to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to instruct ambulance workers to leave their vehicle to reach Mr. Mitchell in his residence;
- d. Failing to instruct ambulance workers to leave their vehicle to render emergency medical assistance to Mr. Mitchell;
- e. Failing to summon assistance of a four wheel drive vehicle to reach Mr. Mitchell; and
- f. Knowing or being substantially certain that Mr. Mitchell was likely to die without medical treatment.
- g. Being aware of breakdown in communication or rescue efforts and failing to take corrective action.

144. As a result of Defendant's conduct, Plaintiffs claim damages under 42

U.S.C § 1983 for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- g. Decedent's loss of income and earning capacity;
- h. Other financial losses suffered as a result of decedent's death; and
- i. Any and all expenses incurred by the decedent's estate.

145. Defendant's conduct as set forth above was so reckless and callously indifferent to the federally protected rights of Curtis Mitchell that Plaintiffs assert a claim for punitive damages against Defendant Long.

146. Pursuant to the Civil Rights Attorney's Fee Awards Act of 1976 (~2 U.S.C.A. § 1988[b]), Plaintiffs assert a claim for attorneys' fees against Defendant Long.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant Long in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**



**COUNT XIV**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-  
Administrators of the Estate of Curtis L. Mitchell, deceased v. NORMAN AUVIL  
and RON CURRY**

**Willful Misconduct**

147. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

148. Upon information and belief, Defendants Auvil and CUIFY had notice that Mr. Mitchell required immediate medical attention.

149. Defendants Auvil and CUIFY did not take appropriate and necessary actions to have an ambulance reach Mr. Mitchell before his death.

150. Decedent's death was due to the intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Defendants Auvil and CUIFY in:

- a. Failing to make adequate and necessary attempts to have an ambulance reach Mr. Mitchell's home;
- b. Failing to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to instruct ambulance workers to leave their vehicle to reach Mr. Mitchell in his residence;
- d. Failing to instruct ambulance workers to leave their vehicle to render emergency medical assistance to Mr. Mitchell;
- e. Failing to summon assistance of a four wheel drive vehicle to reach Mr. Mitchell;
- f. Acting with such willful and wanton misconduct to constitute a violation of the standards of the Emergency Medical Services Act,

35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §8101 *et seq.* (2010); and

- g. Knowing or being substantially certain that Mr. Mitchell was likely to die without medical treatment.

151. As a result of Defendants Auvil and Curry's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 8301, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

152. As a result of Defendants Auvil and Curry's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and

d. Any and all expenses incurred by the decedent's estate.

153. Defendants' conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendant Auvil and Curry.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, requests judgment against Defendants Auvil and Curry in an amount in excess of \$25,000, plus costs. **JURY TRJAL DEMANDED.**

**COUNT XV**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. NORMAN AUVIL and RON CURRY,**  
**Gross Negligence**

154. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

155. Upon information and belief, Defendants Auvil and Curry had notice that Mr. Mitchell required immediate medical attention.

156. Defendants Auvil and Curry did not take appropriate and necessary actions to have an ambulance reach Mr. Mitchell before his death.

157. Decedent's death was due to the grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Defendants Auvil and Curry in:

- a. Failing to make adequate and necessary attempts to have an ambulance reach Mr. Mitchell's home;

- b. Failing to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to instruct ambulance workers to leave their vehicle to reach Mr. Mitchell in his residence;
- d. Failing to instruct ambulance workers to leave their vehicle to render emergency medical assistance to Mr. Mitchell;
- e. Failing to summon assistance of a four wheel drive vehicle to reach Mr. Mitchell;
- f. Acting with such gross negligence to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §8101 *et seq.* (2010)); and
- g. Knowing or being substantially certain that Mr. Mitchell was likely to die without medical treatment.

158. As a result of Defendants Auvil and Curry's grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 8301, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

159. As a result of Defendants Auvil and Curry's grossly negligent, intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

160. Defendants' conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendant Auvil and Curry.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendants Auvil and Curry in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT XVI**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-  
Administrators of the Estate of Curtis L. Mitchell, deceased v. NORMAN AUVIL  
and RON CURRY,**  
**42 U.S.C. § 1983**

161. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

162. Defendants' conduct occurred under color of state law and deprived Plaintiffs' Decedent of rights, privileges and/or immunities guaranteed under federal law and/or the U.S. Constitution.

163. The danger created by Defendants is a "state created danger" as the harm was foreseeable and direct in that Defendants knew that failing to follow appropriate and necessary policies and procedures for rendering emergency medical care and failing to communicate to EMTs the continuing medical emergency and calls to 9-1-1 and that failing to instruct EMTs not to abandon an individual clearly in need of emergency medical assistance would result in harm or death.

164. The danger was state created in that the defendants acted with a degree of culpability that shocks the conscious by failing to render emergency assistance to a person in need, abandoning such an individual and refusing to take all necessary measures to render aide.

165. There was a relationship between the defendants and the decedent wherein Curtis Mitchell was a foreseeable victim of Defendant's conduct.

166. Defendants affirmatively created a danger to Curtis Mitchell, or made Curtis Mitchell more vulnerable, in that Curtis Mitchell relied upon information and belief that emergency aide was forthcoming and therefore did not seek alternative forms of assistance.

167. Decedent's death was due to the conduct of Defendants, in:

- a. Failing to make adequate and necessary attempts to have an ambulance reach Mr. Mitchell's home;
- b. Failing to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;

- c. Failing to instruct ambulance workers to leave their vehicle to reach Mr. Mitchell in his residence;
- d. Failing to instruct ambulance workers to leave their vehicle to render emergency medical assistance to Mr. Mitchell;
- e. Failing to summon assistance of a four wheel drive vehicle to reach Mr. Mitchell; and
- f. Knowing or being substantially certain that Mr. Mitchell was likely to die without medical treatment.
- g. Being aware of breakdown in communication or rescue efforts and failing to take corrective action.

168. As a result of Defendants' conduct, Plaintiffs claim damages under 42

U.S.C § 1983 for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- g. Decedent's loss of income and earning capacity;
- h. Other financial losses suffered as a result of decedent's death; and
- i. Any and all expenses incurred by the decedent's estate.

169. Defendants' conduct as set forth above was so reckless and callously indifferent to the federally protected rights of Curtis Mitchell that Plaintiffs assert a claim for punitive damages against Defendants Auvil and Curry.

170. Pursuant to the Civil Rights Attorney's Fee Awards Act of 1976 (42 U.S.C.A. ~ 1988fbJ). Plaintiffs assert a claim for attorneys' fees against Defendants Auvil and CUIY.

WHEREFORE, Plaintiffs, Theresa E. Thomson and Jeremiah C. Mitchell, request judgment against Defendants Auvil and Curry in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

### COUNT XVII

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. the COUNTY of ALLEGHENY DEPARTMENT OF EMERGENCY SERVICES**

#### Willful Misconduct

171. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

172. Upon information and belief, County of Allegheny, Department of Emergency Services, had notice and knowledge of emergency dispatch policies and procedures for rendering emergency medical care and adequately handling and directing 9-1-1 calls, specifically where multiple calls had been made, yet the County of Allegheny, Department of Emergency Services took no action or took inadequate action to correct said policies and procedures to ensure proper care to patients and to communicate to emergency personnel the number of calls made and the information relayed in those calls, including the worsening condition of the patient, resulting in



inadequate care to emergency patients, including the death of Plaintiffs' decedent, Curtis L. Mitchell.

173. Decedent's death was due to the intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of the County of Allegheny, Department of Emergency Services, in:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care and emergency service dispatch when multiple 9-1-1 calls have been made;
- b. Failing to establish policies and procedures to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to train and require emergency dispatchers to communicate failed attempts to reach Mr. Mitchell despite his ongoing emergency;
- d. Failing to train and require dispatchers to instruct EMTs to not abandon an individual clearly in need of emergency medical assistance;
- e. Failing to train and require emergency dispatchers to summon assistance of four wheel drive vehicles to reach persons in distress;
- f. Acting with such willful and wanton misconduct to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §8101 *etseq.* (2010); and
- g. Knowing or being substantially certain that dispatch policies and procedures would lead to severe pain and suffering, including death.

174. As a result of the County of Allegheny, Department of Emergency Services' intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the

Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 830 1, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

175. As a result of the County of Allegheny, Department of Emergency Services' intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

176. Defendant's conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against the County of Allegheny, Department of Emergency Services.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant, the County of Allegheny, Department of Emergency Services, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT XVIII**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. the COUNTY OF ALLEGHENY DEPARTMENT OF EMERGENCY SERVICES**

**Gross Negligence**

177. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

178. Upon information and belief, County of Allegheny, Department of Emergency Services, had notice and knowledge of emergency dispatch policies and procedures for rendering emergency medical care and adequately handling and directing 9-1-1 calls, specifically where multiple calls had been made, yet the County of Allegheny, Department of Emergency Services took no action or took inadequate action to COITect said policies and procedures to ensure proper care to patients and to communicate to emergency personnel the number of calls made and the information relayed in those calls, including the worsening condition of the patient, resulting in inadequate care to emergency patients, including the death of Plaintiffs' decedent, Curtis L. Mitchell.

179. Decedent's death was due to the intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of the County of Allegheny, Department of Emergency Services, in:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care and emergency service dispatch when multiple 9-1-1 calls have been made;
- b. Failing to establish policies and procedures to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to train and require emergency dispatchers to communicate failed attempts to reach Mr. Mitchell despite his ongoing emergency;
- d. Failing to train and require dispatchers to instruct EMTs to not abandon an individual clearly in need of emergency medical assistance;
- e. Failing to train and require emergency dispatchers to summon assistance of four wheel drive vehicles to reach persons in distress;
- f. Acting with such willful and wanton misconduct to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §81 01 *et seq.* (2010)); and
- g. Knowing or being substantially certain that dispatch policies and procedures would lead to severe pain and suffering, including death.

180. As a result of the County of Allegheny, Department of Emergency Services' intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 8301, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;

- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

181. As a result of the County of Allegheny, Department of Emergency Services' intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

182. Defendant's conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against the County of Allegheny, Department of Emergency Services.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant, the County of Allegheny, Department of Emergency Services, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT XIX**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-  
Administrators of the Estate of Curtis L. Mitchell, deceased v. the COUNTY OF  
ALLEGHENY DEPARTMENT OF EMERGENCY SERVICES**

**VICARIOUS LIABILITY**

183. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

184. At all times relevant hereto, Defendants Auvil, Curry, and Long, of the 9-1-1 call center, were all agents, servants and/or employees of Defendant, the County of Allegheny Department of Emergency Services, acting within the scope of said agency, servitude and/or employment.

185. The conduct of these employees was grossly negligent and constituted willful misconduct, as set forth herein.

186. Therefore, Defendant, the County of Allegheny Department of Emergency Services, is vicariously liable for the actions of Defendants Auvil, Curry, and Long.

187. As a result of Defendant, the County of Allegheny Department of Emergency Services' intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 8301, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;

- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

188. As a result of Defendant, the County of Allegheny Department of Emergency Services' intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

189. Defendant's conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendant, the County of Allegheny Department of Emergency Services ..

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant, the County of Allegheny Department of Emergency Services, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT XX**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-  
Administrators of the Estate of Curtis L. Mitchell, deceased v. THE COUNTY OF  
ALLEGHENY, DEPARTMENT OF EMERGENCY SERVICES**

**42 U.S.c. § 1983**

190. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

191. Defendant's conduct occurred under color of state law and deprived Plaintiffs' Decedent of rights, privileges and/or immunities guaranteed under federal law and/or the U.S. Constitution.

192. The danger created by Defendant is a "state created danger" as the harm was foreseeable and direct in that Defendant knew that failing to follow appropriate and necessary policies and procedures for rendering emergency medical care and adequately handling and directing 9-1-1 calls, specifically where multiple calls had been made would result in death or serious consequences. However, the County of Allegheny, Department of Emergency Services took no action or took inadequate action to correct said policies and procedures to ensure proper care to patients and to communicate to emergency personnel the number of calls made and the information relayed in those calls, including the worsening condition of the patient, resulting in inadequate care to emergency patients, including the death of Plaintiffs' decedent, Curtis L. Mitchell.

193. The danger was state created in that the defendants acted with a degree of culpability that shocks the conscious by failing to render emergency assistance to a



person in need, abandoning such an individual and refusing to take all necessary measures to render aide.

194. There was a relationship between the defendant and the decedent wherein Curtis Mitchell was a foreseeable victim of Defendant's conduct.

195. Defendant affirmatively created a danger to Curtis Mitchell, or made Curtis Mitchell more vulnerable, in that Curtis Mitchell relied upon information and belief that emergency aide was forthcoming and therefore did not seek alternative forms of assistance.

196. Decedent's death was due to the conduct of Defendant, in:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care at an individual's home;
- b. Failing to establish policies and procedures to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to train and require EMTs to leave the ambulance and walk one block to reach Mr. Mitchell to provide medical assistance to his ongoing medical emergency;
- d. Failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance;
- e. Failing to train and require EMTs to summon assistance of four wheel drive vehicles to reach persons in distress;
- f. Knowing or being substantially certain that EMS policies and procedures would lead to severe pain and suffering, including death;
- g. Failing to enact a policy, where such failure resulted in the alleged conduct; and
- h. Being aware of breakdown in communication or rescue efforts and failing to take corrective action.

197. As a result of Defendant's conduct, Plaintiffs claim damages under 42

U.S.C § 1983 for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- g. Decedent's loss of income and earning capacity;
- h. Other financial losses suffered as a result of decedent's death; and
- i. Any and all expenses incurred by the decedent's estate.

198. Defendant's conduct as set forth above was so reckless and callously indifferent to the federally protected rights of Curtis Mitchell that Plaintiffs assert a claim for punitive damages against Defendant County of Allegheny, Department of Emergency Services.

199. Pursuant to the Civil Rights Attorney's Fee Awards Act of 1976 (42 U.S.c.A. § 1988[b]), Plaintiffs assert a claim for attorneys' fees against Defendant County of Allegheny, Department of Emergency Services.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant County of Allegheny, Department of Emergency Services in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

COUNT XXI

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-  
Administrators of the Estate of Curtis L. Mitchell, deceased v. ALLEGHENY  
COUNTY**

**Willful Misconduct**

200. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

201. Upon information and belief, Allegheny County had notice and knowledge of emergency dispatch policies and procedures for rendering emergency medical care and adequately handling and directing 9-1-1 calls, specifically where multiple calls had been made, yet the County took no action or took inadequate action to correct said policies and procedures to ensure proper care to patients and to communicate to emergency personnel the number of calls made and the information relayed in those calls, including the worsening condition of the patient, resulting in inadequate care to emergency patients, including the death of Plaintiffs' decedent, Curtis L. Mitchell.

202. Decedent's death was due to the intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Allegheny County, in:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care and emergency service dispatch when multiple 9-1-1 calls have been made;
- b. Failing to establish policies and procedures to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;

- c. Failing to train and require emergency dispatchers to communicate failed attempts to reach Mr. Mitchell despite his ongoing emergency;
- d. Failing to train and require dispatchers to instruct EMTs to not abandon an individual clearly in need of emergency medical assistance;
- e. Failing to train and require emergency dispatchers to summon assistance of four wheel drive vehicles to reach persons in distress;
- f. Acting with such willful and wanton misconduct to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §8101 *et seq.* (2010)); and
- g. Knowing or being substantially certain that dispatch policies and procedures would lead to severe pain and suffering, including death.

203. As a result of Allegheny County's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 8301, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

204. As a result of Allegheny County's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

205. Defendant's conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Allegheny County.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant, Allegheny County, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT XXII**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-  
Administrators of the Estate of Curtis L. Mitchell, deceased v. ALLEGHENY  
COUNTY**

**Gross Negligence**

206. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

207. Upon information and belief, Allegheny County had notice and knowledge of emergency dispatch policies and procedures for rendering emergency medical care and adequately handling and directing 9-1-1 calls, specifically where multiple calls had been

made, yet the County took no action or took inadequate action to correct said policies and procedures to ensure proper care to patients and to communicate to emergency personnel the number of calls made and the information relayed in those calls, including the worsening condition of the patient, resulting in inadequate care to emergency patients, including the death of Plaintiffs' decedent, Curtis L. Mitchell.

208. Decedent's death was due to the intentional, malicious, willful, wanton, reckless and/or other liability producing conduct of Allegheny County, in:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care and emergency service dispatch when multiple 9-1-1 calls have been made;
- b. Failing to establish policies and procedures to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to train and require emergency dispatchers to communicate failed attempts to reach Mr. Mitchell despite his ongoing emergency;
- d. Failing to train and require dispatchers to instruct EMTs to not abandon an individual clearly in need of emergency medical assistance;
- e. Failing to train and require emergency dispatchers to summon assistance of four wheel drive vehicles to reach persons in distress;
- f. Acting with such willful and wanton misconduct to constitute a violation of the standards of the Emergency Medical Services Act, 35 Pa. C.S.A. § 6921 *et seq.* (repealed 2009, current version at 35 Pa. C.S.A. §8101 *et seq.* (2010); and
- g. Knowing or being substantially certain that dispatch policies and procedures would lead to severe pain and suffering, including death.

209. As a result of Allegheny County's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the

Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 8301,  
for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

210. As a result of Allegheny County's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

211. Defendant's conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Allegheny County.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant, Allegheny County, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT XXIII**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-Administrators of the Estate of Curtis L. Mitchell, deceased v. ALLEGHENY**

**COUNTY**

**VICARIOUS LIABILITY**

212. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

213. At all times relevant hereto, Defendants Auvil, Curry, and Long, all of the 9-1-1 call center, were all agents, servants and/or employees of Defendant, Allegheny County, acting within the scope of said agency, servitude and/or employment.

214. The conduct of these employees was grossly negligent and constituted willful misconduct, as set forth above.

215. Therefore, Defendant, Allegheny County, is vicariously liable for the actions of Defendants Auvil, Curry, and Long.

216. As a result of Defendant, Allegheny County's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs claim damages under the Wrongful Death Statute of the Commonwealth of Pennsylvania, 42 Pa. C.S.A. § 830 I, for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;



- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Any and all damages applicable under the wrongful death acts, survival acts, fiduciary acts, statutes and Pennsylvania rules of civil procedure.

217. As a result of Defendant, Allegheny County's intentional, malicious, willful, wanton, reckless and/or other liability producing conduct, Plaintiffs have sustained the following damages, under the Survival Act, 42 Pa. C.S.A. § 8302, including but not limited to:

- a. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- b. Decedent's loss of income and earning capacity;
- c. Other financial losses suffered as a result of decedent's death; and
- d. Any and all expenses incurred by the decedent's estate.

218. Defendant's conduct as set forth above was so outrageous, reckless and in such conscious indifference to Plaintiffs' decedent's health and well-being that Plaintiffs assert a claim for punitive damages against Defendant Allegheny County.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant, Allegheny County, in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

**COUNT XXIV**

**THERESA E. THORNTON and JEREMIAH C. MITCHELL, as Co-**

**Administrators of the Estate of Curtis L. Mitchell, deceased v. ALLEGHENY**

**COUNTY,**

**42 U.S.c. § 1983**

219. Plaintiffs hereby incorporate by reference all preceding paragraphs as though set forth more fully at length herein.

220. Defendant's conduct occurred under color of state law and deprived Plaintiffs' Decedent of rights, privileges and/or immunities guaranteed under federal law and/or the U.S. Constitution.

221. The danger created by Defendant is a "state created danger" as the harm was foreseeable and direct in that Defendant knew that failing to follow appropriate and necessary policies and procedures for rendering emergency medical care and adequately handling and directing 9-1-1 calls, specifically where multiple calls had been made would result in death or serious consequences. However, Allegheny County took no action or took inadequate action to correct said policies and procedures to ensure proper care to patients and to communicate to emergency personnel the number of calls made and the information relayed in those calls, including the worsening condition of the patient, resulting in inadequate care to emergency patients, including the death of Plaintiffs' decedent, Curtis L. Mitchell.

222. The danger was state created in that the defendants acted with a degree of culpability that shocks the conscious by failing to render emergency assistance to a

person in need, abandoning such an individual and refusing to take all necessary measures to render aid.

223. There was a relationship between the defendants and the decedent wherein Curtis Mitchell was a foreseeable victim of Defendant's conduct.

224. Defendant affirmatively created a danger to Curtis Mitchell, or made Curtis Mitchell more vulnerable, in that Curtis Mitchell and Theresa Thornton relied upon information and belief that emergency aid was forthcoming and therefore did not seek alternative forms of assistance.

225. Decedent's death was due to the conduct of Defendant, in:

- a. Failing to establish adequate, appropriate and necessary policies and procedures for rendering emergency medical care at an individual's home;
- b. Failing to establish policies and procedures to inform later shifts of the continuing medical emergency ongoing with Mr. Mitchell;
- c. Failing to train and require EMTs to leave the ambulance and walk one block to reach Mr. Mitchell to provide medical assistance to his ongoing medical emergency;
- d. Failing to train and require EMTs to not abandon an individual clearly in need of emergency medical assistance;
- e. Failing to train and require EMTs to summon assistance of four wheel drive vehicles to reach persons in distress;
- f. Knowing or being substantially certain that EMS policies and procedures would lead to severe pain and suffering, including death;
- g. Failing to enact a policy, where such failure resulted in the alleged conduct; and
- h. Being aware of breakdown in communication or rescue efforts and failing to take corrective action.

226. As a result of Defendant's conduct, Plaintiffs claim damages under 42

U.S.C § 1983 for and on behalf of the decedent's next of kin for:

- a. Loss of service and contribution of the decedent, which he would have rendered during his lifetime;
- b. Funeral and burial expenses;
- c. Expenses for the administration of decedent's estate;
- d. Loss of benefit of the guidance, counseling, comfort, solace, protection and companionship of decedent;
- e. The loss of pecuniary benefits to the end of Mr. Mitchell's life expectancy; and
- f. Decedent's pain, suffering mental anguish, inconvenience and other such damages that are permitted by law;
- g. Decedent's loss of income and earning capacity;
- h. Other financial losses suffered as a result of decedent's death; and
- i. Any and all expenses incurred by the decedent's estate.

227. Defendant's conduct as set forth above was so reckless and callously indifferent to the federally protected rights of Curtis Mitchell that Plaintiffs assert a claim for punitive damages against Defendant, Allegheny County.

228. Pursuant to the Civil Rights Attorney's Fee Awards Act of 1976 (42 U.S.C.A. § 1988[b]), Plaintiffs assert a claim for attorneys' fees against Defendant Allegheny County.

WHEREFORE, Plaintiffs, Theresa E. Thornton and Jeremiah C. Mitchell, request judgment against Defendant Allegheny County in an amount in excess of \$25,000, plus costs. **JURY TRIAL DEMANDED.**

j. Respectfully submitted,

*Alan H. Perer*

Alan H. Perer, Esquire  
Swensen, Perer & Kontos

*Robert N. Peirce III*

Robert  
N. Peirce, III, Esquire /

Robert Peirce & Associates, P.c.

Paul A. *Paul A. Ellis*  
Ellis,  
Esquire

*Attorneys for Plaintiffs*



I, Theresa E. Thornton, verify that I am the Plaintiff in this action and that the statements made in the foregoing AMENDED COMPLAINT are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

9-30-2010  
Date

Theresa Thornton  
Theresa E. Thornton, Plaintiff