

D'AMATO LAW FIRM

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FILED
JUL 23 PM 12: 29
OFFICE OF THE
CIVIL DIVISION MANAGER

**SANDRA SMITH, INDIVIDUALLY AND
AS EXECUTRIX OF THE ESTATE OF HER
LATE HUSBAND GEORGE BRADLEY
SMITH,**

Plaintiff,

-vs-

**CITY OF NORTH WILDWOOD, COUNTY
OF CAPE MAY, STATE OF NEW JERSEY,
JOHN DOE, MARY DOE, ABC
PARTNERSHIPS, and XYZ
CORPORATIONS,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
CAPE MAY COUNTY - LAW DIVISION

DOCKET NUMBER: CPM-L- 331 -14

A CIVIL ACTION

COMPLAINT
AND JURY DEMAND

Plaintiff Sandra Smith, individually and as executrix of the estate of her late husband George Bradley Smith (hereinafter "Brad Smith") residing in Pennsylvania, by way of Complaint and Jury Demand says:

COUNT ONE

(Dangerous Condition Claim - City of North Wildwood)

1. On July 27, 2012, the decedent Brad Smith was on the North Wildwood beach in the area of Hereford Inlet with his wife, Sandra Smith, and their children Brandy Smith and Kole Smith.

2. At the aforesaid place and time, the decedent Brad Smith and Scott Sunderland were walking South along the water in the area at or around Central and Spruce Avenue to Ocean Avenue and 2nd Avenue (hereinafter "Inlet Beach").

3. At the aforesaid time and place, the decedent Brad Smith and Scott Sunderland were walking with their 7 year old daughters in ankle deep water.

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4. At the aforesaid time and place, the sand collapsed beneath decedent Brad Smith, his daughter Brandy Smith, Scott Sunderland, and Sunderland's daughter, causing all four to be swept out into the Hereford Inlet.

5. After being swept out, Brad Smith was holding up Brandy Smith until they were forced to be separated from one another.

6. Scott Sunderland was eventually able to reach the shore with his daughter clutched around his neck.

7. Around the time Sunderland reached the shore, a New Jersey State Police Marine Unit boat was in the vicinity of Brad Smith and Brandy Smith but passed by the area without stopping.

8. Brandy Smith was then rescued by a private onlooker on a jet ski.

9. Soon after, Brad Smith was unable to be seen by onlookers as a result of being swept out to sea.

10. Brad Smith's body was found three days later at which time it was determined that he died by way of accidental drowning.

11. Plaintiff alleges that an insufficient amount of time has passed within which to determine the identity of any other persons or business entities that may be responsible for the causation of the accident. Said persons and business entities have been named as John Doe, Mary Doe, ABC Partnerships and XYZ Corporations. Plaintiff reserves the right to amend the Complaint when and if their identities become known.

12. At all relevant times, Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, hereinafter including but not limited to the North Wildwood Beach Patrol, the North Wildwood Police Department, and the North Wildwood Public Works Department owned, operated,

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patrolled, controlled, serviced, and maintained Inlet Beach.

13. The aforesaid accident was caused by the carelessness and the negligence of Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, in the ownership, operation, control, improvement, and maintenance of the subject area of beach.

14. Prior to the subject accident, Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, imposed and/or caused substantial physical modification of the subject beach from its natural state. Said physical modification of Inlet Beach includes, but is not limited to, beach nourishment/modification projects, beach maintenance, permanent shore protection structures, and beach signage.

15. Through the aforesaid physical modifications, Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, created, maintained, and/or allowed to exist a hazard that did not previously exist at the subject beach which constituted a dangerous condition. Said dangerous condition includes, but is not limited to, the condition of the shoreline, the existence of a steep and unobservable drop-off at the area of the accident, the existence of an unobservable hole in the sand, the existence of a channel and powerful tides along the subject beach, and/or inadequate/misleading warnings at or around the area of the accident.

16. At all relevant times, the dangerous condition of the subject beach was concealed and hidden from decedent, his family, and similarly situated pedestrians.

17. Defendant City of North Wildwood had a duty to protect decedent Brad Smith against the dangerous condition set forth above and it was a reasonably foreseeable risk that decedent would incur injuries as a result of the dangerous

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condition.

18. Defendant City of North Wildwood had actual and/or constructive notice and knowledge of the aforesaid dangerous condition.

19. Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, created and failed to correct the aforesaid dangerous condition.

20. The actions and/or omissions of Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, in creating and failing to correct the dangerous condition of the subject area of beach constituted negligence.

21. The actions and/or omissions of Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, in creating and failing to correct the dangerous condition of the subject area of beach were palpably unreasonable.

22. The aforesaid accident was proximately caused by the negligence of Defendant City of North Wildwood.

23. As a direct and proximate cause of the negligence of Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, Brad Smith was caused to suffer personal injuries resulting in his death.

WHEREFORE Plaintiff Sandra Smith, individually and as executrix of the estate of her late husband George Bradley Smith, demands judgment against Defendant City of North Wildwood for compensatory damages, interest, attorney's fees and costs of suit.

COUNT TWO

(Dangerous Condition Claim - State of New Jersey)

1. Plaintiff repeats the allegations of the previous paragraphs as if same were set forth at length herein.

2. Prior to the subject accident, Defendant State of New Jersey, through its agents, employees, agencies, and/or political subdivisions, hereinafter including but not limited to the Department of Environmental Protection and the Division of Fish & Wildlife, imposed and/or caused substantial physical modification of the subject beach from its natural state.

3. At all relevant times, the subject section of beach was owned, operated, controlled, and maintained by Defendant State of New Jersey.

4. The aforesaid accident was caused by the carelessness and the negligence of Defendant State of New Jersey, in the ownership, operation, control, improvement, and maintenance of the subject area of beach.

5. Defendant State of New Jersey created, maintained, and/or allowed to exist a dangerous condition on the subject beach which was the cause of the aforesaid accident. Said dangerous condition includes, but is not limited to, the condition of the shoreline, the existence of a steep and unforeseeable drop-off at the area of the accident, the existence of an unforeseeable hole in the sand, and/or inadequate warnings at or around the area of the accident, and/or inadequate warnings at or around the area of the accident.

6. Defendant State of New Jersey had a duty to protect decedent Brad Smith against the dangerous condition set forth above and it was a reasonably foreseeable risk that decedent would incur injuries as a result of the dangerous condition.

7. Defendant State of New Jersey had actual and/or constructive notice and knowledge of the aforesaid dangerous condition.

8. Defendant State of New Jersey, through its agents, employees, agencies, and/or political subdivisions, failed to correct the dangerous condition.

9. The actions and/or omissions of Defendant State of New Jersey, by and through its agents, employees, agencies, and/or political subdivisions, in failing to correct the dangerous condition of the subject area of beach constituted negligence.

10. The actions and/or omissions of Defendant State of New Jersey, by and through its agents, employees, agencies, and/or political subdivisions, in failing to correct the dangerous condition of the subject area of beach were palpably unreasonable.

11. The aforesaid accident was proximately caused by the negligence of Defendant State of New Jersey.

12. As a direct and proximate cause of the negligence of Defendant State of New Jersey, through its agents, employees, agencies, and/or political subdivisions, Brad Smith was caused to suffer personal injuries resulting in his death.

WHEREFORE Plaintiff Sandra Smith, individually and as executrix of the estate of George Bradley, demands judgment against Defendant State of New Jersey for compensatory damages, interest, attorney's fees and costs of suit.

COUNT THREE

(Dangerous Condition Claim - County of Cape May)

1. Plaintiff repeats the allegations of the previous paragraphs as if same were set forth at length herein.

2. Prior to the subject accident, Defendant County of Cape May, through its agents, employees, agencies, and/or political subdivisions, imposed and/or caused substantial physical modification of the subject beach from its natural state.

3. At all relevant times, the subject section of beach was owned, operated,

controlled, and maintained by Defendant County of Cape May.

4. The aforesaid accident was caused by the carelessness and the negligence of Defendant County of Cape May, in the ownership, operation, control, improvement, and maintenance of the subject area of beach.

5. Defendant County of Cape May created, maintained, and/or allowed to exist a dangerous condition on the subject beach which was the cause of the aforesaid accident. Said dangerous condition includes, but is not limited to, the condition of the shoreline, the existence of a steep and unforeseeable drop-off at the area of the accident, the existence of an unforeseeable hole in the sand, and/or inadequate warnings at or around the area of the accident, and/or inadequate warnings at or around the area of the accident.

6. Defendant County of Cape May had a duty to protect decedent Brad Smith against the dangerous condition set forth above and it was a reasonably foreseeable risk that decedent would incur injuries as a result of the dangerous condition.

7. Defendant County of Cape May had actual and/or constructive notice and knowledge of the aforesaid dangerous condition.

8. Defendant County of Cape May, through its agents, employees, agencies, and/or political subdivisions, failed to correct the dangerous condition.

9. The actions and/or omissions of Defendant County of Cape May, by and through its agents, employees, agencies, and/or political subdivisions, in failing to correct the dangerous condition of the subject area of beach constituted negligence.

10. The actions and/or omissions of Defendant County of Cape May, by and through its agents, employees, agencies, and/or political subdivisions, in failing

to correct the dangerous condition of the subject area of beach were palpably unreasonable.

11. The aforesaid accident was proximately caused by the negligence of Defendant County of Cape May.

12. As a direct and proximate cause of the negligence of Defendant County of Cape May, through its agents, employees, agencies, and/or political subdivisions, Brad Smith was caused to suffer personal injuries resulting in his death.

WHEREFORE Plaintiff Sandra Smith, individually and as executrix of the estate of George Bradley Smith, demands judgment against Defendant County of Cape May for compensatory damages, interest, attorney's fees and costs of suit.

COUNT FOUR

(Negligent Supervision Claim - City of North Wildwood)

1. Plaintiff repeats the allegations of the previous paragraphs as if same were set forth at length herein.

2. Prior to the subject accident, Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, undertook to supervise the subject beach area.

3. At all relevant times, Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, supervised the subject section of beach by providing services which include, but are not limited to, lifeguarding, beach patrol services, and policing provided by the North Wildwood Beach Patrol and North Wildwood Police Department.

4. The aforesaid accident was caused by the negligent supervision of Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, in the supervision of the subject area of beach.

5. Defendant City of North Wildwood, through its agents, employees,

agencies, and/or political subdivisions, negligent supervision includes, but is not limited to, the marking of the subject beach area as dangerous only in regards to swimming.

6. Defendant City of North Wildwood had a duty to utilize due care in the supervision of the subject beach area and it was a reasonably foreseeable risk that decedent would incur injuries as a result of Defendant's negligent supervision.

7. Defendant City of North Wildwood had actual and/or constructive notice and knowledge of the aforesaid dangerous condition.

8. Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, failed to adequately warn of the dangerous condition.

9. The actions and/or omissions of Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, in warning of the risks of swimming in the subject beach area and in failing to adequately warn pedestrians of walking or wading on the beach constituted negligence.

10. Decedent Brad Smith reasonably relied upon the warnings placed on the beach by Defendant City of North Wildwood and reasonably expected that he could safely walk in ankle deep water along Inlet Beach.

11. At all relevant times, Defendant City of North Wildwood's rescuing of bathers and placing warning signs at Inlet Beach evidenced their intention to supervise the subject area by way of monitoring, entering into, or becoming a part of the activity at the subject beach.

12. The aforesaid accident was proximately caused by the negligent supervision of Inlet Beach by Defendant City of North Wildwood.

13. As a direct and proximate cause of the negligence of Defendant City of

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North Wildwood, through its agents, employees, agencies, and/or political subdivisions, Brad Smith was caused to suffer personal injuries resulting in his death.

WHEREFORE Plaintiff Sandra Smith, individually and as executrix of the estate of her late husband George Bradley Smith, demands judgment against Defendant City of North Wildwood for compensatory damages, interest, attorney's fees and costs of suit.

COUNT FIVE
(Improper Warnings Claim)

1. Plaintiff repeats the allegations of the previous paragraphs as if same were set forth at length herein.

2. The aforesaid accident was caused by the negligence and carelessness of Defendants City of North Wildwood, County of Cape May, State of New Jersey, through their respective agents, employees, agencies, and/or political subdivisions, in their ownership, operation, control, improvement, and maintenance of the subject beach area.

3. Defendants City of North Wildwood, County of Cape May, State of New Jersey, through their respective agents, employees, agencies, and/or political subdivisions, in their ownership, operation, control, improvement, had knowledge of the existence of the condition of the subject shoreline as well as the concealment of the condition by the ocean tides.

4. Defendants City of North Wildwood, County of Cape May, State of New Jersey, through their respective agents, employees, agencies, and/or political subdivisions, in their ownership, operation, control, improvement, by and through their agents, servants, employees and representatives, upon knowledge of the existence of the condition of the subject shoreline as well as the concealment of the

condition by the ocean tides had a duty to maintain, service, and repair the shoreline in order to fix, fill, ameliorate, and otherwise correct the subject beach area.

5. Defendants City of North Wildwood, County of Cape May, State of New Jersey, through their respective agents, employees, agencies, and/or political subdivisions, in their ownership, operation, control, improvement, by and through their agents, by and through their agents, servants, employees and representatives, upon knowledge of the existence of the condition of the subject shoreline as well as the concealment of the condition by the ocean tides had a duty to warn pedestrians of the existence of the subject shoreline.

6. Defendants City of North Wildwood, County of Cape May, State of New Jersey, through their respective agents, employees, agencies, and/or political subdivisions, in their ownership, operation, control, improvement, by and through their agents, servants, employees and representatives, upon knowledge of the existence of the condition of the subject shoreline as well as the concealment of the condition by the ocean tides had a duty to contact the appropriate governmental authority to fix, fill, ameliorate, and otherwise correct the aforesaid condition.

7. Defendants City of North Wildwood, County of Cape May, State of New Jersey, through their respective agents, employees, agencies, and/or political subdivisions, in their ownership, operation, control, improvement, by and through their agents, servants, employees and representatives, were negligent as follows:

- (a) In failing to maintain the shoreline in a safe condition;
- (b) In failing to have proper signals and/or warnings relative to the existence of the condition of the subject shoreline as well as the concealment of the condition by the ocean tides;

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(c) In failing to take appropriate measures to block off and/or close the area of the shoreline where the accident occurred;

(d) In failing to contact the appropriate department / individual / or governmental entity to maintain, service, and repair the subject shoreline so as to make the area safe;

(e) In failing to maintain, service, and repair the shoreline so as to make the area safe; and

(f) In failing to close Inlet Beach.

8. Defendants City of North Wildwood, County of Cape May, State of New Jersey, through their respective agents, employees, agencies, and/or political subdivisions, in their ownership, operation, control, improvement, by and through their agents, servants, employees and/or representatives, constitute negligence pursuant to N.J.S.A. 59:3-1.

9. The aforesaid accident was proximately caused by the negligence of Defendants City of North Wildwood, County of Cape May, State of New Jersey, through their respective agents, employees, agencies, and/or political subdivisions, in their ownership, operation, control, improvement,.

10. As a direct and proximate cause of the negligence of Defendants City of North Wildwood, State of New Jersey, County of Cape May, North Wildwood Beach Patrol, New Jersey Department of Environmental Protection and New Jersey Division of Fish & Wildlife, through their employees, agents, and representatives, Brad Smith was caused to suffer personal injuries resulting in his death.

WHEREFORE Plaintiff Sandra Smith, individually and as executrix of the estate of George Bradley Smith, demands judgment against Defendants City of North Wildwood and State of New Jersey, for compensatory damages, interest, attorney's

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fees and costs of suit.

COUNT SEVEN
(Survivorship Claim)

1. Plaintiff repeats the allegations of the previous paragraphs as if same were set forth at length herein.

2. As a result of the aforesaid negligence and accident, the late Brad Smith suffered injuries, was caused pain and suffering, and as a result of said injuries passed away.

3. From the time of the occurrence of the aforesaid accident until the time the decedent passed away, he was caused to experience conscious pain and suffering for which Plaintiff seeks compensation on behalf of the Estate.

4. Plaintiff further seeks compensation on behalf of the Estate for the loss of enjoyment of life that the decedent experienced from the occurrence of the aforesaid accident to the time that Brad Smith was declared dead.

WHEREFORE Plaintiff Sandra Smith, individually and as executrix of the estate of her late husband George Bradley Smith, demands judgment against Defendants pursuant to the Survival statutes of the State of New Jersey for damages, interest and costs of suit.

COUNT EIGHT
(Wrongful Death Claim)

1. Plaintiff repeats the allegations of the previous paragraphs as if same were set forth at length herein.

2. As a result of the injuries and subsequent death of Brad Smith, Plaintiff Sandra Smith, the widowed spouse of the decedent, and Kole Smith and Brandy Smith, the daughters of the decedent and Sandra Smith, are deprived of the services, society and companionship of the decedent for which they claim damages.

3. As a result of the injuries and subsequent death of Brad Smith, Kyle

Bradley Smith and Nicole Gaeta, the decedent's adult children, are deprived of the services, society and companionship of the decedent for which they claim damages.

4. As a result of the injuries and subsequent death of Brad Smith, Plaintiff Sandra Smith has and will suffer the loss of services and consortium.

5. As the wife and children of the decedent, Plaintiff Sandra Smith, Kole Smith, Brandy Smith, Kyle Bradley Smith, and Nicole Gaeta are entitled to recover the pecuniary loss occasioned to them by virtue of the wrongful death of Brad Smith.

6. As a result of the injuries sustained to the late Brad Smith and his subsequent death, Plaintiff Sandra Smith, Kole Smith, Brandy Smith, Kyle Bradley Smith, and Nicole Gaeta are entitled to damages for the loss of earnings and other fringe benefits that Brad Smith would have earned had he lived, compensation for the loss of household services that would have been provided by Brad Smith, and compensation for the loss of advice, counsel, support, companionship and society that the late Brad Smith would have provided, but for the injuries sustained in the aforesaid accident and his subsequent death.

WHEREFORE, Plaintiff Sandra Smith, individually and as guardian *ad litem* for her children Kole Smith and Brandy Smith, as well as Kyle Bradley Smith, and Nicole Gaeta demand judgment against Defendants for damages, interest and costs of suit.

COUNT NINE
(Injunctive Relief)

1. Plaintiff repeats the allegations of the previous paragraphs as if same were set forth at length herein.

2. Defendants City of Wildwood, County of Cape May, and State of New Jersey own and/or control a dangerous condition at the location of Inlet Beach.

3. Plaintiff obtained an audio recording of a conversation held on July 1, 2013, at Inlet Beach which included statements by Lieutenant Dave Lindsay of the

North Wildwood Beach Patrol.

4. In discussing the safety of Inlet Beach and subject fatal accident involving Lt. Lindsay states "he was on the scene" at the time of the Brad Smith drowning.

5. In addition, he stated the following:

- a. "[I]t's anything but safe to swim. . . . And the thing is if you close it down, the bars are going to complain. The condos, the people—
The condos at Moores, they're going to complain because they lost beach access."
- b. "You know, there's been seven drownings in nine years."
- c. "And the worse thing about it as the beach patrol we know it's going to happen again, this summer maybe, so - just because it's such a dangerous—"
- d. "And when you're walking you can see the water rushing out. It's—And like I said, for us it's frustrating because like we know it's going to happen."

6. Defendants City of Wildwood, County of Cape May, and State of New Jersey will cause Plaintiff, as well similarly situated visitors to Inlet Beach, irreparable harm in their continued ownership and control of the dangerous condition located at Inlet Beach as evidenced by the comments of Lt. Lindsay.

WHEREFORE Plaintiff Sandra Smith, individually and as executrix of the estate of her late husband George Bradley Smith, demands a temporary restraining order and a permanent injunction closing Inlet Beach to the public.


JURY DEMAND

Plaintiff demands a jury trial.

NOTICE OF TRIAL COUNSEL

Paul R. D'Amato, Esquire is designated as Trial Counsel pursuant to Rule 4:25-

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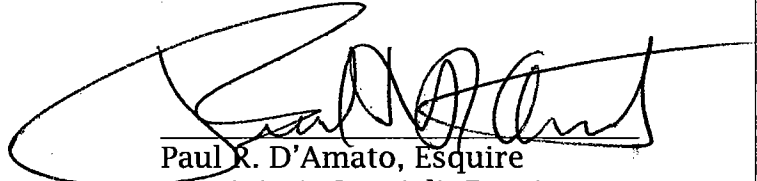
DATED: July 22, 2014

CERTIFICATION

Paul R. D'Amato, Esquire, of full age, certifies:

1. I am a member of the D'AMATO LAW FIRM and am entrusted with the preparation and trial of this case.
2. This case is not subject to any other court action or arbitration proceeding.

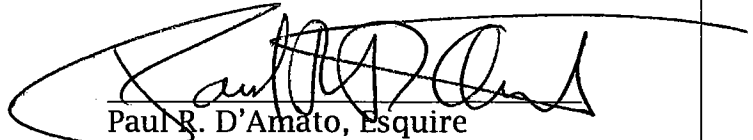
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Paul R. D'Amato, Esquire
Dominic A. Speziali, Esquire

DATED: July 22, 2014

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)

I, Paul R. D'Amato, Esquire, certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).


Paul R. D'Amato, Esquire

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