

D'AMATO LAW FIRM^{P.C.}

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October 28, 2016

Clerk, Law Division
Cape May County Superior Court
9 North Main Street
Cape May Court House, NJ 08210

RE: SMITH V. NORTH WILDWOOD
DOCKET NUMBER | CPM-L-331-14
CONSOLIDATED WITH | CPM-L-324-16
RETURN DATE | November 18, 2016
OUR FILE NUMBER | 3100-P

Dear Sir/Madam:

Enclosed you will find an original and copy of the following:

- (XX) Notice of Motion;
- (XX) Proposed Order;
- (XX) Attorney Certification;
- (XX) Brief in Support of the Motion
- (XX) Proof of Mailing; and
- (XX) Second Amended Complaint

Would you please:

- (XX) File; and
- (XX) Return a filed copy in the enclosed self-addressed stamped envelope.

Please charge our Attorney Collateral Account for any related costs, #19125.

Thank you kindly for your time and attention to this matter.

Very truly yours,

Kasi M. Gifford

Kasi M. Gifford, Esquire

KMG

Enclosures

cc enc.:

Honorable Joseph L. Marczyk
Joseph Grassi, Esquire - *via email*
Oliver Barry, Esquire - *via email*
Brian Hunkins, Esquire - *via email*
Michael Barker, Esquire - *via email*
Sandy Smith - *via email*

D'AMATO LAW FIRM, P.C.
By: Kasi M. Gifford, Esquire - NJ ID#: 152582015
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Attorney for Plaintiff

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

Plaintiff,

-VS-

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

Defendants,

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY- LAW DIVISION

DOCKET NUMBER: CPM-L-331-14

Civil Action

**NOTICE OF PLAINTIFFS' MOTION TO
AMEND THE COMPLAINT TO
INCLUDE JOSEPH ANTHONY "TONY"
CAVALIER AND DAVID LINDSAY AS
DIRECT DEFENDANTS**

To: Brian Hunkins, Esquire
Attorney for Defendant State of New Jersey

Michael Barker, Esquire
Attorney for Defendant City of North Wildwood

Joseph Grassi, Esquire
Attorney for Plaintiff Brandy Smith

PLEASE TAKE NOTICE that the undersigned shall apply to the above named Court located at 1201 Bacharach Boulevard, Atlantic City, N.J. 08401, on **Friday, November 18, 2016, at 9:00 a.m.** or as soon thereafter as counsel may be heard for an **Order to amend Plaintiffs' Complaint to include Joseph Anthony "Tony" Cavalier and David Lindsay as named Defendants.**

TAKE FURTHER NOTICE that reliance shall be placed on the within papers, unless Opposition to same is timely file, at which time **ORAL ARGUMENT** is requested.

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PLEASE TAKE FURTHER NOTICE that this application is being submitted pursuant to Rule 1:6-2 with the request that this matter be submitted to the Court for ruling on the moving papers. A copy of the proposed form of Order sought is annexed hereto. Unless you file answering papers or request oral argument, the Court may enter the Order as submitted, amend the Order or direct oral argument.

A proposed form of Order is attached.

D'AMATO LAW FIRM, P.C.

By: Kasi M. Gifford
Kasi M. Gifford, Esq.

Dated: 10/28/16

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Attorney for Plaintiff

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

Plaintiff,

-VS-

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

Defendants,

**SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY- LAW DIVISION**

DOCKET NUMBER: CPM-L-331-14

Civil Action

CERTIFICATION

I, Kasi M. Gifford, Esquire hereby certify as follows:

1. I am a member of the D'Amato Law Firm, P.C. which represents the Plaintiffs in the above wrongful death matter.
2. The original Complaint in this matter was filed on July 22, 2014.
3. 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.
4. 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").
5. At the aforesaid time and place, the decedent Brad Smith and Scott Sunderland were walking with their 7 year old daughters in

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ankle deep water.

6. 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.
7. After being swept out, Brad Smith was holding up Brandy Smith until they were forced to be separated from one another.
8. Scott Sunderland was eventually able to reach the shore with his daughter clutched around his neck.
9. 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.
10. Brandy Smith was then rescued by a private onlooker on a jet ski.
11. Soon after, Brad Smith was unable to be seen by onlookers as a result of being swept out to sea.
12. Brad Smith's body was found three days later at which time it was determined that he died by way of accidental drowning.
13. Since that time extensive discovery has been conducted, including an expansive amount of depositions.
14. These depositions include the sworn testimony of two North Wildwood Beach Patrol Officials, namely Joseph Anthony "Tony" Cavalier and David Lindsay detailing the activities they and others undertake as members of the North Wildwood Beach Patrol to Supervise the Subject area of the Inlet Beach.

15. Joseph Anthony "Tony" Cavalier is the Chief of the North Wildwood Beach Patrol.
16. David Lindsay is a former Lieutenant of the North Wildwood Beach Patrol.
17. David Lindsay was the Lieutenant in charge of the Inlet Beach on the date of Brad Smith's drowning.
18. Tony Cavalier's deposition was taken on February 16, 2016, and David Lindsay's deposition was taken on March 2, 2016.
19. As a result of testimony given at the above mentioned depositions, Plaintiffs now seek to Amend the Complaint to name Joseph Anthony "Tony" Cavalier and David Lindsay as Defendants in this matter.
20. It was not until the depositions of Chief Cavalier and Lieutenant Lindsay were taken on February 16, 2016, and March 2, 2016, respectively that the Plaintiffs learned of the nature of their supervision over the area of the beach where Brad Smith drowned.
21. In their depositions both Chief Cavalier and Lieutenant Lindsay swore under oath that they would continuously monitor the radio to ascertain the conditions on the subject beach.
22. Additionally, Chief Cavalier and Lieutenant Lindsay testified that they along with other members of the North Wildwood Beach Patrol would regularly patrol the area in the North Wildwood Beach Patrol vehicle, and would almost daily effectuate rescues off of the subject area of the beach.

23. Furthermore, Chief Cavalier and Lieutenant Lindsay both testified to having knowledge for years prior to Brad Smith's drowning of the drop off and whirlpool or vortex like conditions on the subject beach, which had caused injury to many other beach goers, and death to at least two other beach goers.
24. Pursuant to R. 4:9-1, attached hereto as "Exhibit A" is a copy of the proposed Amended Complaint.
25. Attached hereto and made a part hereof as "Exhibit B" is a true and accurate copy of the deposition transcript of Joseph Anthony "Tony" Cavalier.
26. Attached hereto and made a part hereof as "Exhibit C" is a true and accurate copy of the depositions transcript of David Lindsay.
27. Attached hereto and made a part hereof as "Exhibit D" is a true and accurate copy of the article referenced in Count 30 of the Amended Complaint entitled, "Guard Chief Warns about Swimming in Inlet."

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

D'AMATO LAW FIRM, P.C.

By: Kasi M. Gifford
Kasi M. Gifford, Esq.

Dated: 10/26/16

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Attorney for Plaintiff

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

Plaintiff,

-vs-

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

Defendants,

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY- LAW
DIVISION

DOCKET NUMBER: CPM-L-331-14

Civil Action

PLAINTIFFS' BRIEF IN SUPPORT
OF THE MOTION FOR LEAVE TO
FILE AN AMENDED COMPLAINT

PLAINTIFFS' LEGAL ARGUMENT

R. 4:9-1 provides for the liberal amendment of pleadings. The rule reads as follows:

A party may amend any pleading as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is to be served, and the action has not been placed upon the trial calendar, at any time within 90 days after it is served. Thereafter a party may amend a pleading only by written consent of the adverse party or by leave of court which shall be freely given in the interest of justice. A motion for leave to amend shall have annexed thereto a copy of the proposed amended pleading. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 20 days after service of the amended pleading, whichever period is longer, unless the court otherwise orders.

Additionally, R. 4:24-1(b) provides that the joinder of a new party shall extend the discovery period by (60) days. Consistent with Best Practices Rules and Procedures, the court shall assign a new

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discovery end date which shall include time to serve the new party, time for the new party to answer and then provide sixty (60) days of additional discovery from the time the answer is estimated to be filed. The court may shorten or enlarge the additional sixty (60) days where appropriate in the individual case. If any party thereafter needs additional discovery, an application must be made pursuant to R. 4:24-1.

The Court has made clear that "R. 4:9-1 requires that motions for leave to amend be granted liberally" and that "the granting of a motion to file an amended complaint always rests in the court's sound discretion." Kernan v. One Washington Park Urban Renewal Assocs., 154 N.J. 437, 456-57 (1998). As stated in Notte v. Merchs. Mut. Ins. Co., the "exercise of discretion requires a two-step process: whether the non-moving party will be prejudiced, and whether granting the amendment would nonetheless be futile. 185 N.J. 490, 501 (2006)." With regard to whether or not a claim is futile the Court explained that an amendment is futile when:

the amended claim will nonetheless fail and, hence, allowing the amendment would be a useless endeavor. Thus, while motions for leave to amend are to be determined "without consideration of the ultimate merits of the amendment," Interchange State Bank v. Rinaldi, 303 N.J. Super. 239, 256 (App.Div.1997) (citing City Check Cashing v. Nat'l State Bank, 244 N.J. Super. 304, 308-09 (App.Div.), certif. denied, 122 N.J. 389 (1990)), those determinations must be made "in light of the factual situation existing at the time each motion is made." Ibid. (citing Fisher v. Yeats, 270 N.J. Super. 458, 467 (App.Div.1994)). More specifically, "courts are free to refuse leave to amend when the newly asserted claim is not sustainable as a matter of law. In other words, there is no point to permitting the filing of an amended pleading when a subsequent motion to dismiss must be granted." Id. at 256-57, (citing Mustilli v. Mustilli, 287 N.J. Super. 605, 607 (Ch.Div.1995)). Id. at 501-02.

The Court in Kernane v. One Washington Park, noted that R. 4:9-1 is to be construed liberally at any stage in the litigation. The Court stated:

That "broad power of amendment should be liberally exercised at any stage of the proceedings, including on remand after appeal, unless undue prejudice would result." Pressler, Current N.J. Court Rules, comment on R. 4:9-1 (1998); see also Adron, Inc. v. Home Ins. Co., 292 N.J. Super. 463, 475-76 (App.Div.1996) ("Although the court must be concerned that 'no undue delay or prejudice will result from the amendment,' it must weigh such factors against the overriding need to seek justice.") (quoting Tomaszewski v. McKeon Ford, Inc., 240 N.J. Super. 404, 411(App. Div. 1990)); Coastal Group, Inc. v. Dryvit Sys., Inc., 274 N.J. Super. 171, 181(App.Div.1994) (holding that amendment would not impose undue burden or be unfair to defendant where "claims are based on closely related factual allegations"); Brower v. Gonnella, 222 N.J. Super. 75, 80 (App.Div.1987) ("Denial of . . . a motion [to amend] in the 'interests of justice' is usually only required when there would be prejudice to another party."). Of course, the granting of a motion to file an amended complaint always rests in the court's sound discretion. Pressler, Current N.J. Court Rules, comment on R. 4:9-1 (1998); see also Fisher v. Yates, 270 N.J. Super. 458, 467 (App.Div.1994) ("While motions for leave to amend pleadings are to be liberally granted, they nonetheless are best left to the sound discretion of the trial court in light of the factual situation existing at the time each motion is made."). 154 N.J. 437, 457 (N.J.).

According to the Court in Webb v. Witt, a motion to amend should be considered applying the same standard one would use to analyze a motion to dismiss for failure to state a claim, the Court explained:

All of the allegations in the pleading must be accepted as true. Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). Plaintiffs are entitled to every reasonable factual inference. Indep. Dairy Workers Union of Highstown v. Milk Drivers and Dairy Employees Local No. 680, 23 N.J. 85, 89(1956). The judge should consider only whether those allegations are legally sufficient to establish the necessary elements of the claimed cause of action. Printing Mart-Morristown, *supra*, 116 N.J. at 746. In doing so, the judge must examine the complaint "in depth and with liberality to ascertain

whether the fundament of a cause of action may be gleaned even from an obscure statement of claim." Ibid. (citing DiCristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App.Div.1957)). If necessary, an opportunity to amend should be allowed. 379 N.J. Super. 18, 28 (App.Div. 2005).

Here, Chief Joseph Anthony "Tony" Cavalier of the North Wildwood Beach Patrol and Lieutenant David Lindsay are indispensable parties. Though Plaintiffs included a Negligent Supervision count in their original Complaint, it was not until the depositions of Chief Cavalier and Lieutenant Lindsay were taken and North Wildwood Beach Patrol Records were obtained that it became clear that Chief Cavalier and Lieutenant Lindsay were specifically responsible for the supervision and control of the inlet section of the beach. It is evident from the deposition testimony of Chief Cavalier and Lieutenant Lindsay that the two, along with the other lifeguards stationed in the inlet section of the beach regularly and in the standard course of business undertook supervision of the subject area of the beach where Brad Smith's drowning took place. Therefore, to add the two as named Defendants to this litigation is just and necessary. The information obtained from the depositions of Chief Cavalier and Lieutenant Lindsay and their involvement in the supervision of the subject area of the beach undoubtedly supports Plaintiffs' claims of negligent supervision, as both Chief Cavalier and Lieutenant Lindsay explicitly were the agents of North Wildwood who took on the supervision of swimmers at the subject area of the beach, therefore, they must be added as parties to this litigation as they are

instrumental to Plaintiffs' case and R. 4:9-1 is to be granted liberally, unless undue prejudice would arise on behalf of the Defendants.

Here, Defendants would not be prejudiced by this amendment. Chief Cavalier and Lieutenant Lindsay were both employees of the Defendant City of North Wildwood at the time of Brad Smith's drowning. The North Wildwood Beach Patrol was originally mentioned in Plaintiffs' Complaint and as already noted the original Complaint already included a Negligent Supervision count. All Defense counsel were afforded the opportunity to be present at the depositions of Chief Cavalier and Lieutenant Lindsay and were able to independently question the two men.

Additionally, extensive discovery has been exchanged between the parties regarding the day to day activities of the North Wildwood Beach Patrol, including the Beach Patrol Daily reports and special incident reports. As such, the addition of these two parties would not unduly delay this litigation and would require only minimum additional discovery by the parties. The only prejudice that Defendants may encounter is that the addition of Chief Cavalier and Lieutenant Lindsay strengthen Plaintiffs' claim of Negligent Supervision, which is why such an amendment must be permitted in spite of any prejudice to Defendants in the overriding interest of justice.

Accordingly, Plaintiffs seek to amend their Complaint to include Joseph Anthony "Tony" Cavalier, Chief of the North Wildwood Beach



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Patrol and Lieutenant David Lindsay as Defendants in this litigation. If timely opposition is filed, Plaintiffs request oral argument.

D'AMATO LAW FIRM, P.C.

By: Kasi M. Gifford

Kasi M. Gifford, Esq.

Dated: 10/26/16

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EXHIBIT A

D'AMATO LAW FIRM

By: Paul R. D'Amato, Esquire - NJ ID# 006901974

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609-926-3300

Attorney for Plaintiffs

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

Plaintiffs,

-vs-

**CITY OF NORTH WILDWOOD, STATE OF
NEW JERSEY, JOSEPH ANTHONY
"TONY" CAVALIER CHIEF OF THE
NORTH WILDWOOD BEACH PATROL,
DAVID LINDSAY LIEUTENANT OF THE
NORTH WILDWOOD POLICE
DEPARTMENT, 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

**PROPOSED
AMENDED
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

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 with his daughter and Scott Sunderland with his two children 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").

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3. At the aforesaid time and place, the decedent Brad Smith and Scott Sunderland were walking with their 7 year old daughters Brandy Smith and Ally Sunderland in ankle deep water. Scott Sunderland's son, Aiden Sunderland was also walking with the group, but he was the furthest away from the water, thus the highest up on the beach.

4. At the aforesaid time and place, the sand collapsed beneath decedent Brad Smith, his daughter Brandy Smith, Scott Sunderland, and his daughter, Ally Sunderland 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 Ally Sunderland clutched around his neck.

7. Brandy Smith was then rescued by a young man on a Jet Ski.

8. Soon after, Brad Smith could not be seen by onlookers as a result of being swept out to sea.

9. Brad Smith's body was found three days later at which time it was determined that he died due to accidental drowning.

10. Plaintiffs allege 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. Plaintiffs reserve the right to amend the Complaint when and if their identities become known.

11. 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, patrolled, controlled, serviced, and maintained Inlet Beach.

12. 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, and maintenance of the subject area of beach.

13. Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, allowed to exist a hazard 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 a channel and powerful ebb tides along the subject beach, the existence of a whirlpool and or whirlpool effect along the beach, and/or inadequate/misleading warnings at or around the area of the accident.

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

15. 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 condition.

16. Defendant City of North Wildwood had actual notice and knowledge of the aforesaid dangerous condition.

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

agencies, and/or political subdivisions, created and failed to correct the aforesaid dangerous condition by failing to close the subject area of the beach.

18. 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 eliminate the dangerous condition of the subject area of beach constituted negligence.

19. 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.

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

21. 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

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

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

controlled, and maintained by Defendant State of New Jersey.

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

4. 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.

5. 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 that led to Brad Smith's death as a result of the dangerous condition.

6. Defendant State of New Jersey had constructive notice and knowledge of the aforesaid dangerous condition.

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

8. 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.

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 were palpably unreasonable.

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

11. 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

1. Plaintiffs repeat 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 and Joseph Anthony "Tony" Cavalier and David Lindsay, 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. At all relevant times, Defendants Joseph Anthony "Tony" Cavalier and David Lindsay were lifeguards employed by Defendant City of North Wildwood.

5. At all relevant times, Defendant Joseph Anthony "Tony" Cavalier was the Chief of the North Wildwood Beach Patrol

6. At all relevant times, Defendant David Lindsay was a Lieutenant on the North Wildwood Beach Patrol. Defendant David Lindsay was in charge of the inlet section of the North Wildwood Beach.

7. At all relevant times, Defendants Joseph Anthony "Tony" Cavalier and David Lindsay held supervisor positions on the North Wildwood Beach Patrol.

8. At a deposition on February 16, 2016, Joseph Anthony "Tony" Cavalier testified as follows:

Q: Okay. If I said to you, what is your understanding of what happened to Mr. Smith, do you have one?

A: How I think it happened?

Q: Yes.

A: Yes.

Q: Okay. And before you tell me how you think it happened, can you tell me the following: You didn't see it happen; did you?

A: No.

Q: All right. All right. So, you're basing your forthcoming answer as to how it happened based on what?

A: Being down there all the time.

Q: Okay. So, why don't you tell me how you think it happened.

A: At certain times of the day, when the tide is in or out, there's a drop off along that section of the beach,

Q: Okay. What do you mean by a drop off?

A: It literally drops off.

Q: Okay. And how long has that particular condition existed as far as you know?

A: The inlets changing all the time. Every year, it changes.

See Cavalier Dep. 41:20-42:19.

9. When questioned about his knowledge of the drop off, Chief Cavalier testified as follows:

Q:... the drop off runs how---how far, or how long is it?

A: Twenty yards.

Q: Okay. And is that drop off, and I know you said this, but I'm kind of having difficulty understanding it. Is every season that drop off someplace along that Inlet Beach?

A: Yes.

Q: Okay. Does the drop off, season to season, move?

A: Yes.

Q: Okay. And all the years that you've been part of the North Wildwood Beach Patrol, is this drop off, does it, like, move from, let's say Point A, and then the next year, it's like a mile away, or is there a certain limitation that it stays within?

A: Limitation.

Q: And what would you say that is? Like, is it, like a quarter of a mile, a tenth of a mile that it moves?

A: Tenth of a mile.

See Cavalier Dep. 56:5-25.

Q: Okay. Were there any signs on July 27, 2012, that would have alerted Brad Smith as to this drop off?

A: No.

See Cavalier Dep. 58:8-11.

10. Chief Cavalier was asked whether or not there would have been any signs at the water's edge warning of the hazardous conditions. Chief Cavalier responding in the negative testified:

Q: Now, you do have an understanding that Mr. Smith and his family and the Sunderland family had been sitting on a protected beach on July 27, 2012, and had—and that Mr. Sunderland with his son, and Mr. Smith and his daughter decided to take a walk on the beach? Are you aware of that?

A: No.

Q: Okay. As they are walking from the protected beach, you would call it the last one, First and Surf. Right?

A: Yes.

Q: As they're walking, and they're going towards Moore's Beach, would there be any sign warning them of any hazardous

condition located near the water's edge, as they're walking?

A: No.

See Cavalier Dep. 72:13-73:3.

11. Furthermore, when Chief Cavalier was asked about the visibility of the drop off he testified as follows:

Q: Okay. When you referred to the drop off earlier in your testimony, does this photograph show what you call a drop off?

A: No.

Q: Okay. How is a drop off different than the photograph that you have in your hand?

A: It's along the water's edge. It's in the water.

Q: So, that—wait. Okay. When you say it's in the water, so that if I'm standing on land, I can't see the drop off, correct?

A: Yes.

Q: Okay. That area that's shown in that photograph, is that Moore's Beach?

A: No.

Q: Is that Inlet Beach?

A: Yes.

See Cavalier Dep. 82: 23- 83:16.

12. Moreover, Chief Cavalier when asked if this drop off is consistently present, testified regarding the details of the drop off as follows:

Q: All right. Virtually, all the questions I'm going to be about that drop off. Because I want to try to understand where that drop off is, how it occurs. And you've indicated that it moves along with the shore line. Is that right?

A: Yes.

Q: So that's a dynamic process?

A: Yes.

Q: But that it is relatively constant, and they're not your words, so that it's a feature that, that while it moves, it doesn't really go away; does it?

A: No.

Q: It doesn't move from day to day; does it?

A: Yes. The Inlet changes every day.

Q: Okay.

A: The currents.

Q: Okay. Does the drop off change during the tide?

A: Yes. Certain tides, there is no drop off.

Q: Okay. What kind of tides is there no drop off, and what kind of tides is there a drop off?

A: High tide. Hide tide, it's a regular beach.

Q: Okay. And that's because the drop off—

A: Would be the further out.

Q: --is so far out that you couldn't walk to it?

A: Correct.

See Cavalier Dep. 111:6-112:15.

A: When the water is out is when there is a drop off. See Cavalier Dep 113:9-10.

Q: Okay. Do you know whether the currents are scouring that Point, that Lindsay calls a Point?

A: I believe it scours the whole Inlet Beach, the way the currents run, not just there.

See Cavalier Dep 118:15-21.

13. Chief Cavalier further testified:

Q: Okay. Well, when the drop off appears, how big an area is it?

A: Ten, fifteen yards.

Q: Okay. And how—how—what's the drop? In other words, if someone is walking, and they encounter the drop off, how far will they step down?

A: Over their head.

Q: Okay. All right. So, it's sort of a cliff?

A: I don't consider it that.

Q: Okay.

A: It's when the tide's out, it's just the water drops off.

Q: All right. It's a sudden drop off?

A: Yes.

See Cavalier Dep 119:1-17

14. When questioned as to whether or not the drop off was a factor in the

Smith drowning, Chief Cavalier explained:

Q: Would I encounter the drop off—in this case, the Sunderland version is that Smith,

Sunderland and the children were walking in ankle deep water, parallel to the beach.

A: Yes.

Q: Okay. And two of them just fell away, the beach fell away. And you indicate, you theorized they fell in the drop off?

A: Yes.

Q: Okay. What I'm trying to understand is, would the drop off have been running along the beach, and they got too close to it and slide from the side, or would they have encountered a drop off that ran perpendicular to the direction they were walking? Do you understand what I'm asking you?

A: Do you want me to explain how I think?

Q: Yeah, I do. Yeah. Very much.

A: They were walking along, and they came to the spot where it's—I call a drop off, and it was over their head, and they stepped into it.

See Cavalier Dep. 120:20-121:25.

15. Chief Cavalier clarified that the drop off is discussed by other lifeguards amongst themselves, and is recognized as a risk to beachgoers, even those who are simply walking at the water's edge:

Q:...and do you discuss where the drop off is with any of your personnel during the course of a summer?

A: No.

Q: Do they discuss it with you?

A: Yes.

Q: Okay. So, the drop off is a phenomenon that the guards will discuss—

A: Yes.

Q: --amongst themselves? And you recognize it as a risk?

A: Yes.

...

Q: You understand that the drop off is a risk to people who are using the beach?

A: Yes.

Q: And you recognize that it's a risk that comes up to someone who is simply walking, not swimming?

A: Yes.

See Cavalier Dep. 122:7-123:4. (emphasis added).

16. Chief Cavalier has recognized this risk for ten years. Chief Cavalier testified as follows:

Q: Is that correct? And how long have you recognized that risk?

A: Ten years.

Q: What caused you to recognize that risk 10 years ago?

A: Some of the rescues we had down there (emphasis added).

Q: Okay. Can you tell me which—what rescues you had, and where they would be documented, that led you to recognize that risk?

A: No. I—it's my own personal experience of going down there, and looking at it.

See Cavalier Dep. 122:7- 123:16.

17. Chief Cavalier had made recommendations before Mr. Smith's drowning to the North Wildwood Mayor and Council regarding which beaches should be guarded every summer. Chief Cavalier described the process as follows:

Q: Okay. I have read a series of resolutions that were passed by the City of North Wildwood relative to what beaches would be protected for an upcoming summer season. And you're probably familiar with those resolutions; aren't you?

A: Yes.

Q: Right. And all the resolutions, there's a reference to the council and the mayor having considered the recommendations of the North Wildwood Beach Patrol?

A: Yes.

Q: All right. Were those recommendations given to the mayor and the counsel of North Wildwood on an annual basis, like every year?

A: Yes.

Q: And were they typically given a couple months before the beginning of the summer season?

A: A month.

Q: Okay. And were your recommendations that are referenced in the resolutions in writing from you to the mayor and council?

A: Yes.

See Cavalier Dep. 27:25-28:1-21.

18. Chief Cavalier testified that the drop off is present every year. He s that there are two drop offs and compared the two as follows:

Q: The drop off is, is present every year; isn't it, someplace or other?

A: Yes.

See Cavalier Dep. 131:25 - 132:1.

Q: Okay. Okay. The drop off that we've been talking about is typically how deep?

A: Ten.

Q: Okay. And are there other areas along bay of these beaches where there are other drop offs?

A: Yes.

Q: Okay. Are those drop off, can they be as deep as 10 feet, also?

A: 50 feet. 50 to 60 feet.

Q: Okay.

A: That's the drop off at Moore's Beach, where they fish.

See Cavalier Dep. 133:20- 134:6.

19. Chief Cavalier acknowledged that the drop off was present at the location of the Smith drowning on July 27, 2012, when he testified as follows:

Q: Okay. So if I follow you correctly, the drop off, when the drowning occurred, was at the Point, and it was about 10 or 15 feet deep?

A: Yes.

See Cavalier Dep. 135:20-23.

20. Before the Smith Drowning Chief Cavalier was also personally aware of the vortex or whirlpool and explained his knowledge as follows:

Q: Okay. He [Dr. Stewart Farrell] also says that when the back bay is going into the ocean, that there is a vortex or whirlpool in the body water called the Inlet?

A: Yes.

Q: All right. Given the number of years that you have been on the beach patrol, is that vortex or whirlpool created every time the back bay moves out to the ocean?

A: Yes.

Q: All right. I know you're not a research scientist, but what is your understanding of what causes the whirlpool or vortex?

A: I believe it's the bay hitting the ocean at that point.

See Cavalier Dep. 43:15-44:5.

Q: All right. How large is this whirlpool or vortex that you have seen in the past in the Inlet?

A: Twenty-five yards.

Q: Okay. And does it appear to be circular.

A: Yes.

Q: Okay. So, the diameter across would be about 25 yards?

A: Yes. I'm sorry(emphasis added).

See Cavalier Dep. 45:4-18.

21. Chief Cavalier when asked his opinion whether an average swimmer could swim through the vortex or whirlpool stated:

Q: That's okay...Could an average swimmer swim through the vortex?

A: No.

See Cavalier Dep. 45:4-46:25.

Q: Okay. So, at Moore's Beach, before July 27, 2012, was that area consistently 50, 60 feet deep?

A: Yes.

Q: All right. For what length?

A: Twenty yard, twenty-five yards.

See Cavalier Dep. 53:12-16.

Q: Okay. And Dr. Farrell, in one of his statements, and hopefully we can get to it today, he says that sometimes when the back bay is going to the ocean, that the water is moving at five miles per hour, the water that's going out to the ocean.

Q: Would you agree with him?

A: Yes.

Q: Would you agree that it could be more than five miles per hour?

A: Yes.

Q: Ten miles per hour?

A: No, not—not that—

Q: Somewhere between five and ten miles per hour?

A: Yeah.

See Cavalier Dep. 60:16- 61:6.

22. Chief Cavalier acknowledged that the vortex or whirlpool is present in the same location as the drop off:

Q: The vortex that you talked about before, how far is the vortex from the drop off?

A: That's—that's where it is.

Q: Oh, okay. All right. So, the vortex is, is related to—

A: Yes.

Q:-- the drop off? Okay.

See Cavalier Dep. 131:2-13.

23. Chief Cavalier testified that on July 27, 2012, there were no signs regarding a drop off or vortex or whirlpool or ebb currents on the Unprotected Inlet Beach prohibiting walking in ankle deep water, or walking in water that goes to your mid-calf. See Cavalier Dep. 62:1-8.

24. Before the Smith drowning lifeguards regularly listened to the radio and effectuated rescues on the Unprotected Inlet Beach every summer, as evidenced by Chief Cavalier 's testimony:

Q: All right. The—let's see if we can do it this way: were there any occasions where North Wildwood lifeguards had to effectuate a rescue of a person that was in the water off of Moore's Beach?

A: Yes.

Q:.. were there occasions before July 27, 2012, where lifeguards of the North Wildwood Beach Patrol had to effectuate a rescue of someone that was swimming off of what we've been calling the Inlet Beach?

A: Yes.

Q: Okay. From your experience, is it safe to say that in all the years that you have been a member of the North Wildwood Beach Patrol, that before July 27, 2012, there were occasions during the summer season when North Wildwood lifeguards had to effectuate rescues of individuals swimming both off the Moore's Beach and off of the Inlet Beach?

A: Yes.

Q: Okay. Typically, how would your lifeguards be alerted to the fact that they had to effectuate a rescue off of Moore's head—Moore's Beach and the Inlet Beach?

A: Police department, we would monitor the police radio. The police would get a call, somebody's in distress, Moore's or the Inlet, and we would respond.

See Cavalier Dep. 91:10- 92:17.

25. Additionally, Chief Cavalier acknowledged that about a dozen times a summer, the lifeguards must save someone who has tried to swim to Champagne Island, a sand bar, located off of the Unprotected Inlet Beach. Chief Cavalier explained:

Q: Is there any prohibition from a person who's on the Inlet Beach, not Moore's Beach, the Inlet Beach from swimming to Champagne Island? A prohibition.

A: No.

Q: Okay. Is there any prohibition for someone swimming to Champagne Island from Moore's Beach?

A: No.

Q: Okay. How many rescues in a given summer before July 27, 2012, did your lifeguards have to effectuate relative to people who were trying to swim from Moore's Beach and/or the Inlet Beach to Champagne Island and vice-versa?

A: About a dozen a summer.

See Cavalier Dep. 101:5-21.

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26. The Beach Patrol Daily Report Dated August 19, 2012, about three weeks after Brad Smith's drowning, states that there were, "Eight Preventions at the Point," Chief Cavalier explained a prevention as follows:

Q: Okay. Now, let me show you what's been marked for identification as Exhibit 44. It's a daily report dated August 19, 2012. And at the bottom, the same category, again, it says, "Eight preventions at the Point." Okay. Now, when it says eight prevents, do that—if you can tell, does that mean preventing eight people from going into the water? What—I don't understand this term prevention.

A: They were trying to stop people from going in the water there.

See Cavalier Dep. 103:6-19.

27. City officials, including Chief Cavalier, have acknowledged in sworn testimony that beach goers who frequent the Unprotected Inlet Beach are inclined to engage in behaviors otherwise prohibited by various North Wildwood Ordinances.

28. Such activities include, but are not limited to, drinking alcoholic beverages on the beach, utilizing floatation devices in the water, playing games, and bringing their dogs to the beach.

29. When asked about any discussions between Chief Cavalier, the Mayor, and City Council regarding whether or not to close the Unprotected Inlet Beach, Chief Cavalier testified as follows:

Q: Was there any discussion while you were the chief of the beach patrol of North Wildwood, before July 27, 2012, at a mayor and council meeting of the City of North Wildwood, about having a lifeguard or lifeguards with lifeguard stands in what we've been calling the Inlet Beach area?

A: No.

Q: Okay. Same question for Moore's Beach... Before July 27, 2012, did you ever attend a

meeting of the mayor and council where there was a discussion about having a lifeguard and a lifeguard, perhaps with a stand, at what we've been calling Moore's Beach?

A: Yes.

Q: Okay. Given the number of years you've been the chief of the beach patrol, can you give me your best estimate as to how many times you spoke to the mayor and council at one of their meetings?

A: About Moore's Beach?

Q: Yea.

A: Once.

Q: Okay. And when was that?

A: Twelve years ago.

Q: Okay. And can you tell me what you said?

A: We had Mayor Palumbo, who was the mayor, a discussion was brought up about should we guard the Moore's Beach again. And the mayor and I went to the beach, and he actually went around asking people how they felt about a lifeguard being back there. And 90 percent of the people didn't want a lifeguard there.

Q: Did they tell you why they didn't want a lifeguard there?

A: They want to be able to do what they want to do.

Q: And one of the things they wanted to do was drink alcoholic beverages?

A: Yes.

Q: All right. What else besides drinking and alcoholic beverages did they want to do?

A: Dogs, Jet Skis (emphasis added).

Q: Okay. And since that time, have you, as the chief of the beach patrol, let the people do what they wanted to do when you were there with the then mayor?

A: If we got complaints from the public, the police department would respond, if people were out of control with—the alcohol, or the dogs.

Q: Okay.

A: And we finally got it under control.

Q: Okay. When did you finally get it under control?

A: Well, with the dogs, we eliminated that.
But the alcohol, you never eliminate.

Q: Since July 27, 2012, I have been to
Moore's Beach and the area that you call the
Inlet Beach several times, and I have
witnessed police officers of the City of
North Wildwood walking on the beach. Have
you made that same observation?

A: Yes.

Q: All right. Did you ever talk to the chief of
the North Wildwood Police Department
about having North Wildwood police officers
patrol Moore's Beach and the Inlet Beach?

A: Yes.

Q: All right. And going back as many years
as you feel comfortable telling me, how long
have you been discussions with the chief of
police of the City of North Wildwood about
patrolling Moore's Beach and the Inlet
Beach?

A: The last 10 years.

See Cavalier Dep. 31:5- 34:3.

30. One year to the day prior to Brad's drowning, on July 27, 2011,
Shorenwstoday.com posted an article entitled "Guard Chief Warns about
Swimming in Inlet." This article was posted a result of the drowning fatalities of a
Baltimore woman off of the unprotected inlet beach. Chief Cavalier is quoted as
saying:

The Inlet can look like it has calm water, but
it is deceiving. **The water starts off shallow
but then about two feet out from shore it
can drop off (emphasis added).** You can go
from knee deep to right over your head real
quick. There's a certain point off the shore,
you can see it from the sea wall, the water
looks like a washing machine out there.

31. At his deposition on March 2, 2016, Lieutenant Lindsay testified as
follows:

Q: In the North Wildwood Beach Patrol, could
you draw with a red marker where the inlet
zone was?

A: Sure.

Q: All right. Now, you know the city better than I do... can you give me street names?

A: Yes, Sir.

Q: Okay. Go ahead.

A: Inlet zone went from Surf Avenue down to the ocean, along the waterfront to the rock pile at Second and JFK, and then back along the bulkhead or walkway up to, I believe it's First and JFK.

Q: First?

A: First and Surf.

See Lindsay Dep. 13:9-23.

Q: For how many years before July 27, 2012, were you assigned for the summer to, we'll call it, the inlet zone?

A: I believe in '98, I was moved to the Inlet.

Q:...I'm surmising that because of your experience and your professionalism, you were assigned to the inlet zone, as opposed to other zones. Would that be a fair statement?

A: Well, I was assigned to the inlet zone in '90—the dates aren't exactly clear, but around '96, I was put in charge of the Jet Ski.

Q: Right.

A: And then the Jet Ski was more or less put in charge—it was assigned to the Inlet. So, I went with the Jet Ski.

...

Q:... am I correct in saying that the area where, is, say Moore's Beach and the Inlet Beach is some of the more dangerous beach area in North Wildwood, because of these currents that we've been talking about?

A: That's true.

See Lindsay Dep. 20:8-21:13.

32. Since Lieutenant Lindsay was in charge of the Inlet section of the beach he was asked at depositions how he knew whether or not someone was in need of assistance on the Unprotected Inlet Beach. Lieutenant Lindsay testified in the following manner:

Q: According to these records, which we'll get in a moment, it appears to us that there were occasions where lifeguards,

and not just saying you necessarily just yet,

...

Q: Where lifeguards that were posted in the inlet zone had to effectuate rescues up north, the Moore's Beach, and at the Point area. Is that correct?

A: Yes, sir.

Q: All right. And how would you, if you were posted in the inlet zone, know that somebody was in trouble at the beaches, which is Moore's Beach, the Point area? How would you know that?

A: Well, I actually was, you know, a lot of guys made jokes, because I would always listen to scan. But because of the section of the beach I was in charge of, I would have my radio on scan all the time, so I'm listening directly to dispatch.

See Lindsay Dep. 26:4-22.

33. Lieutenant Lindsay described the Hereford Inlet Conditions as follows:

Q: Okay. If you had to give me an estimate of the number of times when you were assigned to the inlet zone before July 27, 2012, that you had to assist in rescues of people who were trying to swim from Moore's Beach to Champagne Island, or back, give me your best estimate. How many times a summer?

A: Twice a week.

Q: Okay. And I have a buddy who was raised down here in Cape May County. And he told—he's a tremendous swimmer, but he was explaining to me how difficult that swim is, because of the currents. Correct?

A: Yea. It's treacherous.

See Lindsay Dep. 29:8-20.

34. Lieutenant Lindsay, who is of the opinion that the Unprotected Inlet Beach needs to be shut down to prevent future drownings, clarified under oath that he believes the reason the beach has not been shut down is because the local establishments and people would be against the beach closure. Lieutenant Lindsay described his reasoning as follows:

Q: ...What was the pressure that whomever that was associated with the bars was putting on to keep Moore's Beach open, as opposed to closing it?

A: Well, to be honest with you, I—I don't know any pressure. When I was in that conversation [the recorded conversation with Mrs. Simpson] I was really just talking about my own personal opinion. And what I did a lot with—and you, know, I still to that day feel the same way, it has nothing to do with how the city or the bartenders—the bar owners, but it's just my personal opinion would be that if you were to—if you were to shut that section of the beach down, which is really the—the only way you're going to prevent another drowning, and everything I say there, you know, I'll stand by. I would have told Mrs. Simpson---

Q: Right.

A:-- the same thing if she told me she was with you guys.

Q: Right.

A: So, it's not a matter of any of the bar owners, or anyone. It's just my personal opinion that if you were to shut down this section of the beach--

Q: Right.

A:--which, and you said you were there in the—you know, the peak of the summer, I don't know the bar owners that are right over the bulkhead would be too happy. And I know for a fact that the—the local people, who go to that beach, just to get away from the lifeguards, you—you know, you wouldn't have a happy bunch of people.

See Lindsay Dep. 32:11-33:18

35. Lieutenant Lindsay when asked at his deposition why the Unprotected Inlet Beach remains unprotected despite the number of drowning fatalities and rescues on the Unprotected Inlet Beach, he responded in the following manner:

Q:... You've been very candid and truthful today, and I respect that. And I'm almost finished. I just want to ask you a question. I've been through all of these reports, okay,

yours and others. With all the rescues that are documented, I keep asking myself, why wasn't there a lifeguard stand with lifeguards close to Moore's Beach, as opposed to being at, First and Surf?

A: First and Surf, yeah. Well, the answer I would give to that question is, when you put a lifeguard stand on the beach, you're telling the public that's a safe place to swim. And that area of the beach is anything but safe (emphasis added). Forget about the currents. It's a boating channel. I explained to my—Will the other day, we joked about, we thought we were going to see Rodney Dangerfield come in on Caddyshack with the horn going, Jet Skis, you know, kite surfers, speed boats. You name it. I mean, you've been down there.
Q: Yeah.

A: On a—on July 4th, it's—we would drive down there, and we'd be like, let's get out of here. It's—as a lifeguard, it was—we didn't want to be anywhere near it.

See Lindsay Dep. 43:20-44:18.

36. Lieutenant Lindsay expressed extreme concern when he testified regarding the lack of warning to beachgoers such as Brad Smith, and believes that the only way to prevent another drowning at the Unprotected Inlet Beach is to close the beach completely. Lieutenant Lindsay testified in the following manner:

Q: Well, what warnings are there to people like Brad Smith, who's walking with his daughter down the beach, to say that there could come a time where you're going to walk into 10 foot deep water when you're only walking in ankle deep to mid calf water? There's no warning?

A: No. The signs we put up, dangerous currents. But—

Q: But you wouldn't see them if you're walking from a protected beach to where the event took place?

A: No. Nope (emphasis added).

Q: All right. Here's another thing I asked myself. And it's easy for me to ask questions, and it's tough for people to provide answers. I realize that. What do you think, given all your experience on the beach patrol, and **especially with this area that we've been talking about, how do we prevent another Brad Smith from drowning?**

...

A: Yeah. You know, being a lieutenant down there for so long, and being on a lot of these drownings, you know, I asked myself the same thing. And I think the only way to prevent it is to shut the beach down completely (emphasis added). I mean, fences, you know, guard dogs, 24/7. Not even—not even walking down there. Because there's—you know—

Q: In a perfect world, if—if you were king, where would you shut the beach off,; from what point to what point?

...

Q: What you're saying is you'd have to close the beaches from Moore's Beach to the inlet zone, where it starts?

A: Yes.

Q: Okay.

A: And no one step a foot on—on the sand. See Lindsay Dep. 45:10- 47:13.

Q:... What would you tell them when you went down there, when they're at the Point, as to why they shouldn't be swimming there?

A: We would tell them that they're in unprotected part of the beach, unguarded part, and that it's not a safe place to swim.

Q: Okay. If somebody was walking at water's edge, would you tell them not to walk there?

A: I couldn't we just didn't have the—because it was—it's pretty—you know being down there yourself, it's a pretty popular area to walk. A lot of people—a lot of people that are the Moore's Beach will walk this way to get a hot dog, a lot of people that are at the inlet beach will walk that way to see the boats, and Jet Skis, and—so, it—you know, it just wasn't—it wasn't—

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Q: Yeah. The Chief touched on that. Not enough manpower, or woman power.

A: Right.

Q: To be politically correct. The—when people would walk from Moore's Beach south, where would they go to get a hot dog?

A: There was a stand—there's a stand at First and Surf, and also one at Second and JFK.

Q: Okay. In a perfect world, if North Wildwood had an unlimited budget, would you, if you were the chief, have lifeguards walking on foot between Moore's Beach and the beginning of the inlet zone to warn people about that even walking in ankle deep water could be dangerous.

A: Not lifeguards. Police.

Q: Who would you—If you would have to have police department. Because you'd have too much of a confrontation with—with the beach patrol.

...
A: Yeah. I mean, you'd have to really, it would be like a military state. You'd have to—you would get a—have such a problem with locals. That's their beach. They—you know, they think, you know.

Q: Um-hum. You know, I'm going to leave this up to you if you want to answer it or not. Mrs. Smith, her sole motive by this litigation is never to let this happen to another family, to lose, you know, a husband, two young—you know, a father to, you know—to two young kids. You don't have to answer if you don't want to.

A: Um hum.

Q: And nobody's blaming you please, think about this whole thing.

A: Oh, I know.

Q: What would you say to her about the future for—to prevent this from happening again?

A: Yeah. You know, it definitely wasn't an easy thing for me. I would tell her I don't know what the answer is. And I sat—I sit on the beach eight hours a day, six days a week. And knowing how dangerous it is down there, trying to do my best. And you know, I know, our response team couldn't have done a better job. There was a Jet Ski on scene.

Q: Yeah.

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A: That was right there.
Q: Right, yeah, we know.

...
A: What it is, is you put big fences, electrical fences with guard dogs, and police, and you don't let people in there. That's—that's what it comes down to.
See Lindsay Dep. 51:8-54:8

37. Defendants Joseph Anthony "Tony" Cavalier and David Lindsay undertook to supervise the subject area of the beach where Brad Smith fell into a drop off and was confronted by the ferocious ebb currents.

38. Defendants Joseph Anthony "Tony" Cavalier and David Lindsay owed a standard of care to the public, including Brad Smith and his family as a result of undertaking this supervision.

39. Defendants Joseph Anthony "Tony" Cavalier and David Lindsay breached the standard of care with respect to their supervision of the subject area of the beach.

40. The aforesaid accident was caused by the negligent supervision of Defendant City of North Wildwood, through its agents, employees, agencies, and/or political subdivisions, Defendants Joseph Anthony "Tony" Cavalier and David Lindsay, in the supervision of the subject area of beach.

41. The specific acts of supervision by Defendant City of North Wildwood, through Chief Cavalier and Lindsay, its agents, employees, agencies, and/or political subdivisions were constantly monitoring the conditions on the subject area of the beach over radio, the beach patrol patrolling in a North Wildwood Beach Patrol vehicle, and regularly effectuating rescues on the subject area of the beach.

42. Defendant City of North Wildwood and Defendants Cavalier and Lindsay had a duty to utilize due care in the supervision of the subject beach area.

43. It was a reasonably foreseeable risk that someone would drown as a result of Defendants' negligent supervision.

44. Defendant City of North Wildwood and Defendants Cavalier and Lindsay had actual notice and knowledge of the aforesaid dangerous conditions, namely, an invisible drop off accompanied by ferocious ebb currents which created a vortex or whirlpool.

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

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

47. Decedent Brad Smith reasonably expected that he could safely walk in ankle deep water along Inlet Beach because there were no warnings of an invisible drop off.

48. At all relevant times, Defendant City of North Wildwood's rescuing of bathers and placing warning signs at Inlet Beach though totally inadequate, in addition to Defendants Cavalier and Lindsay's standard practice of regularly monitoring the subject area of the beach and driving down to the subject area of the 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.

49. The aforesaid accident was proximately caused by the negligent supervision of Inlet Beach by Defendant City of North Wildwood and Joseph Anthony "Tony" Cavalier and David Lindsay.



COUNSELORS AT LAW
A PROFESSIONAL CORPORATION

2900 Fire Road
Suite 200
Egg Harbor Township, NJ 08224

50. 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 FOUR

1. Plaintiffs repeat 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, State of New Jersey, through their respective agents, employees, agencies, and/or political subdivisions, in their ownership, operation, control, improvement, and maing tenance of the subject beach area.

3. Defendants City of North Wildwood, and State of New Jersey, through their respective agents, employees, agencies, and/or political subdivisions, and Joseph Anthony "Tony" Cavalier and David Lindsay in their ownership, operation, control, and supervision 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, 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, 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, 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, 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;
- (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, 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, 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, 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 fees and costs of suit.

COUNT FIVE

1. Plaintiffs repeat 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 Plaintiffs seek compensation on behalf of the Estate.

4. Plaintiffs further seek 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 SIX

1. Plaintiffs repeat 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, Plaintiffs 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, Plaintiffs Sandra Smith has and will suffer the loss of services and consortium.

5. As the wife and children of the decedent, Plaintiffs 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, Plaintiffs 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.

JURY DEMAND

Plaintiffs demand a jury trial.

NOTICE OF TRIAL COUNSEL

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

4.

D'AMATO LAW FIRM

BY: _____
Paul R. D'Amato, Esquire

DATED: October 28, 2016

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

DATED: October 28, 2016

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

DATED: October 28, 2016

EXHIBIT B

1 SUPERIOR COURT OF NEW JERSEY
2 LAW DIVISION - CAPE MAY COUNTY
3 DOCKET NO. CPM-L-331-14

4 SANDY SMITH,
5 INDIVIDUALLY AND AS
6 EXECUTRIX OF THE ESTATE
7 OF HER LATE HUSBAND
8 GEORGE BRADLEY SMITH,

9 Plaintiff,

10 vs.

11 CITY OF NORTH WILWOOD,
12 STATE OF NEW JERSEY,
13 JOHN DOE, MARY DOE, ABC
14 PARTNERSHIPS and XYZ
15 CORPORATIONS,

16 Defendants.

17 TAKEN BEFORE: LYNN SMITH, a Certified Court
18 Reporter of the State of New Jersey, License No.
19 X101520, at the North Wildwood Community Center, 900
20 Central Avenue, North Wildwood, New Jersey 08260, on
21 Tuesday, February 9, 2016, commencing at 1:10 p.m.

22 WORD FOR WORD REPORTING, LLC
23 CERTIFIED COURT REPORTERS & VIDEOGRAPHERS
24 6 NORTH BROAD STREET, SUITE 202
25 WOODBURY, NEW JERSEY 08096
Ph. (856) 384-2770 Fax. (856) 384-2779

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6 -and-
7 DOMINIC A. SPEZIALI, ESQUIRE
8 For the Plaintiffs

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14 For the Plaintiffs

15 BARKER, GELFAND & JAMES
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20 -and-
21 WILL ROZELL, ESQUIRE
22 For the Defendant, North Wildwood

23 STATE OF NEW JERSEY
24 DEPARTMENT OF LAW AND PUBLIC SAFETY
25 DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
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(609) 777-4872
BY: BRIAN HUNKINS, DAG
For the State of New Jersey
(Via telephone)

Also present: Lou DiJoseph
Patrick Rosenello

Videographer: Robert Wynn

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11 2	Report	10
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13 4	Aerial Photographs	17
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17 32	North Wildwood Beach Patrol 93 Daily Report	
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WORD FOR WORD REPORTING, LLC

VIDEOGRAPHER: Today is February 9th, 2016. This is the video deposition of Joseph Anthony Cavalier. We are going on the record at 1:10 p.m. Will counsel now please state their appearance for the record.

MR. D'AMATO: Paul D'Amato and Dominic Speziali for the plaintiffs.

MR. BARKER: Michael Barker for North Wildwood, defendants.

MR. ROZELL: William Rozell for North Wildwood, defendants.

MR. HUNKINS: Brian Hunkins representing State of New Jersey.

MR. GRASSI: Joseph Grassi for co-plaintiff.

VIDEOGRAPHER: Will the court reporter please swear in the witness.

JOSEPH A. CAVALIER, having been first duly sworn, testified as follows:

EXAMINATION

BY MR. D'AMATO:

Q. Sir, you are presently employed by the City of North Wildwood in what capacity?

A. Chief of the North Wildwood Beach Patrol.

Q. Okay. How long have you held that position?

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A. Thirty years.

Q. Okay. And before you became the chief of the North Wildwood Beach Patrol, did you hold any other rank within the beach patrol?

A. Yes.

Q. And what were those rank -- what was the rank or ranks?

A. Lieutenant, and then captain, and then chief.

Q. Okay. When did you start working for the North Wildwood Beach Patrol?

A. 1966.

Q. Okay. As I understand from Mr. Barker, this is the first time that you've ever had your deposition taken?

A. Yes.

Q. All right. I want to go over some basic recommendations, if you will, or rules, and I'm sure Mr. Barker has covered some or most of them with you.

The first thing is, if I ask a question which is unclear, and there's a good chance that I may ask a question that's unclear to you, just say to me, I can't answer the question, and with Mr. Barker's permission, I'll ask you why not, and you'll tell me, and then I'll rephrase the question with the hope that you can then answer it.

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All of your responses must be verbal or oral. Gestures of the hand and nods of the head cannot be taken down by the young lady to my left. She is preparing what we call a transcript. It's a booklet. It's going to have everything I say, everything you say, and everything all the other lawyers say in response to the questions that are going to be asked of you today.

If you don't know the answer to a question, I'm sure Mr. Barker would agree with me, simply say you don't know. It doesn't help any of the lawyers here, as we are trying to proceed through this litigation, for you to guess the answer to a particular question.

Frequently, in order to move this deposition along, you might say to the lawyer, including me, Paul, is this what you're asking me? And I'll probably say yes. But that's with Mr. Barker's permission that you can ask me the question. Because technically, I'm not here to answer any questions. But that's not practical.

So, with that in mind, do you need any time to speak to Mr. Barker before I begin my examination under oath of you?

A. Yes.

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1 Q. You need more time?

2 MR. BARKER: He's asking you do you
3 want to speak to me now?

4 A. Oh, I'm sorry. I thought you said did I
speak to him.

6 Q. Okay.

7 A. No, I don't need any more time.

8 Q. Okay. All right.

9 Also, given the fact this is your first
10 deposition, and naturally, I appreciate the fact that
11 it's not the most pleasant experience, if you need to
12 take a break, just tell us. You can take a break.

13 I really have prepared for your
14 deposition, so I hope I can move through the subject
15 matter quickly.

16 If you do want to take a break, if you
17 want to go outside, get some fresh air, and Mr.
18 Barker can go with you, but the two of you, as Mr.
19 Barker well knows, cannot talk about the subject
20 matter of the deposition. You can talk about
21 anything else, but not the subject matter. But he
22 knows that, and he'll tell you that.

23 So, let's get started.

24 In preparing for this deposition, I
25 have come across the following phrases, if you will.

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1 Inlet Beach, The Inlet, Moore's Beach, Moore's Inlet
2 Beach, The Point, and The Spit. So, I want to get an
3 understanding here today of what those words mean to
4 you, if anything. All right?

5 (Report is received and marked for
6 identification as Exhibit 1.)

7 (Report is received and marked for
8 identification as Exhibit 2.)

9 (Photograph is received and marked for
10 identification as Exhibit 3.)

11 Q. Now, I have had marked for identification, as
12 I said, I'm going to hand Mr. Barker every exhibit,
13 most of all the exhibits, and you. This is -- we
14 simply numbered them 1, 2, 3 with today's date.

15 (Report received and marked for
16 identification as Exhibit 1.)

17 Now, let me hand you Exhibit 1.

18 And for the benefit of my colleagues,
19 this is the front page of a report that was prepared
20 for the City of North Wildwood by the Stockton
21 University Coastal Research Center. And I would like
22 you to look at that particular photograph. And when
23 you look at that photograph, do you see what you call
24 The Inlet Beach?

25 A. Yes.

WORD FOR WORD REPORTING, LLC

1 Q. All right. Could you take this orange pen
2 and circle, as tightly as you can, what you call The
3 Inlet Beach.

4 A. (Witness complies.)

5 Q. Okay. May I see that?

6 Okay. Got it.

7 MR. D'AMATO: Mike, did you see that?

8 MR. BARKER: No.

9 MR. D'AMATO: Okay. Here.

10 Q. All right. Now, on that same piece of paper,
11 which is Exhibit 1, with this green pen, could you
12 circle or give us some indication of what The Inlet
13 means to you, when -- the phrase "The Inlet"?

14 A. The same thing.

15 Q. Okay. Just for my education, would The Inlet
16 refer to the body of water that moves from the bay to
17 the ocean, and vice-versa?

18 A. Yes.

19 Q. Okay. So, with that in mind -- well, no.
20 So, I think I understand what you're saying. You're
21 saying to me that, in using your words, you would
22 refer to the area that you marked in orange also as
23 The Inlet?

24 A. I guess you would refer to that as The Inlet.

25 Q. Okay. Let me see what you marked there.

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1 Let's see.

2 Okay. Here. All right.

3 So, okay, the green mark is The Inlet,
4 and thus it's a body of water?

5 A. Yes.

6 Q. Okay, fine. Now, if I said -- maybe -- okay.
7 I'm going to hand to you as Exhibit 2 another -- here
8 we go.

9 MR. BARKER: Thank you.

10 MR. D'AMATO: All right.

11 Q. Another report that was prepared for the city
12 of North Wildwood by the Richard Stockton Coastal
13 Research Center, and you'll see it's the 2012 annual
14 report. Let me hand that to you.

15 And could you mark on that particular
16 exhibit with this blue marker where Moore's Beach is.

17 A. (Witness complies.)

18 Q. May I see it?

19 MR. D'AMATO: Here, Mike. Okay? Will?
20 Okay.

21 Q. All right. Is Moore's Beach, in your mind,
22 the same as Moore's Inlet Beach?

23 A. Yes.

24 Q. Okay. Now, with the two exhibits that you
25 have in front of you, and don't mark it just yet, if

WORD FOR WORD REPORTING, LLC

1 I said to you could you mark on either of them, or
2 both, what is known as The Point, could you do that?

3 **A. Not on this.**

4 **Q.** Okay. This is what exhibit in the right
lower-hand corner?

6 MR. D'AMATO: If you looked right in
7 the lower right-hand corner on the one exhibit, Mike,
8 what is it?

9 MR. BARKER: I don't know what he was
10 referring to. But I just want to point out to the
11 witness, you see these labels here?

12 THE WITNESS: Um-hum.

13 MR. BARKER: This is saying Exhibit 1.
14 And this is saying Exhibit 2. So, when Mr. D'Amato
15 asks you about something, if you're referring to a
16 particular exhibit, let him know which numbered
17 exhibit it is that you're going to look at.

18 THE WITNESS: Okay.

19 MR. BARKER: And discuss with him.
20 Okay, sir? Thank you.

21 **Q.** Chief, I saw you point to Exhibit 2, and said
22 you could not, on that photograph, indicate what The
23 Point is. Correct?

24 **A. Yes.**

25 **Q.** Okay. Can you do it on Exhibit 1?

WORD FOR WORD REPORTING, LLC

1 **A. Yes.**

2 **Q.** All right. Can I just see that for a second?
3 Exhibit 1? Thank you.

4 Okay. What we're going to do, then --
5 let's see. We're going to use blue. Okay.

6 If you could circle or just note,
7 whatever way is best for you, with that blue marker
8 what The Point is.

9 **A. (Witness complies.)**

10 MR. D'AMATO: Here. Just put this
11 stuff over there.

12 **Q.** Could I see it?

13 Okay. You have circled on this Exhibit
14 1 in blue what represents to you to be The Point.
15 Correct?

16 **A. I don't call it The Point.**

17 **Q.** Okay. Who calls it The Point? Have you ever
18 heard that expression before; The Point?

19 **A. One of the lieutenants that worked on the**
20 **beach patrol called it The Point.**

21 **Q.** Who is that; Lindsay?

22 **A. Lindsay.**

23 **Q.** Okay. All right. Okay. Could I have those
24 back. Just bear with me.

25 Lieutenant Lindsay is no longer
WORD FOR WORD REPORTING, LLC

1 employed by the North Wildwood Beach Patrol.

2 Correct?

3 **A. Yes.**

4 **Q.** When did he stop working for North Wildwood?

5 **A. October of 2014.**

6 **Q.** Was he fired?

7 **A. He retired. We have a pension plan.**

8 **Q.** Okay. I have a photograph that I'm going to
9 mark for identification as Exhibit 3. And I'm going
10 to show it to Mr. Barker, and Will, and I'm going to
11 hand it to you.

12 On that particular photograph, do you
13 see Moore's Beach, also known as Moore's Inlet Beach?

14 **A. Yes.**

15 **Q.** All right. Could you circle the area that
16 you call Moore's Beach or Moore's Inlet Beach.

17 **A. (Witness complies.)**

18 **Q.** Okay. Here.

19 MR. D'AMATO: Here. You see?

20 MR. DIJOSEPH: Brian?

21 MR. HUNKINS: Okay, thanks.

22 BY MR. D'AMATO:

23 **Q.** The condominiums that you see in this Exhibit
24 3, is that the location where Moore's Bar and
25 Restaurant used to be?

WORD FOR WORD REPORTING, LLC

1 **A. Yes.**

2 **Q.** All right. And the parking lot that we see
3 adjacent to the condominiums in Exhibit 3, who owns
4 that parking lot?

5 **A. City of North Wildwood.**

6 **Q.** Okay. When was that parking lot built,
7 approximately? And that's something I should have
8 told you. You can always estimate, if you wish, you
9 know.

10 **A. You mean blacktopped?**

11 **Q.** Yes.

12 **A. Over 20 years ago.**

13 **Q.** Okay. And when were those condominiums built
14 that we see in Exhibit 3?

15 **A. How long ago?**

16 **Q.** Yeah.

17 **A. Seven, eight, nine years ago.**

18 **Q.** Okay. And before the parking lot was
19 blacktopped, was there a parking lot there?

20 **A. Yes. It was gravel.**

21 **Q.** Okay. And how long had that gravel parking
22 lot been there, given the number of years that you've
23 been working for North Wildwood?

24 **A. As long as I can remember.**

25 **Q.** Okay, fine. Okay.

WORD FOR WORD REPORTING, LLC

1 MR. D'AMATO: Where are the exhibits
2 that have been marked?

3 MR. DIJOSEPH: Right here.

4 MR. D'AMATO: Okay. All right. Just
5 hold on. Okay.

6 Q. Now, given the number of years that you have
7 been working for the beach patrol, I want to go over
8 some aerial photographs that we obtained from the
9 county, and they were actually exhibits at the
10 deposition of the county engineer. And I'm going to
11 mark them collectively as Exhibit 4, because at the
12 top of each photograph is a date.

13 (Photographs are received and marked
14 for identification as Exhibit 4.)

15 Q. Now, The Inlet area that we had previously
16 referred to, that inlet represents how the water from
17 the back bay comes out to the ocean and vice-versa.
18 Correct?

19 A. Yes.

20 Q. All right. Would you agree, in the number of
21 years that you've been working for North Wildwood,
22 that the configuration of The Inlet, as relative to
23 its location, has moved?

24 A. Yes.

25 Q. All right. With that in mind, let's look at
WORD FOR WORD REPORTING, LLC

1 Exhibit 4. All right. Now, you and I are old, but
2 we weren't around in 1920. Right? Okay? So, if you
3 don't mind, when were you born; what year?

4 A. '46.

5 Q. Okay. Well, Mr. Barker was, like, 1930. I'm
6 1947.

7 So, take a look at 1956. All right?

8 Now, what we've done here is, as best as we lawyers
9 could, we tried to show where the -- got that, in
10 1956? Yeah.

11 A. Yeah.

12 Q. We tried to show where this event with Mr.
13 Smith occurred. And as you look at this aerial
14 photograph for the year 1956, would you agree, at
15 that point in time, we don't see the condominiums
16 that we referenced in the prior photograph. Correct?

17 A. Yes.

18 Q. All right. Now, do you see Moore's Bar in
19 that aerial photograph?

20 A. No.

21 Q. Okay. Do you have any idea when Moore's Bar
was built?

23 A. I believe in the '40s.

24 Q. Okay. Let's go to the next page, which is an
25 aerial photograph for 1963. In this photograph, do
WORD FOR WORD REPORTING, LLC

1 we see Moore's Beach?

2 A. Yes.

3 Q. Okay. Could you circle it with the red
4 marker, please.

5 A. (Witness complies.)

6 Q. Okay. All right. Could you go to the next
7 exhibit, which is -- excuse me, it's not an exhibit.
8 It's the next aerial photograph. It's 1970. Do you
9 see Moore's Beach in that aerial photograph?

10 A. No.

11 Q. Okay. Do you see water where Moore's Beach
12 was shown in the 1963 photograph?

13 A. Yes.

14 Q. Okay. Can you circle the area where Moore's
15 Beach is, acknowledging that water is covering it.

16 A. (Witness complies.)

17 Q. Okay.

18 Mr. D'AMATO: Is that large enough?
19 Could we see that, Mike?

20 MR. BARKER: I can't see. What did you
21 do?

22 A. (Witness complies.)

23 Q. Okay. Right there. Okay. We can see it
24 now.

25 All right. Now, if you could look to
WORD FOR WORD REPORTING, LLC

1 the next page, which is 1995. Could you circle the
2 area where Moore's Beach was noted in the prior
3 aerial photo?

4 A. (Witness complies.)

5 Q. Okay. And could you go to the next aerial
6 photograph, which is the year 2000. And could you
7 again circle Moore's Beach.

8 A. (Witness complies.)

9 Q. Okay. Now, I just want to just stop for a
10 second here, and I want to digress a little bit, but
11 I'll go back to these aerials, photographs in a
12 moment.

13 In all the years that you've been
14 working for the North Wildwood Beach Patrol, was
15 there ever a lifeguard stand or a lifeguard in
16 attendance on Moore's Beach?

17 A. Yes.

18 Q. What period of time?

19 A. In the '70s.

20 Q. For approximately how many years?

21 A. Four or five.

22 Q. Okay. Was it a lifeguard stand, or just a
23 lifeguard?

24 A. I can't remember.

25 Q. Okay. Why was the posting of a lifeguard
WORD FOR WORD REPORTING, LLC

1 stand or a lifeguard at Moore's Beach discontinued?

2 **A. Because we couldn't -- the beach had eroded,**
3 **and we couldn't get to it.**

4 **Q.** Okay. Would you agree that since the early
5 1970s, that there have been summers where there's
6 been a beach where people sit on the beach and
7 sunbathe?

8 **A. At Moore's?**

9 **Q.** Yes, yeah.

10 **A. Yes.**

11 **Q.** Okay. Was there ever consideration by you to
12 re-establish having a lifeguard or a lifeguard stand
13 with a lifeguard at Moore's Beach?

14 **A. No.**

15 **Q.** Why not?

16 **A. It was too inaccessible to get to, if there**
17 **was a problem. We couldn't drive to it. We can**
18 **drive to our -- our chairs, and we couldn't get to**
19 **that.**

20 **Q.** Okay. On the day of Mr. Smith's initial
21 disappearance, which was July 27, 2012, could
22 vehicles drive from the protected beaches to where
23 the sand had collapsed when he and Mr. Sunderland and
24 their children were walking?

25 **MR. BARKER:** Objection.

WORD FOR WORD REPORTING, LLC

1 **VIDEOGRAPHER:** Off the record at 1:33.

2 **MR. D'AMATO:** Go ahead.

3 **MR. BARKER:** I'm objecting to the form
4 of the question. And if you want me to be more
5 specific, I could.

6 **MR. D'AMATO:** No, that's okay.

7 **MR. BARKER:** So --

8 **MR. D'AMATO:** That's good. I
9 appreciate the way you just did that. You don't have
10 to be more specific. I'm with you. Okay? Okay.

11 **VIDEOGRAPHER:** Please stand by.

12 Back on the record at 1:33.

13 **BY MR. D'AMATO:**

14 **Q.** Would you like the question read back, that I
15 just asked?

16 **A. Yes.**

17 (Record read.)

18 **A. Yes.**

19 **Q.** Okay. All right. Now, if we could go to the
20 aerial photograph for 2002. Would you agree that we
21 see the parking lot that we've been referring to
22 before?

23 **A. Yes.**

24 **Q.** Okay. Do you -- just put a little X over the
25 parking lot.

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1 **A. (Witness complies.)**

2 **Q.** All right. And as I look at the parking lot
3 in this aerial photograph from 2002, I don't see the
4 condominiums adjacent to the parking lot; do you?

5 **A. No.**

6 **Q.** Okay. Now, if we could go to the aerial
7 photograph for April 1, 2003. In looking at this
8 aerial photograph, is the Moore's Beach shown here?

9 **A. No.**

10 **Q.** Is it covered with water?

11 **A. Well --**

12 **Q.** Or does it --

13 **A. It's cut off.**

14 **Q.** Yeah, thanks. All right. All right.

15 Now, could you go to the aerial
16 photograph of April 6, 2005. Would you agree that we
17 do see Moore's Beach?

18 **A. Yes.**

19 **Q.** All right. Could you just circle it?

20 Because some day, some people are going to be looking
21 at this.

22 Can I see what you did, please.

23 Okay. Fine. Now, let's stay with that
24 aerial photograph.

25 You have on several of these aerial
WORD FOR WORD REPORTING, LLC

1 photographs indicated where you believe Moore's Beach
2 is. Could you, on this aerial photograph, dated
3 April 6, 2005, tell me where Moore's Beach ends?

4 **A. I don't understand the question.**

5 **Q.** Okay. If you and I are standing on the sand
6 back on April 6, 2005, and we begin to walk south --

7 **A. Okay.**

8 **Q.** -- and I on -- when would you say to me,
9 Paul, we're no longer at Moore's Beach?

10 **A. You want me to circle it?**

11 **Q.** No. You know what I want you to do, I'd
12 rather you draw a line with this blue marker, if you
13 don't mind, sir.

14 There you go.

15 **A. (Witness complies.)**

16 **Q.** Okay. Now, on that photograph, which is
17 dated April 6, 2005, below the blue line, do we see
18 any portion of a protected beach?

19 **A. Yes.**

20 **Q.** Okay. The first protected beach that's shown
21 on that photograph, dated April 6, 2005, would be
22 located next to what street, if we could use a street
23 reference?

24 **A. Surf Avenue.**

25 **Q.** Okay. All right. Take the green marker, if
WORD FOR WORD REPORTING, LLC

- 1 you will, and just draw a line where the protected
2 beach at Surf Avenue begins.
3 **A. (Witness complies.)**
4 **Q.** Okay. Now, you have drawn a line where
5 Moore's Beach ended, and you have drawn a line where
6 the Surf Avenue Beach starts, which was a protected
7 beach. Correct?
8 **A. Yes.**
9 **Q.** What do you call the area between those two
10 lines, that beach area? What do you call it?
11 **A. Inlet Beach.**
12 **Q.** Okay. While we're there talking about The
13 Inlet Beach on this photograph of April 6, 2005.
14 Before July 27, 2012, did you personally ever
15 observe, during the summertime, especially, people
16 sitting on the beach area, what you call The Inlet
17 Beach?
18 **A. (Indicating.)**
19 **Q.** That's right, yeah. Between where Moore's
20 Beach ends and where Surf Beach begins.
21 **A. Yes.**
22 **Q.** All right. And were those individuals in
23 violation of any North Wildwood ordinance by sitting
24 on the beach between those lines that we're going to
25 call The Inlet Beach?

WORD FOR WORD REPORTING, LLC

- 1 **A. No.**
2 **Q.** Okay. If any of those individuals before
3 July 27, 2012 were walking in ankle deep water, on
4 what we're calling The Inlet Beach, between where
5 Moore's Beach ends and where Surf Beach begins, would
6 they be in violation of any ordinance of the City of
7 North Wildwood?
8 **A. No.**
9 **Q.** All right. If they were walking in the water
10 between this area that we're talking about, and the
11 water came up to their mid calf, would they be in
12 violation of any ordinance of the City of North
13 Wildwood?
14 **A. Can you repeat that again?**
15 **Q.** Yeah.
16 **A. I want to make sure --**
17 **Q.** Sure. If a person in the summertime, before
18 July 27, 2012, was walking in the ocean or the water
19 there and the water was up to their mid calf, and
20 they were in this area, what we're calling The Inlet
21 Beach, which starts at the end of Moore's Beach and
22 ends at the beginning of the Surf Avenue Beach, would
23 they be in violation of any ordinance?
24 **A. No.**
25 **Q.** All right. Following this along, if a person

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- 1 was out 20 feet swimming in that area that we've been
2 referring to, would they be in violation of any North
3 Wildwood ordinance?
4 **A. Yes.**
5 **Q.** Okay. Do you know why swimming in the ocean
6 off of The Inlet Beach, and I'm not going to repeat,
7 you know, the beginning and the end of it, I think we
8 know what we're talking about, do you know why
9 swimming 20 feet from The Inlet Beach was prohibited?
10 **A. Because it's unprotected.**
11 **Q.** Okay. And why was it unprotected for --
12 well, strike that.
13 Was there ever a lifeguard stand or a
14 lifeguard posted in what we're calling The Inlet
15 Beach before July 27, 2012?
16 **A. No.**
17 **Q.** Okay. Why not?
18 **A. I can't answer that.**
19 **Q.** Okay. All right. The Inlet Beach that we
20 have been referring to over and over again, did it
21 ever completely disappear, so that it wasn't
22 available for the summer season for people to sit on
23 and sunbathe?
24 **A. No.**
25 **Q.** Okay. I have read a series of resolutions

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- 1 that were passed by the City of North Wildwood
2 relative to what beaches would be protected for an
3 upcoming summer season. And you're probably familiar
4 with those resolutions; aren't you?
5 **A. Yes.**
6 **Q.** Right. And in all the resolutions, there's a
7 reference to the council and the mayor having
8 considered the recommendations of the North Wildwood
9 Beach Patrol?
10 **A. Yes.**
11 **Q.** All right. Were those recommendations given
12 to the mayor and the council of North Wildwood on an
13 annual basis, like every year?
14 **A. Yes.**
15 **Q.** And were they typically given a couple months
16 before the beginning of the summer season?
17 **A. A month.**
18 **Q.** Okay. And were your recommendations that are
19 referenced in the resolutions in writing from you to
20 the mayor and council?
21 **A. Yes.**
22 **Q.** All right. And where are those written
23 recommendations?
24 **A. I don't know how to answer that question.**
25 **Q.** I'm sorry. What?

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1 **A. I can't answer that question. Could you ask**
2 **it again?**

3 **Q.** Yeah. The written recommendations that you
4 give to the -- gave to the mayor and the council of
5 North Wildwood for the years before July 27, 2012,
6 you told me they were in writing?

7 **MR. BARKER:** Objection. Let me -- I
8 have an objection to your question.

9 **VIDEOGRAPHER:** Off the record at 1:43.

10 **MR. D'AMATO:** Just -- say it. It's
11 okay. Don't worry.

12 **MR. BARKER:** Okay.

13 **MR. D'AMATO:** What I mean, don't worry.
14 You don't have to -- I don't care if you say it in
15 front of him. That's the point I'm trying to say.

16 **MR. BARKER:** My objection is that you
17 asked the question assuming that he gave written
18 recommendations to the mayor and the council. He
19 hasn't testified to that.

20 **MR. D'AMATO:** Okay.

21 **MR. BARKER:** I think you stepped ahead
22 of yourself a little.

23 **MR. D'AMATO:** I have -- okay. Back on
24 the video record. You're right.

25 **VIDEOGRAPHER:** Back on the record,
WORD FOR WORD REPORTING, LLC

1 1:44.

2 **BY MR. D'AMATO:**

3 **Q.** All right. The written recommendations that
4 we have been referring to, were they given just to
5 the council, or was it the council and the mayor that
6 received them?

7 **A. I gave it to the city clerk.**

8 **Q.** Okay.

9 **A. The city clerk gives it to the mayor and**
10 **council.**

11 **Q.** Okay. All right. With respect to those
12 recommendations, you told me that they were always in
13 writing?

14 **A. No.**

15 **Q.** Okay. How frequently would be -- would they
16 be in writing, as opposed to something verbal?

17 **A. It was a city resolution. I would take last**
18 **year's resolution into the city clerk, and we would**
19 **just -- I would review the chairs, the locations, and**
20 **the dates would be changed.**

21 **Q.** Okay.

22 **A. So, I miss --**

23 **Q.** No. I follow you. Because I read all these
24 resolutions that we have.

25 **A. Okay.**

1 **Q.** And it looks like they're the same. Correct?

2 **A. Yeah, right.**

3 **Q.** All right. So, I do understand your
4 testimony.

5 Was there any discussion while you were
6 the chief of the beach patrol of North Wildwood,
7 before July 27, 2012, at a mayor and council meeting
8 of the City of North Wildwood, about having a
9 lifeguard or lifeguards with lifeguard stands in what
10 we've been calling The Inlet Beach area?

11 **A. No.**

12 **Q.** Okay. Same question for Moore's Beach.
13 Should I ask it -- yeah, let me ask it completely.

14 Before July 27, 2012, did you ever
15 attend a meeting of the mayor and council where there
16 was a discussion about having a lifeguard and a
17 lifeguard, perhaps with a stand, at what we've been
18 calling Moore's Beach?

19 **A. Yes.**

20 **Q.** Okay. Given the number of years you've been
21 the chief of the beach patrol, can you give me your
22 best estimate as to how many times you spoke to the
23 mayor and council at one of their meetings?

24 **A. About Moore's Beach?**

25 **Q.** Yeah.

1 **A. Once.**

2 **Q.** Okay. And when was that?

3 **A. Twelve years ago.**

4 **Q.** Okay. And can you tell me what you said?

5 **A. We had Mayor Palumbo, who was the mayor, a**
6 **discussion was brought up about should we guard**
7 **Moore's Beach again. And the mayor and I went to the**
8 **beach, and he actually went around asking people how**
9 **they felt about a lifeguard being put back there.**
10 **And 90 percent of the people didn't want a lifeguard**
11 **there.**

12 **Q.** Did they tell you why they didn't want a
13 lifeguard there?

14 **A. They want to be able to do what they want to**
15 **do.**

16 **Q.** And was one of the things they wanted to do
17 was to drink alcoholic beverages?

18 **A. Yes.**

19 **Q.** All right. What else besides drinking
20 alcoholic beverages did they want to do?

21 **A. Dogs, Jet Skis.**

22 **Q.** Okay. And since that time, have you, as the
23 chief of the beach patrol, let the people do what
24 they wanted to do when you were there with the then
25 mayor?

1 **A. If we got complaints from the public, the**
2 **police department would respond, if people were out**
3 **of control with the -- the alcohol, or the dogs.**

4 **Q. Okay.**

5 **A. And we finally got it under control.**

6 **Q. Okay. When did you finally get it under**
7 **control?**

8 **A. Well, with the dogs, we eliminated that. But**
9 **the alcohol, you never eliminate.**

10 **Q. Okay.**

11 **A. It's --**

12 **Q. Since July 27, 2012, I have been to Moore's**
13 **Beach and the area that you call The Inlet Beach**
14 **several times, and I have witnessed police officers**
15 **of the City of North Wildwood walking on the beach.**

16 Have you made that same observation?

17 **A. Yes.**

18 **Q. All right. Did you ever talk to the chief of**
19 **the North Wildwood Police Department about having**
20 **North Wildwood police officers patrol Moore's Beach**
21 **and The Inlet Beach?**

22 **A. Yes.**

23 **Q. All right. And going back as many years as**
24 **you feel comfortable telling me, how long have you**
25 **been having discussions with the chief of police of**

WORD FOR WORD REPORTING, LLC

1 the City of North Wildwood about patrolling Moore's
2 Beach and The Inlet Beach?

3 **A. The last 10 years.**

4 **Q. Okay. And is there a set pattern as to when**
5 **the police officers patrol that beach? That is, the**
6 **Moore's Beach and The Inlet Beach?**

7 **A. I can't answer that question.**

8 **Q. Okay. All right. Is part of your duties and**
9 **responsibilities to ensure that the protected beaches**
10 **of North Wildwood are clean?**

11 **A. My --**

12 **Q. Yeah. Is that one of your jobs?**

13 **A. No.**

14 **Q. To make sure the beach is clean.**
15 **Okay. Whose job is it?**

16 **A. Public Works.**

17 **Q. All right. And who's the present head of the**
18 **Public Works Department of North Wildwood?**

19 **A. Gary Sloan.**

20 **Q. Okay. And how long has Gary been the head of**
21 **the Public Works Department?**

22 **A. One year.**

23 **Q. And who was the head of the Public Works**
24 **Department before Gary Sloan?**

25 **A. Harry Wozunk.**

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1 **Q. Is he still with us, the gentleman?**

2 **A. No. He re -- he left.**

3 **Q. Oh, he left the employment? Is he still**
4 **alive?**

5 **A. Yes.**

6 **Q. Okay. Where does he live?**

7 **A. Cape May Court House, I believe.**

8 **Q. Okay. And how do you spell his last name?**

9 **A. W-O-Z-U-N-K.**

10 **Q. And --**

11 **A. Wozunk.**

12 **Q. And how long -- I'm sorry. I cut you off.**
13 **So far, I don't think I've cut you off.**

14 **A. No.**

15 **Q. But if I do, Mike will tell me, or you'll**
16 **tell me. Right?**

17 **A. Okay.**

18 **Q. How long was he the head of the Public Works**
19 **Department?**

20 **A. Eight years.**

21 **Q. All right. Before July 27, 2012, did**
22 **employees of the Public Works Department clean**
23 **Moore's Beach and The Inlet Beach?**

24 **A. Just where the lifeguard protection was.**

25 **Q. Okay. Well, now, remember -- I have been**
WORD FOR WORD REPORTING, LLC

1 using the phrase Inlet Beach.

2 **A. No.**

3 **Q. Okay. They never closed it -- they never**
4 **cleaned it?**

5 **A. No.**

6 **Q. All right. Now, did -- okay. Let me**
7 **rephrase that.**

8 The -- I've read all of these daily
9 logs from the North Wildwood Beach Patrol. And I see
10 references to First and Surf. All right?

11 Is First and Surf a protected beach?

12 **A. Yes.**

13 **Q. Okay. Is that the first protected beach?**

14 **A. That's the last.**

15 **Q. Oh, you go the opposite way?**

16 **A. Yes.**

17 **Q. Okay. So, First and Surf would be the last**
18 **protected beach?**

19 **A. Yes.**

20 **Q. And has that been the case for 10 years**
21 **before July 27, 2012?**

22 **A. Yes.**

23 **Q. All right. Before July 27, 2012, what**
24 **services did the North Wildwood Fire Department offer**
25 **to the members of the North Wildwood Beach Patrol**

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1 relative to any situations occurring in the -- on the
2 North Wildwood protected beaches and the water
3 connected or adjacent to it? The fire department.

4 **A. Well, if we called for their services, they**
5 **would respond.**

6 **Q.** Okay. Just give me an example, considering
7 you've been the chief for so many years, of the type
8 of services that you have observed them provide.

9 **A. A neck injury, spinal injury.**

10 **Q.** Right. So, the EMTs or the paramedics would
11 come?

12 **A. Yes.**

13 **Q.** All right. Any other services?

14 **A. That's mostly medical.**

15 **Q.** Okay. Relative to the protected beaches of
16 North Wildwood, before July 27, 2012, what services
17 would the North Wildwood Police Department provide to
18 the employees of the North Wildwood Beach Patrol?

19 **A. If we had problems with anybody on the beach,**
20 **we would call the police.**

21 **Q.** All right. You're aware that there's a
22 station located not too far from here, where the New
23 Jersey Marine Police are located. Correct?

24 **A. Yes.**

25 **Q.** All right. For how many years before July
WORD FOR WORD REPORTING, LLC

1 27, 2012 did the New Jersey Marine Police provide any
2 services to the members of the North Wildwood Beach
3 Patrol?

4 **A. How often?**

5 **Q.** How often, and what type of services?

6 **A. If we had problems in The Inlet waterway, we**
7 **would call the marine police to respond to a boat**
8 **that broke down, or a Jet Ski that broke down.**

9 **Q.** If -- if it was alleged that someone had
10 drowned --

11 **A. Yes.**

12 **Q.** -- would the marine police be called?

13 **A. Yes.**

14 **Q.** All right. Before July 27, 2012, did the
15 marine -- the New Jersey Marine Police have a set
16 schedule when they would patrol the actual inlet, the
17 body of water?

18 **A. No.**

19 **Q.** Okay. Here's the most important question,
20 and I'm joking with you:

21 How do you pronounce this? Is it
22 Hereford Inlet, or Hereford Inlet? I've heard both
23 people say both things.

24 What do you call it?

25 **A. Hereford.**

WORD FOR WORD REPORTING, LLC

1 **Q.** Hereford. Okay.

2 Do you know why it's called that?

3 **A. No.**

4 **Q.** And if I was to take you to one of those
5 aerial maps and said what is the Hereford -- Hereford
6 Inlet, would that be the body of water that is
7 adjacent to the Moore's Beach?

8 **A. Yes.**

9 **Q.** Okay.

10 All right. Let me put these away.

11 These are just extras. Okay.

12 MR. BARKER: Off the record a minute.

13 VIDEOGRAPHER: Off the record, 1:56.

14 MR. BARKER: For clarity of the record,

15 you indicated that Exhibit -- I thought you marked
16 this as Exhibit 4, this compendium.

17 MR. ROZELL: That's what I thought,
18 too.

19 MR. D'AMATO: The one that was actually
20 marked -- no, no, we marked it --

21 MR. BARKER: The compendium.

22 MR. DIJOSEPH: He has the stuff.

23 MR. BARKER: Oh, okay. So, this is

24 Exhibit 4. It had previously been marked County

25 Designee-5.

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1 MR. DIJOSEPH: Yeah, that should be 4,
2 previously marked 5 from the County.

3 MR. D'AMATO: Right.

4 MR. DIJOSEPH: They all should be the
5 same.

6 MR. BARKER: Okay. Here's my point.

7 MR. D'AMATO: Yeah.

8 MR. BARKER: I think Mr. D'Amato
9 thought that the compendium, Exhibit 4, would be a
10 series of photographs with dates on the top, like the
11 first one, 1920. But I just wanted to point out that
12 in the copy that I got, and maybe in the witness'
13 copy, I haven't looked, actually, it's composed of
14 more than just that.

15 MR. D'AMATO: It is.

16 MR. BARKER: Okay.

17 MR. D'AMATO: And you --

18 MR. BARKER: So, I didn't know if you
19 wanted to take the other things off or not.

20 MR. D'AMATO: No, I don't. I want to
21 leave it just --

22 MR. BARKER: Well, see?

23 MR. D'AMATO: Hold on. Can I have that
24 back?

25 MR. BARKER: Yeah, there's a couple

WORD FOR WORD REPORTING, LLC

1 there.

2 MR. D'AMATO: Yeah. All right. One
3 second.

BY MR. D'AMATO:

Q. Did you have an opportunity to read the
6 reports that were generated by the North Wildwood
7 Beach Patrol relative to the --

8 VIDEOGRAPHER: We're not back on the
9 video yet. Are we ready?

10 MR. D'AMATO: Let's go back on the
11 video.

12 VIDEOGRAPHER: Back on the record at
13 1:58.

14 BY MR. D'AMATO:

15 Q. Did you have the opportunity, in order to
16 prepare for this deposition, to read the reports that
17 were prepared by the North Wildwood Beach Patrol
18 relative to the drowning of Mr. Smith?

19 A. No.

20 Q. Okay. If I said to you, what is your
21 understanding of what happened to Mr. Smith, do you
22 have one?

23 A. **How I think it happened?**

24 Q. Yes.

25 A. Yes.

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1 Q. Okay. And before you tell me how you think
2 it happened, can you tell me the following: You
3 didn't see it happen; did you?

4 A. No.

5 Q. All right. So, you're basing your
6 forthcoming answer as to how it happened based on
7 what?

8 A. **Being down there all the time.**

9 Q. Okay. So, why don't you tell me how you
10 think it happened.

11 A. **At certain times of the day, when the tide is**
12 **in or out, there's a drop off along that section of**
13 **beach.**

14 Q. Okay. What do you mean by a drop off?

15 A. **It literally drops off.**

16 Q. Okay. And how long has that particular
17 condition existed, as far as you know?

18 A. **The inlet's changing all the time. Every**
19 **year, it changes.**

20 Q. Okay. For the summer season of 2012, did
21 this drop off exist before July 27, 2012?

22 A. **I don't know.**

23 Q. Okay. All right. Do you know a Dr. Stewart
24 Farrell of the resource -- the resource center that
25 does the research and prepares a lot of these papers?

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1 A. Yes.

2 Q. All right. In some of the reports that he's
3 written, and I have them here, and if I have to get
4 them, I'll get them for you, he talks about what is
5 happening in The Inlet when the back bays are going
6 out to the ocean, and vice-versa. Okay?

7 And he talks about the currents, and he
8 talks about that there are vertical and longitudinal
9 currents that are existing in that inlet.

10 Have you ever -- first, have you ever
11 heard him mention that, or did you ever --

12 A. No.

13 Q. -- read anything?

14 A. No.

15 Q. Okay. He also says that when the back bay is
16 going into the ocean, that there is a vortex or
17 whirlpool in that body of water called The Inlet?

18 A. Yes.

19 Q. Are you aware of that?

20 A. Yes.

21 Q. All right. Given the number of years that
22 you have been on the beach patrol, is that vortex or
23 whirlpool created every time the back bay moves out
24 to the ocean?

25 A. Yes.

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1 Q. All right. And I know you're not a research
2 scientist, but what is your understanding of what
3 causes that whirlpool or vortex?

4 A. **I believe it's the bay hitting the ocean at**
5 **that point.**

6 Q. Okay. If we were to go out on a boat this
7 coming summer with Mr. Barker, and everybody here,
8 would we, with your assistance, be able to see this
9 whirlpool, or vortex?

10 A. **Like I said, every year, it changes. The**
11 **beach is bigger, it's smaller.**

12 Q. Right.

13 A. **It's a lot smaller now than what it was.**

14 Q. The beach, or the whirlpool, or the vortex?

15 A. **The beach.**

16 Q. The beach. Okay.

17 But here's my question: You -- I
18 thought you said to us that that vortex or whirlpool,
19 he uses both of those words, Dr. Farrell, is there
20 every time the back bay is going to the ocean.
21 Correct?

22 A. Correct.

23 Q. All right. If we were to go out this summer
24 on a boat, would you be able to say to us, at the
25 appropriate time and the appropriate place, there's

WORD FOR WORD REPORTING, LLC

1 that whirlpool or vortex I was talking about in my
2 deposition?

3 **A. Yes.**

4 **Q.** All right. How large is this whirlpool or
vortex that you have seen in the past in The Inlet?

6 **A. Twenty-five yards.**

7 **Q.** Okay. And does it appear to be circular?

8 **A. Yes.**

9 **Q.** Okay. So, the diameter across would be about
10 25 yards?

11 **A. (Witness nods.)**

12 **Q.** All right. Now --

13 MR. BARKER: You have to answer
14 verbally, sir. When you answer a question, your
15 answer has to be verbal. I think you were shaking
16 your head.

17 **Q.** You meant yes. I know.

18 **A. Yes. I'm sorry.**

19 **Q.** That's okay.

20 Okay. I am what I call an ocean
21 swimmer. I'm not a pool swimmer. I was raised in
22 Atlantic City and Margate. I -- you know, I think I
23 know the ocean.

24 Could an average swimmer swim through
25 the vortex?

WORD FOR WORD REPORTING, LLC

1 MR. BARKER: Objection.

2 VIDEOGRAPHER: Off the record at 2:03.

3 MR. D'AMATO: I don't need to know the
4 basis of it. So, can we go back on the record.

5 VIDEOGRAPHER: Back on the record at
6 2:04.

7 BY MR. D'AMATO:

8 **Q.** Okay. You want her to read the question
9 back?

10 **A. I thought he objected to it.**

11 **Q.** No, but -- go ahead. You want to explain to
12 him?

13 MR. BARKER: I did object. And I
14 cannot direct you not to answer the question.

15 THE WITNESS: Okay.

16 MR. BARKER: And so, at this point, Mr.
17 D'Amato's going to tell you whether he's asking you
18 the same question, or he's asking you a different
19 question.

20 MR. D'AMATO: No, I'm asking the same
21 question.

A. Ask me again.

23 **Q.** Yes. She's going to ask you.

24 (Record read.)

25 **A. No.**

WORD FOR WORD REPORTING, LLC

1 **Q.** Okay. Do you have any knowledge as to
2 whether Mr. Smith was caught in that vortex?

3 **A. No.**

4 **Q.** Okay. Other than Mr. Smith, do you know of
5 any other drownings where people left Moore's Beach
6 or that Inlet Beach we've been talking about, which
7 was between Moore's Beach and Surf Avenue? Do you
8 know of any other drownings?

9 **A. No.**

10 **Q.** Okay. Now, what I want to do at this point
11 is go through certain photographs.

12 Okay. Did -- before I go to the
13 photographs, did you ever read any statement by the
14 gentleman that was with Mr. Smith as to what
15 happened?

16 **A. No.**

17 **Q.** Okay. Did you ever read the reports that
18 were generated by the North Wildwood Beach Patrol
19 relative to Mr. Smith?

20 **A. Yes.**

21 **Q.** Okay. Did you have to approve them before
22 they were issued?

23 **A. Yes.**

24 **Q.** All right. And you approved them?

25 **A. Yes.**

WORD FOR WORD REPORTING, LLC

1 **Q.** Okay. We have a statement here from the
2 gentleman that was with Mr. Smith. And I want to --
3 I'm going to hand this to you, but -- and I'm going
4 to mark it for identification as --

5 MR. D'AMATO: Hold on. Did you see
6 them?

7 MR. DIJOSEPH: Yes.

8 MR. D'AMATO: Where are they?

9 (Discussion off the record.)

10 (BassBarn Website Printout is received
11 and marked for identification as Exhibit 5.)

12 MR. D'AMATO: We found it.

13 **Q.** And I just, I want to read this for the
14 benefit of my colleagues here.

15 He says, "My best friend and I were
16 walking along Moore's Beach on The Inlet side, where
17 it meets the ocean, with our seven-year-old daughters
18 and my nine-year-old son. As we were coming up to
19 the ocean side, in less than knee deep water, my
20 friend, myself, and both our daughters fell in off a
21 ledge in the sand."

22 That's what he says, in part, here.

23 The words that I just read to you,
24 which are on this exhibit, and this was posted on
25 some website called BassBarn, as Exhibit -- and I

WORD FOR WORD REPORTING, LLC

1 marked it as Exhibit 5, did you ever hear that
2 description by the gentleman that was with Mr. Smith?

3 **A. No.**

4 **Q. Okay.**

MR. DIJOSEPH: This is an exhibit --

6 MR. D'AMATO: Yeah, it's already been
7 marked. All right.

8 (Photograph received and marked for
9 identification as Exhibit 6.)

10 **Q. Now, there is a website that you can go on**
11 **for Moore's Beach. And here is a young lady, and Mr.**
12 **DiJoseph, who's retired from the Intelligence Bureau**
13 **of the New Jersey State Police, and he's now a**
14 **licensed private investigator, he provided this for**
15 **me. You're going to see a woman with a child in her**
16 **hands standing in ankle deep water. And this water**
17 **is located right off of Moore's Beach, I could make**
18 **that representation to you.**

19 If you saw her standing there, would
20 you tell her that it's dangerous for her to stand
21 there?

22 **A. No.**

23 **Q. Okay. All right.**

24 MR. BARKER: What was that number; 5?

25 MR. D'AMATO: 5. You want to give that
WORD FOR WORD REPORTING, LLC

1 to him?

2 MR. HUNKINS: Exhibit 5?

3 MR. DIJOSEPH: No, I'm sorry. That's
4 marked 6.

5 MR. BARKER: 6? Oh, that's right.

6 MR. DIJOSEPH: 5 is BassBarn.

7 BY MR. D'AMATO:

8 **Q. Okay. Here we're going to have marked for**
9 **identification as Exhibit 7 another photograph that**
10 **was on this Moore's Beach website that shows that**
11 **people are arranging for a wedding.**

12 Did you ever see anybody getting
13 married on Moore's Beach?

14 **A. No.**

15 **Q. Okay.**

16 (Photograph is received and marked for
17 identification as Exhibit 7.)

18 MR. D'AMATO: Here's an extra one for
19 him.

20 MR. BARKER: Do you have a copy of 5
21 for us?

22 MR. D'AMATO: I'll get it for you in a
23 second. Okay? Before we leave today. Here. Take
24 this.

25 **Q. I'm going to mark for identification an**
WORD FOR WORD REPORTING, LLC

1 aerial photograph showing the condominiums. Okay?

2 All right. And the parking lot that we have
3 previously referenced.

4 And I'm going to show my colleagues
5 what I'm referring to right here. Okay?

6 MR. HUNKINS: Thank you, Paul.

7 MR. D'AMATO: All right.

8 MR. BARKER: 8?

9 MR. D'AMATO: Okay. This is Exhibit 8.

10 MR. BARKER: This side?

11 MR. D'AMATO: They're both the same.

12 (Photograph is received and marked for
13 identification as Exhibit 8.)

14 BY MR. D'AMATO:

15 **Q. Okay. Now, just get your orientation. You**
16 **would agree that we're looking at a part of Moore's**
17 **Beach?**

18 **A. Yes.**

19 **Q. Okay. The individuals that own the**
20 **condominiums, the actual condominium units, I meant**
21 **to say, in that condominium building, is there any**
22 **prohibition from those individuals sunbathing at**
23 **Moore's Beach?**

24 **A. No.**

25 **Q. Okay. In fact, there is -- there are stairs**
WORD FOR WORD REPORTING, LLC

1 that people can access from the parking lot to get to
2 Moore's Beach. Correct?

3 **A. Yes.**

4 **Q. All right. And the only stairs that -- no,**
5 **let me rephrase that.**

6 The closest stairs that exist in order
7 for someone to get to Moore's Beach would be the
8 stairs that are located from the parking lot that we
9 see in this particular exhibit. Correct?

10 **A. No.**

11 **Q. Where else?**

12 **A. Down by the corner at Moore's Beach.**

13 **Q. Let me see.**

14 **A. All the way down. There's a set of steps**
15 **that goes right onto the beach.**

16 **Q. Oh, yeah. Okay. Got it. Thank you.**

17 So, there are two sets of stairs there?

18 **A. Two sets.**

19 **Q. All right. Now, in looking at Exhibit 8,**
20 **you'll -- you'll see, and I'm going to hand this to**
21 **you in a moment, that you see an area that looks**
22 **light green, and then you see an area that is dark**
23 **green. Okay?**

24 **A. Yes.**

25 **Q. Now, in reading about this inlet from the**
WORD FOR WORD REPORTING, LLC

1 time that the Iroquois Indians were having some
2 difficulties with it, the actual depth of The Inlet
3 at different points in time, for every season, can be
4 as deep as 50, 60 feet. Correct?

MR. HUNKINS: Object to the form.

MR. BARKER: Join. You can answer.

7 **A. No.**

8 **Q.** Okay. How deep?

9 **A. The 50 or 60 foot is by Moore's Beach.**
10 **That's where it's deep. This -- this is six, ten,**
11 **along the beach.**

12 **Q.** Okay. So, at Moore's Beach, before July 27,
13 2012, was that area consistently 50, 60 feet deep?

14 **A. Yes.**

15 **Q.** All right. For what length?

16 **A. Twenty yards, twenty-five yards.**

17 **Q.** Okay. Did you go to the location where Mr.
18 Smith fell into the ocean, on the day it happened?

19 **A. Yes.**

20 **Q.** Okay. That particular area, where it
21 happened, and --

22 MR. DIJOSEPH: Which one do you want?

23 Do you want 4?

24 MR. D'AMATO: Yes, 4.

25 **Q.** Where that event took place, that you saw,
WORD FOR WORD REPORTING, LLC

1 could you put an -- tell me if on the aerial
2 photograph of April 6, 2005, as part of the
3 compendium of aerial photographs marked as Exhibit 4,
4 does this show where that event took place?

5 **A. Yes.**

6 **Q.** Okay. Could you make a half an inch X where
7 it took place.

8 **A. (Witness complies.)**

9 **Q.** Okay.

10 MR. D'AMATO: Mike, could I see that
11 for a second. Okay.

12 (Discussion off the record.)

13 MR. HUNKINS: Would it be okay for the
14 record if we indicate for the record --

15 MR. D'AMATO: I'm sorry. What?

16 MR. HUNKINS: Would it be okay to
17 indicate for the record that he put the X somewhere
18 on Inlet Beach? Would that help? I mean, it would
19 help me reading the transcript.

20 MR. D'AMATO: Yes.

21 MR. HUNKINS: Okay, thanks.

22 MR. D'AMATO: Yup. That's what he did.

23 MR. DIJOSEPH: That one.

24 MR. D'AMATO: Okay.

25 BY MR. D'AMATO:

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1 **Q.** And could you do the same thing on the aerial
2 photograph dated March 14, 2012. And make it about a
3 half an inch, so we see it -- be able to see it with
4 our old eyes.

5 **A. Um-hum.**

6 MR. BARKER: March?

7 **A. (Witness complies.)**

8 **Q.** Okay. Okay. You've made two X's on these
9 aerial photographs.

10 Give us your best estimate as to how
11 far these X's on these two photographs would be from
12 the parking lot that we've been referencing.

13 **A. Hundred yards.**

14 **Q.** Yeah. Okay. Here. Okay. Is there a phrase
15 or a word that North Wildwood lifeguards use to
16 describe, what did you call it, the cliff, was it?
17 Where you say it drops off? What was the word that
18 you used?

19 Mike, could you help me? Remember, you
20 were talking about --

21 **A. Yes.**

22 **Q.** Yeah. Does anybody remember the word he
23 used?

24 MR. GRASSI: It was drop off.

25 **A. Drop off.**

WORD FOR WORD REPORTING, LLC

1 **Q.** Drop off. Okay.

2 Is there any other word that lifeguards
3 typically refer or use relative to that drop off?

4 **A. Not to my knowledge.**

5 **Q.** Okay. And again, that drop off runs how --
6 how far, or how long is it?

7 **A. Twenty yards.**

8 **Q.** Okay. And is that drop off, and I know you
9 said this, but I'm kind of having difficulty
10 understanding it. Is every season that drop off
11 someplace along that Inlet Beach?

12 **A. Yes.**

13 **Q.** Okay. Does the drop off, season to season,
14 move?

15 **A. Yes.**

16 **Q.** Okay. And all the years that you've been
17 part of the North Wildwood Beach Patrol, is this drop
18 off, does it, like, move from, let's say, Point A,
19 and then the next year, it's like a mile away, or is
20 there a certain limitation that it stays within?

21 **A. Limitation.**

22 **Q.** And what would you say that is?

23 Like, is it, like, a quarter of a mile,
24 a tenth of a mile that it moves?

25 **A. Tenth of a mile.**

WORD FOR WORD REPORTING, LLC

1 Q. Okay. Is the beach area where you put the X
2 on the aerial photographs, where the event with Mr.
3 Smith took place, is that considered a stable beach?
MR. BARKER: Objection.
VIDEOGRAPHER: Off the record at 2:18.
6 MR. D'AMATO: You know what, from now
7 on, if you just could say to me, do we have to go off
8 the record.
9 VIDEOGRAPHER: Okay.
10 MR. D'AMATO: It will save us some
11 time. And it's not your fault.
12 VIDEOGRAPHER: Okay.
13 MR. D'AMATO: I just want to finish
14 with the witness.
15 VIDEOGRAPHER: Okay. Ready to go back
16 on?
17 MR. D'AMATO: Yeah, just one second. I
18 appreciate your objection, but I don't need to know
19 the basis of it.
20 Sometimes we just don't need to know
21 the basis of it. Okay? That's what I just said.
22 Okay. So, we go back on the video
23 record.
24 THE VIDEOGRAPHER: Back on the record,
25 2:19.

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1 BY MR. D'AMATO:
2 Q. Okay. You want the last question read back?
3 A. Yes.
4 (Record read.)
5 A. I don't know.
6 Q. Okay. Why don't you know?
7 A. I just don't know.
8 Q. Okay. Were there any warning signs on July
9 27, 2012 that would have alerted Brad Smith as to
10 this drop off?
11 A. No.
12 Q. Why not?
13 A. It's -- I can't answer that.
14 Q. Is there somebody within the government of
15 North Wildwood that you think could answer it?
16 A. I don't know.
17 Q. Okay.
18 MR. DiJOSEPH: Let me take that.
19 Q. Okay.
20 MR. D'AMATO: I did it again.
21 Oh, here we go, thanks.
22 (Photograph is received and marked for
23 identification as Exhibit 9.)
24 Q. All right. Let me show you what's been
25 marked for identification as Exhibit 9. This is

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1 another photograph that Investigator DiJoseph pulled
2 off the Moore's website for the Moore's Beach. And;
3 let me hand it to you --
4 MR. DiJOSEPH: Paul, that is a public
5 --
6 MR. D'AMATO: It's a what?
7 MR. DiJOSEPH: It's a public Facebook
8 page for the beach.
9 MR. D'AMATO: Oh, okay. All right.
10 MR. DiJOSEPH: It's a public open group
11 on Facebook called Moore's Inlet Beach.
12 MR. D'AMATO: Got it. Thank you.
13 BY MR. D'AMATO:
14 Q. Okay. Looking at that photograph, you'll see
15 people bathing, okay, and you can assume our
16 representation that that is showing you Moore's
17 Beach.
18 Did the lifeguards of the North
19 Wildwood Beach Patrol, before July 27, 2012, go to
20 Moore's Beach and tell any bathers, like the ones you
21 see in that photograph, to get out of that water, and
22 not swim there?
23 A. No.
24 Q. Before July 27, 2012, if you saw those
25 bathers right off of Moore's Beach, that is shown in

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1 that particular exhibit, would you think that it was
2 dangerous for them to be swimming, or just standing
3 in that area?
4 MR. BARKER: Objection.
5 VIDEOGRAPHER: Do we need to go off?
6 MR. D'AMATO: No.
7 Q. Yeah.
8 A. Any unprotected beach is dangerous, as far as
9 I'm concerned.
10 Q. Okay. All right. Where you see those
11 bathers, can you tell us, and again you can estimate,
12 if the bay was going out to the ocean, and the vortex
13 or whirlpool was created, how far are they from that
14 vortex or whirlpool?
15 A. 300 yards.
16 Q. Okay. And Dr. Farrell, in one of his
17 statements, and hopefully we can get to it today, he
18 says that sometimes when the back bay is going to the
19 ocean, that that water is moving at five miles per
20 hour, the water that's going out to the ocean.
21 A. Um-hum.
22 Q. Would you agree with him?
23 A. Yes.
24 Q. Would you agree that it could be more than
25 five miles per hour?

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- 1 **A. Yes.**
 2 **Q.** Ten miles per hour?
 3 **A. No, not -- not that --**
 4 **Q.** Somewhere between five and ten miles per
 5 hour?
 6 **A. Yeah.**
 7 **Q.** Or nine miles per hour?
 8 **A. Yes.**
 9 **Q.** Okay. So, we'll say somewhere between five
 10 to nine miles per hour?
 11 **A. (Witness nods.)**
 12 **Q.** Okay. Could I have that back?
 13 (Photograph is received and marked for
 14 identification as Exhibit 10.)
 15 **Q.** Let me show you what's been marked for
 16 identification as Exhibit 10. Now, you could see in
 17 the lower right-hand corner, this photograph was
 18 taken by Mr. DiJoseph on August 10, 2012.
 19 I just want to show Mr. Barker and
 20 Will. Okay?
 21 All right. You see that sign that's
 22 there?
 23 **A. (Witness nods.)**
 24 **Q.** Yeah. That sign is warning people of what?
 25 **A. No swimming.**

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- 1 **Q.** Okay. Would you agree that on July 27, 2012,
 2 there were no signs saying no walking in ankle deep
 3 water? Would you agree?
 4 **A. Yes.**
 5 **Q.** Would you agree that on July 27, 2012, there
 6 were no signs saying do not walk in water that goes
 7 to your mid calf?
 8 **A. Yes.**
 9 **Q.** Okay. Now, I'll take it back.
 10 (Photograph is received and marked for
 11 identification as Exhibit 11.)
 12 **Q.** Now, I'm going to show you what's been marked
 13 for identification as Exhibit 11. Again, this
 14 photograph was taken on August 10, 2012. All right?
 15 You'll see a series of flags, red flags. All right?
 16 Were those red flags posted there after July 27,
 17 2012?
 18 **A. Yes.**
 19 **Q.** And was this a result of -- as a result of
 20 Mr. Smith drowning?
 21 **A. Yes.**
 22 **Q.** All right. Whose idea was it to put those
 23 flags there?
 24 **A. The city administrator.**
 25 **Q.** And that was?

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- 1 **A. Lou Belasco.**
 2 **Q.** Okay. All right. What do those red flags
 3 signify? What are they warning about?
 4 **A. It's -- that's the same signal -- it's an**
 5 **international signal, no swimming.**
 6 **Q.** Okay. How long were those red flags up for
 7 the summer season of 2012?
 8 **A. How long were they up?**
 9 **Q.** Labor Day?
 10 **A. Yes.**
 11 **Q.** Okay. Were these flags that we're looking at
 12 in that photograph, were they posted in that
 13 location, or approximately next to those locations,
 14 for the summer of 2013?
 15 **A. I believe so.**
 16 **Q.** How about the summer of 2014?
 17 **A. No.**
 18 **Q.** Why not?
 19 **A. We just stopped putting them out.**
 20 **Q.** Was there any discussion with the mayor and
 21 council about not putting them out anymore?
 22 **A. No.**
 23 **Q.** You made that decision yourself?
 24 **A. Yes.**
 25 **Q.** Did you have a basis for that decision?

WORD FOR WORD REPORTING, LLC

- 1 **A. No.**
 2 **Q.** Okay. I'll take that back.
 3 (Photograph is received and marked for
 4 identification as Exhibit 12.)
 5 **Q.** I've had marked for identification as Exhibit
 6 12 another photograph taken by this investigator on
 7 August 10, 2012. And you'll see those flags again.
 8 Here's my question: Does this area
 9 show where the event took place involving Mr. Smith?
 10 And if it does, could you just put like a circle the
 11 size of a quarter.
 12 **A. I'm not sure from this angle.**
 13 **Q.** Okay. That -- let me show you what's going
 14 to be marked for identification as Exhibit 13.
 15 (Photograph is received and marked for
 16 identification as Exhibit 13.)
 17 **Q.** The gentleman that you see in that photograph
 18 is Mr. Sunderland, who was with Brad Smith at the
 19 time of the event.
 20 The fellow that you see on the Jet Ski
 21 there, standing next to the Jet Ski, is the young man
 22 who's referenced in the reports that were written by
 23 the North Wildwood Beach Patrol, and who was able to
 24 assist in bringing Mr. Smith's daughter to shore.
 25 And this photograph was, in fact, taken by Mr.

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1 DiJoseph.
 2 The significance of this, and Mr.
 3 DiJoseph some day will testify to this, is that Mr.
 4 Sunderland is standing where he says the event took
 5 place. And in one of Mr. DiJoseph's reports, he's
 6 written that the gentleman that's next to the Jet Ski
 7 said this is where the event took place.

8 Now, are you able to -- considering all
 9 the years you've been on the beach patrol, do you
 10 have a sense that where this location is is
 11 approximately a hundred yards from, I think, the
 12 parking lot? Can you tell?

13 **A. Yes.**

14 **Q.** And would you agree it is?

15 **A. Yes.**

16 **Q.** Okay.

17 **MR. D'AMATO:** You want to take that?
 18 The ones I'm not using, just put in a separate pile.
 19 Okay.

20 **Q.** Okay. Now, I'm going to have, to save some
 21 time, as one collective exhibit, four photographs
 22 that were taken by Mr. DiJoseph on August 16, 2013.
 23 I'm just -- and I'm going to clip them. And you're
 24 going to see, there's a con -- piece of concrete, and
 25 an orange ball that says no swimming. And --

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1 **MR. D'AMATO:** Is it okay with you that
 2 I just have these as one collective exhibit, or would
 3 you prefer that I mark them individually?

4 **MR. BARKER:** I prefer you mark them
 5 individually.

6 **MR. D'AMATO:** Okay.

7 (Photographs are received and marked
 8 for identification as Exhibits 14 through 17.)

9 **Q.** So, what I'm going to do is, I'm going to
 10 hand you Exhibit 14. And then I'll hand you -- hand
 11 to you another exhibit as 15. You'll see an orange
 12 ball. And I will hand to you Exhibit 16. And you'll
 13 see another orange ball. And finally, as Exhibit 17,
 14 another photograph that shows a piece of concrete and
 15 an orange ball.

16 Were -- how many of these orange balls
 17 connected to concrete were posted on the beach in
 18 North Wildwood after Brad Smith's drowning?

19 **A. Four or five.**

20 **Q.** Okay. Were they posted in areas similar to
 21 where the flags were, we saw in the other
 22 photographs?

23 **A. Yes.**

24 **Q.** Okay. Whose idea was it to come up with that
 25 configuration of a -- I'm going to call it like a

WORD FOR WORD REPORTING, LLC

1 balloon connected to a piece of concrete?

2 **A. The mayor, former mayor of North Wildwood.**

3 **Q.** Okay. Were those pieces of concrete, to
 4 which was affixed a balloon, there for the entire
 5 summer season of 2012?

6 **A. Yes.**

7 **Q.** Okay. Were they put back for the summer
 8 season of 2013?

9 **A. They were never taken out.**

10 **Q.** Okay. Did they disappear in the ocean?

11 **A. Yes. Yes.**

12 **Q.** Okay. When did they disappear?

13 **A. I can't remember if they made it to 2013.**

14 **Q.** Okay. We have to take a break, because we
 15 need a new tape. So, we'll go off the video record.

16 **VIDEOGRAPHER:** This ends videotape 1.

17 The time's 2:32. We're off the record.

18 (Recess.)

19 **VIDEOGRAPHER:** This marks the beginning
 20 of videotape 2. The time is 2:41. We're back on the
 21 record.

22 (Photograph is received and marked for
 23 identification as Exhibit 18.)

24 **BY MR. D'AMATO:**

25 **Q.** All right. I've had marked for

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1 identification as Exhibit 18 a photograph that was
 2 taken by Investigator DiJoseph on January 28, 2013.
 3 Let me hand it to you.

4 **MR. BARKER:** Before we go on into that
 5 one, I think you misspoke when you referred to
 6 Exhibit 14 through -- when you first spoke about it,
 7 you referred to the date as August 16, 2013. And
 8 they are all marked as August 16, 2012.

9 **MR. D'AMATO:** Thank you.

10 **MR. BARKER:** So, the record should
 11 stand corrected. Right?

12 **MR. D'AMATO:** Thank you.

13 **MR. BARKER:** Okay. Now, we're onto
 14 another exhibit, No. 18.

15 **BY MR. D'AMATO:**

16 **Q.** Okay. Do you have your orientation? Do you
 17 know what this photograph is showing?

18 **A. Yes.**

19 **Q.** Okay. Do you see the wooden steps that are
 20 located in the photograph?

21 **A. Yes.**

22 **Q.** All right. Does the Public Works Department
 23 of the City of North Wildwood maintain those steps,
 24 if they need repair?

25 **A. Yes.**

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1 Q. Okay.

2 MR. BARKER: Do you want back your
3 Exhibits 14 through --

4 MR. D'AMATO: Yes. I'll provide you
with color copies of everything.

6 (Photograph is received and marked for
7 identification as Exhibit 19.)

8 BY MR. D'AMATO:

9 Q. I'm now going to show you what's been marked
10 for identification as exhibit 19. For the benefit of
11 my colleagues, all right, this photograph was taken
12 July 31, 2014. Let me hand it to you. And just get
13 your orientation as to what part of the beach that
14 that is showing. Okay?

15 Do you know what part of the beach it's
16 showing there?

17 A. I believe it's from Surf Avenue looking west.

18 Q. You're correct. All right. Can I have that
19 back just for one second here.

20 This particular -- is our audio okay?

21 VIDEOGRAPHER: Off the record at 2:43.

22 Let me see if I can quiet them down a
23 little bit in a nice way.

24 (Discussion off the record.)

25 VIDEOGRAPHER: Back on the record at
WORD FOR WORD REPORTING, LLC

1 2:44.

2 BY MR. D'AMATO:

3 Q. All right. I had handed to you Exhibit 19,
4 and then I took it back. And you identified the area
5 where this, what is shown in this particular
6 photograph, and you would agree that the sign on the
7 top means no swimming?

8 A. Yes.

9 Q. All right. And is it fair to say that when
10 you see that sign, it also means it's not a protected
11 beach?

12 A. Yes.

13 Q. Okay. And below, there's another sign that
14 says, "No dogs, cats, or any other domestic animals
15 on beach May 1 to October 1," and it references
16 Ordinance No. 1416.

17 Was it the responsibility, before Mr.
18 Smith's drowning, of the North Wildwood Beach Patrol
19 to enforce the no swimming sign and the no animal
20 sign?

21 MR. BARKER: Objection. You may answer
the question.

23 A. Can you repeat that again?

24 MR. D'AMATO: Please read it back for
25 the chief.

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1 (Record read.)

2 MR. BARKER: Objection.

3 A. I don't know how to answer that question.

4 Q. Well --

5 A. Not -- the second part. You mean, if people
6 are in the water, did we enforce that sign?

7 Q. Yes.

8 A. No.

9 Q. Why not?

10 A. It's too big an area to cover.

11 Q. Okay. How about the sign below, no dogs,
12 cats, or other domestic animals?

13 A. If we got a phone call complaint, we would
14 get the dogs off the beach.

15 Q. And "we" is the beach patrol?

16 A. Or the police.

17 Q. Okay. Both of you, the beach patrol --

18 A. Yes.

19 Q. -- and the police? All right.

20 (Photograph is received and marked for
21 identification as Exhibit 20.)

22 Now, let me show you another
23 photograph that's marked for identification as July
24 31, 2014, it was taken, it's Exhibit 20. And it
25 says, "Area closed, endangered birds nesting."

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1 I've learned about the endangered
2 birds.

3 Every summer, an area is cordoned off
4 where the birds are nesting?

5 A. Yes.

6 Q. All right. Who enforces that particular
7 sign, as to what it's saying? Is that the
8 responsibility of the beach patrol?

9 A. No. Wildlife.

10 Q. Okay.

11 MR. D'AMATO: You want to take these
12 back?

13 Q. Now, do you have an understanding that Mr.
14 Smith and his family and the Sunderland family had
15 been sitting on a protected beach on July 27, 2012,
16 and had -- and that Mr. Sunderland with his son, and
17 Mr. Smith and his daughter decided to take a walk on
18 the beach? Are you aware of that?

19 A. No.

20 Q. Okay. As they are walking from the protected
21 beach, you would call it the last one, First and
22 Surf. Right?

23 A. Yes.

24 Q. As they're walking, and they're going towards
25 Moore's Beach, would there be any sign warning them

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1 of any hazardous condition located near the water's
2 edge, as they're walking?

3 **A. No.**

4 MR. D'AMATO: We're going to save a lot
5 of time here. Okay. Hold on.

6 (Photograph is received and marked for
7 identification as Exhibit 21.)

8 **Q.** I'm going to show you what's been marked for
9 identification as Exhibit 21. This was a photograph
10 that was taken June 20, 2014, almost two years after
11 the Smith incident.

12 Would you agree that these signs did
13 not exist at that location or on the North Wildwood
14 beach on July 27, 2012?

15 MR. BARKER: Objection.

16 **A. This did exist.**

17 **Q.** It did exist?

18 **A. Yes.**

19 **Q.** Okay. Let me see it for a second.

20 **A. The top -- the top part. Not the bottom.**

21 **Q.** Okay. The top part, would be the -- it looks
22 like a beach ball?

23 **A. And the blue.**

24 **Q.** The blue existed?

25 **A. Yes.**

WORD FOR WORD REPORTING, LLC

1 **Q.** Okay. Okay. The sign at the bottom that
2 says "high risk rip current area," that was posted on
3 -- at this location after the Smith incident?

4 **A. Yes.**

5 **Q.** At whose suggestion or recommendation?

6 **A. Public Works. Mr. Wozunk.**

7 **Q.** Okay. The high risk rip current area that
8 this sign refers to, is that the area located off of
9 The Inlet Beach that we were talking about earlier in
10 your deposition?

11 **A. Yes.**

12 **Q.** Okay. Did anyone have to get your approval
13 in order to post this sign that says high risk rip
14 current area?

15 **A. No.**

16 **Q.** All right. Were you even asked if --

17 **A. No.**

18 **Q.** You weren't even asked. Okay.

19 (Photograph is received and marked for
20 identification as Exhibit 22.)

21 **Q.** Let me show you a photograph that's been
22 marked for identification as Exhibit 22. The good
23 looking gentleman there is a colleague of Mr.
24 DiJoseph. He's also a licensed private investigator,
25 Charles Atkinson. And you'll see two officers that

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1 are walking on the beach. And I could tell you, I
2 was there when that photograph was taken. We were
3 right on the beach off that what you call The Inlet
4 Beach.

5 Would you agree that that shows that
6 area?

7 **A. Yes.**

8 **Q.** All right. So, you, before July 27, 2012,
9 personally observed police officers walking on the
10 beach as we see in that particular photograph?

11 **A. No.**

12 **Q.** Why not?

13 **A. This was instituted by our present mayor, the
14 walking patrols.**

15 **Q.** Okay. And when was that instituted?

16 **A. '14.**

17 **Q.** Okay. Did police officers ever patrol the
18 beach before July 27, 2012?

19 **A. They occasionally would ride down in a
20 vehicle.**

21 **Q.** Okay. All right. Could I have that?

22 MR. D'AMATO: Can you make a note to
23 see if there was a resolution or an ordinance that
24 regards that? Okay.

25 Here. You can take that.

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1 (Photograph is received and marked for
2 identification as Exhibit 23.)

3 **Q.** Okay. I'm going to now show you what's been
4 marked for identification as Exhibit 23. And there's
5 a follow-up photograph. And again, I was there when
6 this photograph was taken. Take that. And I'm going
7 to mark for identification as Exhibit 24.

8 (Photograph is received and marked for
9 identification as Exhibit 24.)

10 **Q.** Would you agree that the persons that we're
11 looking at on that vehicle are Public Works employees
12 of the City of North Wildwood?

13 **A. Yes.**

14 **Q.** Okay. Do you know who that individual is?
15 And let me hand to you 24.

16 (Discussion off the record.)

17 **A. I have no idea.**

18 **Q.** Okay. How do you know that it's a Public
19 Works vehicle?

20 **A. Because that's the type of vehicle they use.**

21 **Q.** Okay.

22 **A. The little cart on the back.**

23 **Q.** Would you agree that they're on what you and
24 I have been calling The Inlet Beach?

25 **A. Yes.**

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1 Q. Okay. In the parking lot located near the
2 condominiums, there was or -- there was, when I was
3 there during the summertime, a porta potty. A blue
4 porta potty.

Did you ever see it?

6 A. **On the beach, or on the parking lot?**

7 Q. In the parking lot.

8 A. **Yes.**

9 Q. Who puts that there?

10 A. **Public Works.**

11 Q. Okay. And there's also a small little house.

12 Is that where people can bathe in there?

13 A. **No. That's the restrooms.**

14 Q. Okay. And who maintains those?

15 A. **Public Works.**

16 Q. Okay. All right.

17 (Photograph is received and marked for
18 identification as Exhibit 25.)

19 Q. Let me show you a photograph marked for
20 identification as Exhibit 25. This was taken by Mr.
21 DiJoseph on May 21, 2014. And I'm going to mark
22 another photograph that shows you a close-up as
23 Exhibit 26.

24 (Photograph is received and marked for
25 identification as Exhibit 26.)

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1 Q. Mr. DiJoseph, he wrote a report that
2 indicates that this was a Public Works tractor.

3 A. **Yes.**

4 Q. Front end loader.

5 Was that front end loader taking sand
6 from the Moore's Beach area and putting it on a
7 protected beach?

8 MR. BARKER: Objection.

9 A. **No.**

10 Q. No? Do you know what it was doing?

11 A. **There's an out fall pipe there, that they
12 have to dig out to clear the -- so the water can
13 flow.**

14 Q. Got it. And Public Works take care of that.
15 Correct?

16 A. **Yes.**

17 Q. Yeah?

18 A. **Yes.**

19 (Photograph is received and marked for
20 identification as Exhibit 27.)

21 Q. Okay. Let me show you what's been marked for
22 identification as Exhibit 27. This photograph was
23 taken by a Mrs. Patricia Possey, P-O-S-S-E-Y. These
24 photographs have been supplied to counsel. And this
25 was after the Brad Smith incident.

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1 Did you become aware of the beach in
2 The Inlet Beach area collapsing as shown in this
3 particular photograph?

4 MR. BARKER: Objection.

5 MR. HUNKINS: Can I -- sorry. Are you
6 objecting?

7 MR. BARKER: I'm objecting.

8 MR. HUNKINS: I was wondering if you
9 could represent the date the photo was taken.

10 MR. D'AMATO: It's in the interview
11 here. Go ahead.

12 (Discussion off the record.)

13 MR. D'AMATO: My recollection is when
14 we -- when Mr. DiJoseph interviewed her, it was --
15 this event took place the summer of 2013. 2013.

16 MR. DIJOSEPH: August 3rd, 2014.

17 MR. D'AMATO: 2014. Okay. I was
18 wrong. Okay, here.

19 MR. DIJOSEPH: Oh, no. See, provided
20 to NBC 10 News in September 2012. And we interviewed
21 her August 3rd, 2014.

22 MR. D'AMATO: Okay. Let me just put
23 this on this record.

24 Q. And I've given this statement to your
25 attorneys. But I'll just mark it as part of the

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1 record.

2 This is an interview of Patricia
3 Possey, this report is dated August 4, 2014. And she
4 said that she provided this video to NBC 10 News in
5 September of 2012. Okay? So, here. I'm going to
6 hand that to Mr. Barker. You really don't have to
7 read that, because I want to ask you about this
8 photograph. Where is it?

9 Can I have that, please?

10 MR. BARKER: Certainly.

11 MR. D'AMATO: Yeah. All right. All
12 right.

13 MR. HUNKINS: And I hate to interrupt,
14 but just for the follow-up, we know she gave it to
15 them in September of 2012. Do we know the date she
16 took it?

17 MR. DIJOSEPH: It's in the report.

18 MR. HUNKINS: Oh, it's in the report?

19 MR. D'AMATO: You have this report.
20 I'd just like to move on. Okay?

21 MR. HUNKINS: Yeah.

22 Q. I believe it was taken in September 2012.
23 All right.

24 Here's my question: First, do you
25 recall seeing the beach in this condition back in

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1 September 2012?

2 **A. No.**

3 MR. BARKER: Objection. But you can
4 answer.

5 **Q.** Okay. Have you ever seen conditions like
6 what is shown in Exhibit 27 along the North Wildwood
7 beaches, protected or unprotected, before September
8 27, 2012?

9 **A. Yes.**

10 **Q.** Okay. What locations, if you will, in the
11 City of North Wildwood?

12 **A. Moore's Beach.**

13 **Q.** Okay. Given the number of years that you
14 have been a member of the North Wildwood Beach
15 Patrol, can you explain why a condition like this
16 occurs?

17 **A. No.**

18 **Q.** Okay.

19 MR. D'AMATO: That's unused. This is
20 used.

21 MR. DIJOSEPH: I need the report.

22 MR. D'AMATO: That's all right.

23 (Discussion off the record.)

24 **Q.** Okay. Here. These are unused. Okay?

25 All right. Don't need those. Here.

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1 Take this. What am I up to now; 23?

2 MR. DIJOSEPH: 29.

3 (Photograph is received and marked for
4 identification as Exhibit 29.)

5 **Q.** Okay. Let me show you a photograph that's
6 been marked for identification as Exhibit 29.

7 MR. DIJOSEPH: It's from the public
8 Facebook profile.

9 MR. D'AMATO: Okay. Mr. DiJoseph
10 advises me that that is from the -- what?

11 MR. DIJOSEPH: Moore's Inlet Beach
12 public Facebook group.

13 **Q.** Okay.

14 MR. BARKER: Date?

15 MR. DIJOSEPH: I believe it's like
16 August 2015, it says. Somewhere in that area.

17 MR. HUNKINS: Meaning, that's the date
18 it was taken?

19 MR. DIJOSEPH: That's the date it was
20 posted on the Facebook page. I don't know when it
21 was taken.

22 BY MR. D'AMATO:

23 **Q.** Okay. When you referred to the drop off
24 earlier in your testimony, does this photograph show
25 what you call a drop off?

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1 **A. No.**

2 **Q.** Okay. How is a drop off different than the
3 photograph that you have in your hand?

4 **A. It's along the water's edge. It's in the
5 water.**

6 MR. HUNKINS: Meaning?

7 **Q.** So, that -- wait. Okay.

8 When you say it's in the water, so that
9 if I'm standing on land, I can't see the drop off.

10 Correct?

11 **A. Yes.**

12 **Q.** Okay. The area that's shown in that
13 photograph, is that Moore's Beach?

14 **A. No.**

15 **Q.** Is that Inlet Beach?

16 **A. Yes.**

17 **Q.** Okay.

18 MR. D'AMATO: For the record, he was
19 referring to Exhibit 29.

20 Here we go. Hold on. Okay. You can
21 take that. You can take that. Put that away. Thank
22 you. Here.

23 (Discussion off the record.)

24 MR. D'AMATO: Is that mine, Mike, or is
25 that yours?

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1 MR. BARKER: That's what you gave me.

2 MR. D'AMATO: Okay.

3 (Discussion off the record.)

4 MR. D'AMATO: All right.

5 What exhibit number are we up to now?

6 MR. BARKER: 30.

7 (Discussion off the record.)

8 (Photograph is received and marked for
9 identification as Exhibit 30.)

10 BY MR. D'AMATO:

11 **Q.** Okay. Let me show you what's been marked for
12 identification as Exhibit 30. This was sent to me by
13 Mr. Barker. And I'll hand it to you. It is a memo
14 to Attorney William Kaufman, who I believe is your
15 city solicitor, from Ronald Simone, administrative
16 assistant, it's dated August 27, 2015.

17 Have you ever seen this document
18 before?

19 **A. Can I open it?**

20 **Q.** Sure, sure. You'll see on the next page, it
21 says North Wildwood Beach Patrol Rescue Report.

22 **A. This actual report?**

23 **Q.** Yes.

24 **A. I've never seen this.**

25 **Q.** Okay. The gentleman, Ronald Simone,

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1 administrative assistant, do you know to whom he is
2 an administrative assistant?

3 **A. To the mayor.**

4 **Q.** Mayor? Okay.

MR. D'AMATO: Spez, just we've got to
6 send out a letter, so we can take Mr. Simone's
7 deposition.

8 MR. SPEZIALI: Got it.

9 **Q.** All right.

10 MR. BARKER: I'll take the extra copy,
11 if you want.

12 MR. DIJOSEPH: Mr. Barker.

13 MR. BARKER: Yeah. 30.

14 (Photograph is received and marked for
15 identification as Exhibit 31.)

16 BY MR. D'AMATO:

17 **Q.** Okay. Let me show you what's been marked for
18 identification as Exhibit 31. Give a copy to Mr.
19 Barker, and an extra copy for the mayor, if he wants
20 to look at it.

21 MR. ROSENELLO: Thanks.

22 **Q.** This is a transcription of a conversation
23 that former Lieutenant Lindsay had with a Mrs.
24 Simpson.

25 Have you ever seen this transcript
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1 before?

2 **A. No.**

3 **Q.** Okay. Can I take you to page 4. The numbers
4 are in the upper right-hand corner. Okay?

5 I want to read into the record, because
6 I don't have copies for all the rest of the
7 attorneys, what Lieutenant Lindsay said, and we
8 actually have the recording of this.

9 "Yeah. At low tide, between mid and
10 low tide, the gentleman that drowned last year, when
11 -- we called him out of the water here, so they said,
12 'Okay, we can't go in the water, let's go for a
13 walk.' They're walking, him and his friend and their
14 two daughters, and they're in ankle deep water, and
15 they're right there, and they fell into the 30-foot
16 deep."

17 Now, I'm just going to stop there, and
18 I'll continue in a second.

19 The area, according to Lieutenant
20 Lindsay, where this event took place, it was 30-foot
21 deep.

Do you agree or disagree?

23 **A. Disagree.**

24 **Q.** Okay. And again, how many feet do you think
25 it is?

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1 **A. Ten.**

2 **Q.** Okay. Let me continue with the quote.

3 "And the thing is, is when from mid
4 tide to low tide, all the water in the back bay is
5 rushing out, and it doesn't -- the only place -- all
6 sand bars here, okay."

7 Then Mrs. Simpson says, "Oh." And
8 Lieutenant Lindsay says, "Here to Stone Harbor, all
9 that water comes out right through here."

10 Mrs. Simpson: "It's causing, like, a
11 canal?"

12 Lieutenant Lindsay: "It's like a
13 river. So, you -- they fell in here, and before they
14 knew it, they were getting sucked out, and he, the
15 one little girl, got on the dad's back, they managed
16 to swim, he managed to make it to shore. The other
17 little girl got picked up by a Jet Ski, bought in --
18 brought in. The Jet Ski went back out to get the
19 father. And by the time he got back out, the father
20 must have panicked, and once you panic, you're --
21 you're done."

22 My question to you is this: Did you
23 ever become aware of the existence of this recorded
24 conversation between Mrs. Simpson and Lieutenant
25 Lindsay?

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1 **A. No.**

2 **Q.** All right. There is the first time you ever
3 heard of it?

4 **A. Yes.**

5 **Q.** Okay. Okay. If I could take you to page 7.
6 Okay? And I'm getting to the part of his statements
7 that I want to ask you a question about.

8 "We could get the state and have this
9 whole -- from there to the Greek church, the rocks,
10 shut down. But then you run --"

11 Mrs. Simpson says: "Because of the
12 bars?"

13 Lieutenant Lindsay: "Then you run into
14 the people with the, you know, the bars, and the
15 condo owners, who want to walk over the bulkhead and
16 be on the beach. And for the local people, they
17 know, you know, they -- they know how dangerous it
18 is, but a guy comes down from Philly with his family,
19 and they're, like, because of a lot of -- a lot of
20 people, when we go down and say, 'Hey, you can't be'
21 -- they're, like, 'Oh, we didn't know, thanks for
22 telling us.'"

23 I have a couple questions. Did you,
24 personally, ever feel any pressure from any of the
25 bar owners in the area of Moore's Beach to keep

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1 Moore's Beach an area that was not closed down?

2 **A. Repeat that.**

3 **Q.** Okay. Let me change it up a little bit.

4 All right. Did you, before July 27,
5 2012, ever get any pressure from any of the bar
6 owners not to close down what we've been calling
7 Moore's Beach?

8 **A. No.**

9 MR. HUNKINS: Object to the form.

10 **Q.** How about from the condo owners?

11 **A. No.**

12 **Q.** Did anybody ever tell you, in city
13 government, that they were getting pressure from the
14 bar owners or the owners of the condos in that
15 condominium next to Moore's Beach that those
16 individuals didn't want Moore's Beach closed down, so
17 no one could sit on it?

18 **A. No.**

19 **Q.** Okay. Okay. I'll take that back.

20 (Discussion off the record.)

21 **Q.** Now, I have a series of North Wildwood patrol
22 daily reports.

23 MR. D'AMATO: Oh, here's an extra copy.

24 Mike, is this yours you gave you, or did you take it?

25 MR. BARKER: You brought it here.

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1 MR. D'AMATO: No, I know, but --

2 MR. BARKER: I don't think I brought
3 that into the room.

4 MR. D'AMATO: No, but we gave you a
5 copy. And I wonder if I took your copy. Is it --

6 MR. BARKER: Oh, you gave me a copy?

7 Then --

8 MR. D'AMATO: Yeah, okay.

9 MR. BARKER: No, I didn't know you did.

10 MR. D'AMATO: Here. All right. Sorry.

11 MR. BARKER: Did it have an exhibit

12 number, by the way, or --

13 MR. D'AMATO: Yes.

14 MR. DiJOSEPH: It did. It was the memo
15 from Mike Barker to Attorney Kaufman was Exhibit No.
16 30.

17 MR. BARKER: Yeah, but this is
18 something different. This is to Paul from me, dated
19 -- it's like a discovery.

20 MR. DiJOSEPH: That's not an exhibit.

21 MR. D'AMATO: No. Everybody, the

22 attachment is an exhibit. I didn't attach the

23 letter.

24 MR. BARKER: Oh, okay.

25 MR. D'AMATO: Okay? All right.

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1 MR. ROZELL: It's the Ron Simone
2 report.

3 MR. BARKER: Yeah. I have the report.

4 BY MR. D'AMATO:

5 **Q.** Okay. Did you read any North Wildwood Beach
6 Patrol daily reports in order to prepare for this
7 deposition?

8 **A. No.**

9 **Q.** All right. The -- let's see if we can do it
10 this way: Were there any occasions before July 27,
11 2012 where North Wildwood lifeguards had to
12 effectuate a rescue of a person that was in the water
13 off of Moore's Beach?

14 **A. Yes.**

15 **Q.** Okay. Now, let's go south to The Inlet
16 Beach.

17 Were there occasions before July 27,
18 2012 where lifeguards of the North Wildwood Beach
19 Patrol had to effectuate a rescue of someone that was
20 swimming off of what we've been calling The Inlet
21 Beach?

22 **A. Yes.**

23 **Q.** Okay. From your experience, is it safe to
24 say that in all the years that you have been a member
25 of the North Wildwood Beach Patrol, that before July

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1 27, 2012, there were occasions during the summer
2 season when North Wildwood lifeguards had to
3 effectuate rescues of individuals swimming both off
4 the Moore's Beach and off of The Inlet Beach?

5 MR. BARKER: Objection.

6 **A. Yes.**

7 MR. BARKER: You may --

8 **Q.** Okay. Typically, how would your lifeguards
9 be alerted to the fact that they had to effectuate a
10 rescue off of Moore's head -- Moore's Beach and The
11 Inlet Beach?

12 MR. BARKER: Objection. You may
13 answer.

14 **A. Police department, we would monitor the
15 police radio. The police would get a call,
16 somebody's in distress, Moore's or The Inlet, and we
17 would respond.**

18 **Q.** Okay. Let's do this: All right. Before
19 July 27, 2012, do you know if any of your lifeguards
20 had to effectuate a rescue of someone that fell into
21 that drop off that you and I were talking about
22 earlier?

23 MR. BARKER: Objection.

24 **A. No.**

25 **Q.** Okay.

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1 (Discussion off the record.)
 2 (North Wildwood Beach Patrol Daily
 3 Report is received and marked for identification as
 4 Exhibit 32.)
 5 BY MR. D'AMATO:
 6 **Q.** Let me show you a daily report from the North
 7 Wildwood Beach Department, or Beach Patrol, I meant
 8 to say. It's dated June 19, 2010.
 9 What I've done, to save some time, is
 10 to highlight what I'm going to ask you a question
 11 about, to save some time.
 12 And on 32, it says -- may I have this?
 13 "Two boogie boarding adults from The Inlet with Guard
 14 Lydon, no other incidents on a busy day."
 15 Now, when the author of that refers to
 16 The Inlet, given the fact that you're the chief of
 17 the beach patrol, is he referring to the body of
 18 water that we earlier called The Inlet, or is he
 19 referring to The Inlet Beach, if you can tell from
 20 that document?
 21 **A. He's referring to the guarded beach.**
 22 **Q.** Okay. And what guarded beach would that be?
 23 **A. Surf Avenue, Ocean Avenue.**
 24 **Q.** I got you. Okay. Thank you.
 25 (Discussion off the record.)
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1 (North Wildwood Beach Patrol Daily
 2 Report is received and marked for identification as
 3 Exhibit 33.)
 4 **Q.** All right. All right. I'm now going to hand
 5 you what's been marked for identification as Exhibit
 6 33, a daily report dated July 25, 2010. And you'll
 7 see a reference to one inlet rescue. And my question
 8 is, can you tell from that document where the rescue
 9 -- no, more precisely, off of what beach the rescue
 10 took place?
 11 **A. This would be in the unguarded area.**
 12 **Q.** Okay.
 13 **A. Because it's a kayak.**
 14 **Q.** Okay. That would be Moore's Beach?
 15 **A. Moore's Beach, or --**
 16 **Q.** Or The Inlet Beach?
 17 **A. The Inlet Beach.**
 18 **Q.** Okay. Thanks. All right.
 19 (North Wildwood Beach Patrol Daily
 20 Report is received and marked for identification as
 21 Exhibit 34.)
 22 **Q.** Now, I'm going to hand to you what's been
 23 marked for identification as Exhibit 36. It's dated
 24 July 28, 2010.
 25 MR. DIJOSEPH: You're on 34.
 WORD FOR WORD REPORTING, LLC

1 MR. D'AMATO: I'm sorry. Yep, you're
 2 right. That should be 34.
 3 Okay. Do you have that?
 4 **Q.** July 28, 2010. It says, "Kite surfer stuck
 5 in channel for 15 minutes."
 6 Can you tell where that event took
 7 place, in looking at that report? I know the --
 8 **A. Out in Hereford Inlet.**
 9 **Q.** Okay. And -- okay. You can take that.
 10 (North Wildwood Beach Patrol Daily
 11 Report is received and marked for identification as
 12 Exhibit 35.)
 13 **Q.** All right. Now, I'm going to show you, yep,
 14 one dated July 31, 2010, and this is Exhibit 35. And
 15 the highlighted part says, "3:55, Guard Lydon saw a
 16 group at The Point that was about 200 yards out.
 17 They drifted down from Moore's, and two of the
 18 victims were shaken up."
 19 Where was that rescue effectuated?
 20 **A. About a hundred yards from Moore's Beach.**
 21 **Q.** Okay. And that was off of an unprotected
 22 beach. Correct?
 23 **A. Yes.**
 24 (North Wildwood Beach Patrol Daily
 25 Report is received and marked for identification as
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1 Exhibit 36.)
 2 **Q.** All right. Let me show you a report dated
 3 August 23, 2010, marked for identification as Exhibit
 4 36. The highlighted part says, "Second and Surf
 5 rescue at The Point. People drifted down from
 6 Moore's."
 7 From your experience, was it unusual to
 8 see that people who had come from Moore's Beach into
 9 the water were drifting down towards The Inlet Beach?
 10 MR. BARKER: Objection.
 11 **A. I'm confused the way they wrote this.**
 12 **Okay. Second and -- they -- they went**
 13 **in a hundred or so yards from Moore's, and drifted in**
 14 **the current.**
 15 **Q.** Okay. All right.
 16 **A. It was probably an outgoing tide.**
 17 (North Wildwood Beach Patrol Daily
 18 Report is received and marked for identification as
 19 Exhibit 37.)
 20 **Q.** Okay. Let me show you what has been marked
 21 for identification as Exhibit 37. It's a report
 22 dated August 25, 2010. And the highlighted part
 23 says, "Major rescue off Moore's Beach. Fisherman
 24 fell off sea wall."
 25 It's back in 2010. Do you remember a
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1 fisherman falling off a sea wall?

2 **A. Yes.**

3 **Q.** Is that something that happened more than
4 once, in your career?

5 **A. That's the first -- one time only, that I**
6 **know of.**

7 **Q.** Okay. Okay.

8 (North Wildwood Beach Patrol Daily
9 Report is received and marked for identification as
10 Exhibit 38.)

11 **Q.** Let me show you what's been marked for
12 identification as Exhibit 38. It's a daily report,
13 has a date of August 31, 2010. August 31, 2010. And
14 the highlighted part says, "Rescue at 'The Point.'"
15 Okay?

16 Can you tell from that document what
17 the author -- what specific area of the beach he is
18 referring to? That was Lieutenant Lindsay.

19 **A. He referred to that area as The Point. The**
20 **beach patrol did not refer to that. That was his**
21 **description.**

22 **Q.** Got it. Okay. So, we'll ask Lieutenant
23 Lindsay when we take his dep. All right.

24 Okay. Let's see here.

25 What I'm doing is, I'm -- because we're
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1 going to take Mr. Lindsay's deposition, I'm not going
2 to ask you about these.

3 MR. D'AMATO: Here you go. Take these.

4 It will be easier to find this. Okay?

5 **Q.** Before July 27, 2012, did the members of your
6 beach patrol have to effectuate any rescues relative
7 to Jet Ski accidents that had taken place off of
8 Moore's Beach and/or The Inlet Beach?

9 **A. Yes.**

10 **Q.** Can you give us an estimation in the
11 summertime how many rescues occur relative to Jet Ski
12 accidents?

13 **A. Half a dozen.**

14 **Q.** And how were the members of your patrol
15 alerted to the fact that a Jet Ski accident takes
16 place?

17 **A. Police radio. Somebody called 911.**

18 **Q.** Okay. Okay. Okay. Here, take these.

19 (North Wildwood Beach Patrol Daily
20 Report is received and marked for identification as
21 Exhibit 39.)

22 The next exhibit is dated July 24,
23 2011. I'm marking it as Exhibit 39. And my question
24 of you is about the entry here under ocean rescues.
25 Again, it's dated July 24, 2012.

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1 It says, "Guard Ryan Sanki - rescue
2 on woman 50 yards outside swim zone ignoring
3 whistles."

4 (Discussion off the record.)

5 MR. D'AMATO: July 24, 2011. Excuse
6 me. 2011.

7 **Q.** What swim zone is the author of this
8 referring to?

9 **A. The Surf Avenue chair, we put a flag west of**
10 **it, no swimming. This is referring to a woman that**
11 **was past the flag that went in the water.**

12 (North Wildwood Beach Patrol Daily
13 Report is received and marked for identification as
14 Exhibit 40.)

15 **Q.** Thank you. Okay. The next one is dated May
16 26, 2012, a couple months before the Smith event.
17 And the highlighted portion reads, "Two rescues,
18 guards, Goss and Muso did a good job on controlling
19 the crowd at First and Surf. There are heavy crowds
20 at First Street due to the parking lot."

21 Can you explain what he means that
22 there are heavy crowds due to the parking lot?
23 What's the connection?

24 **A. Well, there's a --**

25 MR. BARKER: Objection. You may
WORD FOR WORD REPORTING, LLC

1 answer.

2 **A. The city made a parking lot, and people come**
3 **down to the beach and park there, so they go out on**
4 **the First and Surf.**

5 **Q.** Got it. And from that parking lot that we've
6 been referring to that's next to the condominiums,
7 individuals that park their cars there, can take one
8 set of steps to get right on Moore's Beach?

9 **A. Yes.**

10 **Q.** All right. Okay. Here you go. You don't
11 have to get this one.

12 (North Wildwood Beach Patrol Daily
13 Report is received and marked for identification as
14 Exhibit 41.)

15 **Q.** Exhibit 41 is a daily report dated July 4,
16 2012. Couple weeks before Brad Smith's drowning.
17 The author, under ocean rescue, says,
18 "Two Jet Ski prevents at Moore's Beach."

19 You'll see that phrase, preventions, or
20 prevents, used in all these reports.

21 Can you tell what the author means from
22 that, by prevents?

23 MR. BARKER: Objection. You may
24 answer.

25 **A. They took the WaveRunner Jet Ski down to**
WORD FOR WORD REPORTING, LLC

1 **Moore's Beach, people were swimming out, Champagne**
2 **Island, and they prevented them from doing that.**

3 **Q.** Okay. I've been educated by locals as to
this Champagne Island.

Is there any prohibition from a person
6 who's on The Inlet Beach, not Moore's Beach, The
7 Inlet Beach, from swimming to Champagne Island? A
8 prohibition.

9 **A. No.**

10 **Q.** Okay. Is there any prohibition for someone
11 swimming to Champagne Island from Moore's Beach?

12 **A. No.**

13 **Q.** Okay. How many rescues in a given summer
14 before July 27, 2012 did your lifeguards have to
15 effectuate relative to people who were trying to swim
16 from Moore's Beach and/or The Inlet Beach to
17 Champagne Island and vice-versa?

18 **MR. BARKER:** Objection. You may answer
19 the question.

20 **Q.** Go ahead.

21 **A. About a dozen a summer.**

22 (North Wildwood Beach Patrol Daily
23 Report is received and marked for identification as
24 Exhibit 42.)

25 **Q.** All right. Let me show you what's been
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1 marked for identification as Exhibit 42. This is a
2 report dated August 17th, 2012.

3 And I'm going to hand it to you, and I
4 want to ask you, at the bottom, it says, "Lifeguard
5 issues - concerns - comp time used." It says, "Five
6 preventions at The Point."

7 Given your years as the chief of the
8 beach patrol, and again, you'll see that the crew is
9 Edwards and Lindsay, is The Point, The Inlet Beach,
10 that we've been referring to?

11 **A. Yes.**

12 **Q.** Okay. All right.

13 (North Wildwood Beach Patrol Daily
14 Report is received and marked for identification as
15 Exhibit 43.)

16 **Q.** Now, let me hand to you what's been marked
17 for identification as Exhibit 43. And this is dated
18 August 18, 2012. And at the bottom, it says, "Seven
19 preventions at Inlet. Notified" -- I don't know if
20 that's PD or PB -- "since alcohol was involved."

21 I'm thinking it means police.

22 Again, can you tell from that, when it
23 says at The Inlet, does that mean The Inlet Beach, or
24 the body of water called The Inlet? Can you tell
25 from that?

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1 **A. Inlet Beach.**

2 **Q.** Okay.

3 (North Wildwood Beach Patrol Daily
4 Report is received and marked for identification as
5 Exhibit 44.)

6 **Q.** Okay. Now, let me show you what's been
7 marked for identification as Exhibit 44. It's a
8 daily report dated August 19, 2012. And at the
9 bottom, the same category, again, it says, "Eight
10 preventions at The Point."

11 Okay. Now, when it says eight
12 preventions, does that -- if you can tell, does that
13 mean preventing eight people from going into the
14 water? What -- I don't understand this term
15 preventions.

16 **MR. BARKER:** Objection. You may answer
17 the question, if you can.

18 **A. They were trying to stop people from going in**
19 **the water there.**

20 **Q.** Got it. Thank you.

21 (North Wildwood Beach Patrol Daily
22 Report is received and marked for identification as
23 Exhibit 45.)

24 **Q.** Let me show you what's been marked for
25 identification as Exhibit 45. It's a daily report

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1 dated August 20, 2012. At the bottom, it says, "Ten
2 preventions at Point."

3 Would your answer be the same as it
4 just was, that they're trying to prevent --

5 **A. Yes.**

6 **Q.** -- people from going -- that are on The
7 Point, the beach, going into the water?

8 **A. (Witness nods.)**

9 **Q.** Okay.

10 **MR. BARKER:** You have to answer
11 verbally.

12 **A. Yes.**

13 **Q.** All right. Here. Finished with these.
14 These are unused. Or actually duplicates. Okay?

15 **MR. D'AMATO:** If we can go off the
16 video and steno record. It --

17 **VIDEOGRAPHER:** Off --

18 **MR. D'AMATO:** Just one second. It will
19 save some time, because I think I'm almost finished.
20 I just want to look at my notes here. Okay?

21 **MR. BARKER:** Certainly.

22 **MR. D'AMATO:** But nobody has to go far.
23 Because I could do this real quick.

24 **VIDEOGRAPHER:** Off the record at 3:31.
25 (Discussion off the record.)

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1 VIDEOGRAPHER: We're back on the record
 2 at 3:36.
 3 BY MR. D'AMATO:
 4 Q. Chief, I feel I have four questions, maybe
 5 not, some follow-up questions.
 6 When I was on the beach the past couple
 7 summers, I saw ice cream vendors.
 8 Now, in order to sell ice cream on the
 9 beaches of North Wildwood, do you need a mercantile
 10 license?
 11 A. Yes.
 12 Q. All right. Is it the responsibility of the
 13 lifeguards to determine if someone's on the beach and
 14 whether they have a mercantile license or not?
 15 A. No.
 16 Q. Is that the police department's
 17 responsibility?
 18 A. Yes.
 19 Q. Okay. From your experience, before July 27,
 20 2012, were the ice cream vendors, if they were able
 21 to, take their cart and sell ice cream to people who
 22 were sitting on The Inlet Beach?
 23 A. Yes.
 24 Q. As well as Moore's Beach?
 25 A. Yes.

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1 Q. Now, what about getting a permit to operate a
 2 vehicle on the beach, is that something that came
 3 under the jurisdiction of the beach patrol, or the
 4 police department?
 5 A. Police department.
 6 Q. Okay. Were there ever occasions before July
 7 27, 2012 where your lifeguards had to alert the North
 8 Wildwood Police Department that somebody was trying
 9 to operate some sort of vehicle on the beach, that
 10 you know of?
 11 A. Not that I know of.
 12 Q. No. Did you ever read the North Wildwood
 13 ordinance that deals with the beaches of North
 14 Wildwood? It's Ordinance -- it's Chapter 138, and
 15 the subsection is Section 196-1.
 16 Did you ever read that ordinance?
 17 A. Yes.
 18 Q. Okay. I could find you the definition here
 19 in a second, but the -- you know what, I'm -- I might
 20 have to -- let me do this. I'm going to have Joe ask
 21 you his questions, and let me find it. I have a -- I
 22 want to get a clean copy of what I have here.
 23 So, I'm finished. I thank you for your
 24 time. I hope you thought I was being fair with you.
 25 I know it was your first deposition. Thank you.

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1 MR. D'AMATO: Off the video record.
 2 (Discussion off the record.)
 3 MR. GRASSI: Do you have questions?
 4 MR. HUNKINS: Just a couple, yeah.
 5 MR. GRASSI: You want to go now?
 6 MR. HUNKINS: No, you can go.
 7 MR. D'AMATO: Joe, you want to sit
 8 here?
 9 MR. GRASSI: I don't think I need to do
 10 that. I might need your help with the exhibits. So,
 11 I'm going to refer back to Exhibit 5 and Exhibit 4.
 12 So, if you could give those to --
 13 MR. DiJOSEPH: 4 and 5?
 14 MR. GRASSI: Yeah, 4 and 5.
 15 MR. HUNKINS: Off the record. I was
 16 going to ask about Exhibit 13, also. So, if you pull
 17 them out. Sorry.
 18 MR. GRASSI: What number are we up to?
 19 MR. DiJOSEPH: We are at 45.
 20 MR. GRASSI: Okay. So, why don't we
 21 have this marked as 46.
 22 MR. D'AMATO: Okay.
 23 (Newspaper Article is received and
 24 marked for identification as Exhibit 46.)
 25 (Discussion off the record.)

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1 MR. GRASSI: While Mr. Cavalier's
 2 reviewing those exhibits, which one was 5?
 3 MR. DiJOSEPH: 5 is the Bass --
 4 (Discussion off the record.)
 5 MR. GRASSI: Exhibit 6, could we see
 6 Exhibit 6?
 7 All right. So, I said I wasn't going
 8 to move down there, but if it's going to help the
 9 court reporter, maybe I should.
 10 VIDEOGRAPHER: Let's go off the record
 11 at 3:42.
 12 (Discussion off the record.)
 13 VIDEOGRAPHER: We're back on the record
 14 at 3:43.
 15 EXAMINATION
 16 BY MR. GRASSI:
 17 Q. All right. So, Chief, I want to show you
 18 first an exhibit that Mr. D'Amato asked you a
 19 question about. That's Exhibit 6. And he asked you,
 20 I think, whether you would warn that woman that she
 21 was in some danger, or whether you would order her
 22 out of the water. And you said no?
 23 A. Correct.
 24 Q. Why is that?
 25 A. Because you can see past her, where the water

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1 -- the color of the water changes, that's where it
2 gets deeper.

3 Q. Okay.

4 A. She's standing in flat -- a flat area.

5 Q. All right. Okay. So that where she's
6 standing, she's not at the drop off; is she?

7 A. No.

8 Q. Are you able to see the drop off in the
9 photograph that she's in?

10 A. I would say where the water changes color.

11 Q. Okay. So, it's hard from the perspective,
12 but it's not very far from where she's standing, that
13 the water seems to drop -- that the water changes
14 color. Is that right?

15 A. Yes.

16 Q. Maybe 10 feet?

17 A. No. That's probably -- I'll bet that's 20
18 yards from where she's standing.

19 Q. Okay. And again, I say it's difficult with
20 the drop off.

21 A. Yes.

22 Q. But, in fact, if you go to the Exhibit 46,
23 that I had placed in front of you.

24 MR. BARKER: That's the newspaper
25 article?

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1 Q. That's a newspaper article from the Shore
2 News, that's a local North Wildwood paper, or
3 Wildwood paper, that you're familiar with; aren't
4 you?

5 A. This article? Yes.

6 Q. Well, the newspaper, in general, and that
7 particular article.

8 A. Yes.

9 Q. All right. Can you tell me what date that
10 article was published?

11 If I could borrow a copy of it, I can
12 tell you. I think it's --

13 A. It says 2011.

14 Q. It's July 27th, 2011. Right? July 27th,
15 2011?

16 A. Yes.

17 MR. BARKER: That's what it says.

18 Q. Okay. Yeah. And at the bottom, I've
19 actually circled the paragraph that I want to draw
20 your attention to right now. You indicate that "The
21 Inlet can look like it has calm water, but it is
22 deceiving. The water starts off shallow, but then
23 about two feet out from the shore, it can drop off."

24 Is that accurate?

25 A. Yes.

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1 Q. All right. And I'm going to assume that
2 you're discussing here the drop off that you
3 discussed earlier in the deposition?

4 A. Yes.

5 MR. HUNKINS: Object to the form.

6 Q. All right. Virtually, all the questions I'm
7 going to ask you about are going to be about that
8 drop off. Because I want to try to understand where
9 that drop off is, how it occurs. And you've
10 indicated that it moves along with the shore line.
11 Is that right?

12 A. Yes.

13 Q. So that it's a dynamic process?

14 A. Yes.

15 Q. But that it is relatively constant, and
16 they're not your words, so that it's a feature that,
17 that while it moves, it doesn't really go away; does
18 it?

19 A. No.

20 MR. BARKER: Objection.

21 Q. Okay. You can answer. You did answer it.
22 No, I'll move on.

23 MR. BARKER: I objected. He answered.

24 MR. GRASSI: Right, okay. So, we'll
25 move on.

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1 Q. It doesn't move from day to day; does it?

2 A. Yes. The Inlet changes every day.

3 Q. Okay.

4 A. The currents.

5 Q. Okay. Does the drop off change during the
6 tide?

7 A. Yes. Certain tides, there is no drop off.

8 Q. Okay. What kind of tides is there no drop
9 off, and what kind of tides is there a drop off?

10 A. High tide. High tide, it's a regular beach.

11 Q. Okay. And that's because the drop off --

12 A. Would be further out.

13 Q. -- is so far out that you couldn't walk to
14 it?

15 A. Correct.

16 Q. Is that right? Okay. Because by the time
17 you got out there, you'd be swimming, you wouldn't be
18 walking?

19 A. (Witness nods.)

20 Q. Is that correct?

21 A. No. Not exactly, no.

22 Q. Okay.

23 A. Say that again.

24 Q. Okay. The -- when you're saying that it
25 changes on different tides, I -- do you mean that it

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1 becomes inaccessible by walking when the tide is
2 high?

3 **A. Well, it's -- it's basically like this**
4 **picture is showing you.**

5 **Q.** Okay.

6 **A. When the tide's up, it will be deep water.**

7 MR. BARKER: He's holding Exhibit 6.

8 MR. GRASSI: Okay.

9 **A. When the water is out is when there is a drop**
10 **off.**

11 **Q.** Okay. When it's low tide, there's a drop
12 off?

13 **A. Not basically low tide. But mid tide.**

14 **Q.** Okay. And, in fact, at low tide, it may be
15 that the drop off looks -- would it look more like
16 those pictures where the beach was actually falling
17 away?

18 **A. No.**

19 MR. BARKER: Objection.

20 MR. HUNKINS: Objection to form.

21 **A. No.**

22 **Q.** Okay. You had indicated, and I'm going to
23 ask you to take a look at 4 -- do I have 4?

24 MR. BARKER: That's the compendium of
25 exhibits?

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1 MR. GRASSI: That's the compendium. I
2 probably buried it somewhere. Yeah.

3 MR. BARKER: There you go.

4 **Q.** Here's 4. And I turned it to the March 2012
5 photograph.

6 MR. BARKER: March 14th, 2012.

7 **Q.** Since that's the -- the photograph that's the
8 most approximate in time to the events.

9 You had indicated that there was an
10 area that was about a tenth of a mile wide where the
11 drop off occurred?

12 **A. Yes.**

13 **Q.** Did I understand that right?

14 Could you indicate on that photograph
15 where that area is?

16 **A. Approximately.**

17 **Q.** Okay. Would you do that? And I don't know
18 if we've had the green ink yet. Why don't you use
19 the green ink to draw lines on the beach that show
20 the area where that would occur.

21 MR. BARKER: Okay. Hold on. Is the
22 packet that you gave him the same one that Paul was
23 using? Because --

24 MR. GRASSI: There's only one way --

25 MR. DIJOSEPH: Should be marked on the
WORD FOR WORD REPORTING, LLC

1 front. That's the exhibit.

2 MR. GRASSI: Yeah. That's the exhibit.

3 MR. BARKER: It's not. This is a copy.

4 MR. D'AMATO: Okay. There it is.

5 MR. GRASSI: Switch with me.

6 MR. BARKER: Okay. Let me get --

7 MR. GRASSI: Are you going to get to
8 the right page? Thanks.

9 MR. BARKER: Yeah. He'll ask you the
10 question again. Just a minute.

11 BY MR. GRASSI:

12 **Q.** Okay. Perfect. All right.

13 MR. BARKER: No, he's going to ask you
14 a question.

15 **Q.** Yeah. So, do you understand what I want you
16 to -- what I want you to do is, is to give us the
17 outlines of the area where the drop off appears.

18 MR. HUNKINS: Object to the form.

19 MR. BARKER: Objection. You mean like
20 appears in the photograph? Or --

21 MR. GRASSI: No, no, no. Here's my
22 understanding. And I'll run through the foundation
23 again.

24 **Q.** Your testimony was that the drop off moves
25 from time to time. Correct?

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1 **A. Yes.**

2 **Q.** And that it -- and that it does that along a
3 particular section of Inlet Beach, or Moore's Beach?

4 **A. Yes.**

5 **Q.** Okay. So, what I want you to do is give us
6 the south and north or east and west limits of where
7 it appears.

8 **A. (Witness complies.)**

9 **Q.** Okay. And if you would take those lines back
10 into the beach a little bit, just so that we can see
11 them on -- because of the contrast.

12 **A. (Witness complies.)**

13 **Q.** Okay. Now, I was up at the other end. So, I
14 didn't really see where you were indicating that
15 Lieutenant Lindsay called an area The Point. Is that
16 The Point?

17 **A. Yes.**

18 **Q.** Okay. And that area on the aerial photos,
19 that changes from time to time, moves -- moves
20 around. But there's almost always some area on The
21 Inlet throat where the sand falls away, as you start
22 to go south?

23 MR. BARKER: Objection.

24 **Q.** Is that right?

25 MR. BARKER: I object. You may answer
WORD FOR WORD REPORTING, LLC

1 the question.

2 **Q.** Do you understand what I'm saying?

3 **A.** **Yeah. I don't -- I don't see sand falling away. I don't --**

Q. I didn't mean it -- okay. I have -- that's probably the wrong way to put it. Because there are -- there's an element here of sand falling away. What I meant by that is, there's an area where you're going in one direction, and then the beach sort of takes another direction?

11 **A.** **Yes.**

12 **Q.** Okay. That's sort of The Point. Correct?

13 **A.** **Yes.**

14 **Q.** All right. And the drop off occurs on The Inlet side of that Point when it occurs; doesn't it?

16 **MR. BARKER:** Objection.

17 **Q.** The drop off is occurring, like, on this photograph, where The Point is here, the drop off is occurring on The Inlet side of that?

20 **A.** **Yes.**

21 **MR. HUNKINS:** Object to the form. I just don't know what you mean by The Inlet side.

23 **MR. BARKER:** You mean where the water is?

25 **Q.** Well, the water -- it's in the water. But
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1 when I say The Inlet side, as opposed to the ocean side.

3 **MR. HUNKINS:** So, you mean northwest as opposed to southeast?

5 **MR. GRASSI:** Yeah, more or less northwest of that Point, as opposed to southeast.

7 **Q.** But The Point where the current's actually going in and out of The Inlet. Correct?

9 **A.** **Yes.**

10 **MR. BARKER:** Objection.

11 **MR. HUNKINS:** Objection to form.

12 **Q.** Have you ever studied any of or read any of these studies of how The Inlet migrates?

14 **A.** **No.**

15 **Q.** Okay. Do you know whether the currents are scouring that Point, that Lindsay calls a Point?

17 **MR. BARKER:** Objection. I'm objecting to the form of the question. You may answer it, if you understand it.

20 **A.** **I believe it scours the whole Inlet Beach, the way the currents run, not just there.**

23 **Q.** Okay. All right. The area that you refer to as a drop off, does it parallel Inlet Beach, or does it run perpendicular to Inlet Beach?

25 **A.** **You got me confused on that one.**

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1 **Q.** Okay. Well, when the drop off appears, how big an area is it?

3 **A.** **Ten, fifteen yards.**

4 **Q.** Okay. And how -- how -- what's the drop? In other words, if someone is walking, and they encounter this drop off, how far will they step down?

7 **A.** **Over their head.**

8 **Q.** Okay. All right. So, it's sort of a cliff?

9 **MR. BARKER:** Objection. You may answer the question.

11 **Q.** You can answer it.

12 **A.** **I don't consider it that.**

13 **Q.** Okay.

14 **A.** **It's when the tide's out, it's just the water drops off.**

16 **Q.** All right. It's a sudden drop off?

17 **A.** **Yes.**

18 **Q.** All right. So that, do you have any idea what the slope of the sand at that drop off is?

20 **A.** **No, I don't.**

21 **Q.** Okay.

22 **A.** **No.**

23 **Q.** Have you ever lost your footing on the drop off?

25 **A.** **No.**

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1 **Q.** Have you seen anyone do that?

2 **A.** **No.**

3 **Q.** Mr. D'Amato asked you whether you knew of anyone who was rescued after stepping off the drop off?

6 **A.** **I don't remember that.**

7 **Q.** Okay. Well, I'm going to ask you that.

8 Do you know of anyone who was rescued after stepping off the drop off?

10 **A.** **No.**

11 **Q.** Do you know if the drop off is circular?

12 **MR. HUNKINS:** Object to the form.

13 **A.** **I don't know what you mean by that question.**

14 **Q.** Okay. Well, it's going back -- I guess what I -- what I should probably ask you to do is, can you -- can you draw the area, in other words, you're saying it's 10 or 20 yards, can you show us where the 10 or 20 yards would be on the drop off?

19 **A.** **It's right here.**

20 **Q.** Would I encounter the drop off -- in this case, the Sunderland version is that Smith, Sunderland and the children were walking in ankle deep water, parallel to the beach.

24 **A.** **Yes.**

25 **Q.** Okay. And two of them just fell away, the

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1 beach fell away.

2 And you indicate, you theorized they
3 fell in the drop off?

MR. BARKER: Objection.

MR. HUNKINS: Objection.

6 MR. BARKER: I'm objecting to that
7 question. I object to the form. But -- you're
8 pressing the question.

9 Q. You can answer. Is what I said accurate?

10 MR. HUNKINS: Object to the form.

11 MR. BARKER: Join.

12 Q. That you think they fell into the drop off,
13 based on the description of Sunderland?

14 A. Yes.

15 Q. Okay. What I'm trying to understand is,
16 would the drop off have been running along the beach,
17 and they got too close to it and slid in from the
18 side, or would they have encountered a drop off that
19 ran perpendicular to the direction they were walking?

20 Do you understand what I'm asking you?

21 A. **Do you want me to explain how I think?**

22 Q. Yeah, I do. Yeah, very much.

23 A. **They were walking along, and they came to the**
24 **spot where it's -- I call a drop off, and it was over**
25 **their head, and they stepped into it.**

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1 Q. Okay.

2 A. **I don't call that a cliff.**

3 Q. Okay. Well, that's fine. I just -- it's
4 fine. You've called it a drop off, and I'm -- I want
5 to call it what you call it. I just am trying to
6 understand where it is, what shape it is.

7 And do you discuss where the drop off
8 is with any of your personnel during the course of a
9 summer?

10 A. No.

11 Q. Do they discuss it with you?

12 A. Yes.

13 Q. Okay. So, the drop off is a phenomenon that
14 the guards will discuss --

15 A. Yes.

16 Q. -- amongst themselves?

17 And you recognize it as a risk?

18 A. Yes.

19 Q. Regardless of knowing that it's a cliff, or
20 -- or calling it a cliff?

21 A. Yes.

22 Q. You understand that that drop off is a risk
23 to people who are using the beach.

24 A. **(Witness nods.)**

25 Q. Is that right?

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1 A. Yes.

2 Q. And you recognize that it's a risk that comes
3 up to someone who is simply walking, not swimming?

4 A. Yes.

5 Q. Is that correct?

6 And how long have you recognized that
7 risk?

8 A. Ten years.

9 Q. What caused you to recognize that risk 10
10 years ago?

11 A. **Some of the rescues we had down there.**

12 Q. Okay. Can you tell me which -- what rescues
13 you had, and where they would be documented, that led
14 you to recognize that risk?

15 A. **No. I -- it's my own personal experience of**
16 **going down there, and looking at it.**

17 Q. Okay. Have you ever discussed that risk with
18 the police chief? Have you discussed that risk with
19 the police chief?

20 A. No.

21 Q. Have you discussed it with -- and I'm -- I'm
22 asking you a pretty broad area of time. So, I'm
23 going to ask you if you ever discussed that risk with
24 a business administrator, mayor, council president?

25 A. No.

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1 Q. Okay. Have you discussed it with anyone,
2 other than other lifeguards?

3 A. No.

4 Q. Okay. At the time that the borough
5 administrator was devising warnings for that area
6 that Lindsay calls The Point, did you have any
7 discussions with him about the risk that was
8 presented by the drop off?

9 A. No.

10 Q. All right. The December -- strike that.
11 The July 27th, 2011 article, that --
12 that article discusses the disappearance of a woman
13 named Christina Tsiotsias, I might be butchering
14 that, from Baltimore, Maryland.

15 That indicates that woman came to the
16 beach at about three o'clock in the afternoon, and
17 that people came looking for her at six to pick her
18 up, and that she was gone. They then reported her
19 missing to the police at about eight p.m. that night.

20 A. Yes.

21 Q. Okay. When did you learn that a woman had
22 been missing from the beach?

23 A. **The next day.**

24 Q. Okay. And at that point, did you attempt any
25 rescue?

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1 **A. No.**

2 **Q.** Did you learn that her -- when the people
3 came to find her, that although they couldn't find
4 her, they did find her beach blanket, and belongings?

A. Yes.

6 **Q.** Do you know if there was ever any type of
7 analysis of what happened to her?

8 **A. Not to my knowledge.**

9 **Q.** And you would agree with me that, for most of
10 that time, between three p.m. and six p.m.,
11 lifeguards were on duty?

12 **A. No.**

13 **Q.** All right. And that's because she appears to
14 have been at an unprotected beach?

15 **A. I don't even know where Spruce Avenue is in**
16 **The Inlet.**

17 **Q.** Okay.

18 **A. It's saying Spruce Avenue. I -- that's --**
19 **that's pretty far down.**

20 **Q.** Moore's Inlet Bar was on Spruce Avenue.
21 Right?

22 **A. Yeah. I -- that's Moore's Beach.**

23 **Q.** So, that's Moore's Beach. Right?

24 So, and you're saying that because the
25 article says that the people who said they dropped

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1 her off dropped her off at Spruce Avenue, so that --

2 **A. Yeah, I'm not familiar with somebody saying**
3 **Spruce Avenue, I'm just --**

4 **Q.** I understand. You'd agree with me that's
5 likely the parking lot at Moore's Beach that you
6 talked about earlier. Correct?

7 **A. Yes. It runs into Central Avenue.**

8 **Q.** Okay. But my question is, is, is about the
9 time of day. That time of day is the time of day
10 when guards are on duty; isn't it?

11 **A. Three p.m., yes.**

12 **Q.** Okay. And what time do the guards go off?

13 **A. 5:30.**

14 **Q.** Okay. All right.

15 **MR. GRASSI:** Would it be best to take a
16 break now, so you can take care of that?

17 **VIDEOGRAPHER:** You've got five minutes.

18 **MR. GRASSI:** Oh, I could take longer
19 than five minutes. All right. So, I'll -- just give
20 me another warning.

21 **BY MR. GRASSI:**

22 **Q.** There was a -- there've been a number of
23 drownings at Inlet Beach and Moore's Beach in the
24 last 10 years; haven't there?

25 **MR. BARKER:** Objection.

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1 **Q.** You can answer.

2 **MR. BARKER:** You can answer.

3 **A. A number?**

4 **Q.** Yes.

5 **A. In the last 10 years?**

6 **Q.** Yes.

7 **A. I don't think more than three.**

8 **Q.** Okay. Well, we know about Mr. Smith.

9 **A. Right.**

10 **Q.** All right. And then there was a drowning
11 last year; wasn't there?

12 **MR. HUNKINS:** Are we talking about
13 Inlet Beach, or any of the beaches?

14 **MR. GRASSI:** Only in The Inlet. I'm
15 just talking about The Inlet.

16 **MR. HUNKINS:** Yeah. And I know, but
17 Inlet Beach, or --

18 **MR. BARKER:** Moore's Beach?

19 **MR. GRASSI:** Moore's Beach, Inlet
20 Beach.

21 **MR. HUNKINS:** Oh, any of the beaches?

22 **A. To my knowledge, that was a suicide.**

23 **Q.** The one from this past summer?

24 **A. Yes.**

25 **Q.** Okay. And how about Jamilah Watkins and
WORD FOR WORD REPORTING, LLC

1 Shayne Hart?

2 **A. Yes.**

3 **Q.** All right. They were two women who died?

4 **A. Yes.**

5 **Q.** In 2000 --

6 **A. Nine.**

7 **Q.** 2009. Did you participate -- and when I say
8 you, I mean the --

9 **A. Yes.**

10 **Q.** -- Wildwood Crest Beach Patrol?

11 **A. We recovered the bodies.**

12 **Q.** Okay. And when was that?

13 **A. After hours.**

14 **Q.** Okay. So, they were recovered that evening?

15 **A. Yes.**

16 **Q.** Okay. Do you know whether there was any
17 analysis of what occurred there?

18 **A. When we knock off at 5:25, we clear the**
19 **water. They were -- the lifeguards remember those**
20 **two women, and they got them out of the -- young**
21 **ladies, got them out of the water. That's our**
22 **policy. We drove away. They went back in the water.**

23 **Q.** Would you have the name of the third woman
24 who survived?

25 **A. The police would.**

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1 Q. Okay. Because I don't know that that
2 incident didn't -- I don't know that it occurred --
3 that it appeared in the reports that we were
4 reviewing earlier.

MR. DiJOSEPH: It does not.

6 Q. All right. So, the police would have that.
7 And are you aware that the Coast Guard assisted in
8 that --

9 A. Yes.

10 Q. -- recovery?

11 And did you read an article where Petty
12 Officer Kennedy indicated that it appeared that those
13 women had been wading in the water, and then were
14 swept away?

15 A. No.

16 Q. Is that the first time you're hearing that?

17 A. Yes.

18 Q. Okay. Because you've indicated in your
19 discussions of this that they were swimming.

20 A. They were swimming off where we were
21 protecting the beach.

22 Q. That was earlier in the evening?

23 A. Yes.

24 Q. Okay. You don't know if they were swimming
25 or wading at the time that they were carried away; do

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1 you?

2 A. No.

3 Q. Do you know of someone drowning in 2008?

4 A. I can't remember.

5 Q. Where -- where would I best locate records of
6 people who drowned off Inlet Beach?

7 A. Well, it's in those records that Mr. -- Paul
8 had.

9 MR. BARKER: We've provided records in
10 discovery.

11 MR. GRASSI: Of --

12 MR. BARKER: From different sources.
13 Police, fire, and beach patrol. You have them all.

14 MR. GRASSI: Okay. So, you think I
15 have this one for this lady from Baltimore, who
16 floated away and was found a day or two later in
17 Avalon?

18 MR. BARKER: I can't remember what
19 records, you know, whether one would correspond
20 directly to that.

21 MR. GRASSI: I'll just look later.

22 MR. BARKER: You could look.

23 VIDEOGRAPHER: Two minutes. Two

24 minutes.

25 MR. GRASSI: Two minutes? Okay.

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1 BY MR. GRASSI:

2 Q. The vortex that you talked about before, how
3 far is the vortex from the drop off?

4 MR. HUNKINS: Object to the form.

5 MR. BARKER: Objection. Joined.

6 Q. You can answer.

7 MR. BARKER: You may answer, if you
8 can.

9 A. That's -- that's where it is.

10 Q. Oh, okay. All right. So, the vortex is, is
11 related to --

12 A. Yes.

13 Q. -- the drop off? Okay.

14 MR. GRASSI: All right. Why don't you
15 change. I'll take a look and see if I've got
16 anything else.

17 VIDEOGRAPHER: This ends video 2. The
18 time is 4:09. We're off the record.

19 (There was a brief recess.)

20 VIDEOGRAPHER: This marks the beginning
21 of videotape 3. The time is 4:14. We're back on the
22 record.

23 BY MR. GRASSI:

24 Q. The drop off is, is present every year; isn't
25 it, someplace or other?

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1 A. Yes.

2 Q. Okay.

3 MR. GRASSI: I don't have any other
4 questions. Thank you.

5 MR. D'AMATO: Are you going to sit over
6 here, or are you going to sit there?

7 MR. HUNKINS: I'm good here.

8 MR. BARKER: You have a clear line of
9 sight?

10 MR. HUNKINS: I do. I'm good.

11 EXAMINATION

12 BY MR. HUNKINS:

13 Q. Sir, you've been very patient. We won't be
14 too much longer. Maybe I have 10 minutes of
15 questions for you, tops.

16 I'm the attorney for the State of New
17 Jersey. Do you need a break at all?

18 MR. BARKER: Can you hear him?

19 A. No. I really have bad hearing, too.

20 Q. Oh, okay. I'll move --

21 MR. BARKER: Would you change with
22 Will, then?

23 MR. HUNKINS: Yes.

24 VIDEOGRAPHER: Off the record at 4:14.
25 (Discussion off the record.)

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VIDEOGRAPHER: Back on the record at

4:15.

BY MR. HUNKINS:

Q. Sir, I'm sitting a little closer now, I'm speaking a little louder. Can you hear me now okay?

A. Yes.

Q. Okay. I'm the attorney for the State. And I have a few questions for you, maybe 10 minutes, tops. Do you feel okay?

A. Yes.

Q. All right. We've been using the term drop off many times. You've been asked many questions about it. And I just want to verify in my own mind what we've got here.

When we were talking about the drop off, did you say that that drop off, in your estimate, is 50 or 60 feet deep, or am I confusing things?

A. No, I never -- I didn't say that.

Q. Okay. Okay. The drop off that we've been talking about is typically how deep?

A. Ten.

Q. Okay. And are there other areas along any of these beaches where there are other drop offs?

A. Yes.

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Q. Okay. Are those other drop offs, can they be as deep as 10 feet, also?

A. 50 feet. 50 to 60 feet.

Q. Okay.

A. That's the drop off at Moore's Beach, where they fish.

Q. All right. So, I just want to nail down where these drop offs can happen, and how deep they typically are.

So, maybe if we start at the northwest, that would be Moore's Beach. Right?

A. Yes.

Q. And do drop offs occur there?

A. That's where it's deep, yes.

Q. Okay. That's where you'd get a 50 or 60-foot deep?

A. Yes.

Q. And is that also where you testified the vortex would be?

A. No.

Q. Okay. So, as we move southeast along the beaches, after Moore's Beach, then you get to what?

A. Inlet Beach.

Q. Okay. And do drop offs occur at Inlet Beach?

A. Yes.

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Q. And how deep are they, typically?

A. Ten.

Q. Okay. And as you move southeast from Inlet Beach, at some point, you get to the protected beach. Is that right?

A. Yes.

Q. Is there a drop off ever on the protected beach?

A. No.

Q. Okay. Now, what's your understanding of where the drowning occurred? Do you understand that it occurred off of The Inlet Beach?

A. Yes.

Q. Okay. Do you have an understanding of how far south it was from The Point?

A. It was at The Point.

Q. Okay. So, that was my other question. Is The Point located on The Inlet Beach?

A. Yes.

Q. Okay. So, if I follow you correctly, the drop off, when the drowning occurred, was at The Point, and it was about 10 or 15 feet deep?

A. Yes.

Q. But I also understand that at different times of the year, or different years, that drop off can be

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at a different location. Correct?

A. Yes.

Q. By that, do you mean that it can be located at places other than The Point?

A. No.

Q. Okay. At mid tide or low tide, is the drop off visible by looking at the color of the water?

A. Yes.

Q. So, anybody walking along could look and see that the color -- the water is a different color, and that there is a deeper water there?

A. People that would know. Some people don't recognize that.

Q. Okay. When coming to the drop off at mid or low tide, can you observe the vortex happening in the water?

A. Yes.

Q. So, somebody walking along could see the vortex?

A. Yes.

Q. I'm confused as to where there were any no swimming signs posted, if there were any. So, was -- at the time of this incident, was Moore's Beach posted as no swimming?

A. Yes.

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1 Q. Was Inlet Beach posted as no swimming?
 2 A. Yes.
 3 Q. Okay. And then I think my last question has
 4 to do with Exhibit 13, if we have it. It's the photo
 5 where Mr. Sunderland was showing where the incident
 6 occurred, and there's a jet skier in the background.
 7 Thank you. Let me show you Exhibit 13.
 8 Do you see that?

9 A. (Witness nods.)

10 Q. Earlier, you were questioned about it, and I
 11 think the indication was that the man standing in the
 12 foreground is Mr. Sunderland?

13 MR. DIJOSEPH: Correct.

14 Q. Okay. And he's standing -- maybe I can get
 15 some help from counsel. He's standing near where the
 16 drowning occurred, or at the spot where --

17 MR. D'AMATO: Okay. May I suggest, you
 18 got to be careful. Because there's going to be
 19 testimony in this case that he didn't drown
 20 instantly. You kept saying the drowning. He was
 21 dragged out, according to some witnesses. So, the
 22 drowning doesn't take place where --

23 MR. HUNKINS: Understood. Thank you.

24 Q. I guess what I'm -- here's what I'm really
 25 trying to ask you: I think you've indicated that the
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1 shore line or the beach changes along The Inlet,
 2 because of the normal action of the tides --

3 A. Yes.

4 Q. -- and the fact that it's an inlet. Is that
 5 right?

6 A. Yes.

7 Q. And I think the photo we're looking at,
 8 Exhibit 13, was taken in August of 2012, and
 9 counsel's indicating that's correct, so --

10 MR. DIJOSEPH: Yes, that's correct.

11 Q. -- I would assume at least a couple of weeks
 12 went by between the drowning and the time this
 13 photograph was taken.

14 MR. DIJOSEPH: What's the date on the
 15 photo?

16 MR. BARKER: August 16, 2012, 1:20 p.m.

17 MR. DIJOSEPH: So, you're looking at
 18 almost 15, 16 days.

19 Q. Okay. So, a couple of weeks went by. So, my
 20 question is, and I'm not an expert on the shore, so
 21 here's why I'm asking. In the course of those two
 22 weeks, could the normal action of tides have moved
 23 sand around in that area?

24 A. Yes.

25 Q. So, although Mr. Sunderland is standing on a
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1 certain piece of sand in Exhibit 13, from your
 2 experience, is it possible that a couple of weeks
 3 earlier, that piece of sand wasn't even there?

4 A. It depends on the tide, when the tide was.

5 Q. Because things change all the time?

6 A. Yes.

7 Q. All right. Because here's what I'm getting
 8 at: If we look at Exhibit 13, and Mr. Sunderland's
 9 standing on that piece of, I'll say, sand, it could
 10 have been -- it could have looked differently on the
 11 day of the accident?

12 A. Yes.

13 Q. Okay.

14 MR. HUNKINS: I think that's all I
 15 have.

16 MR. D'AMATO: Okay. I have three quick
 17 questions.

18 EXAMINATION

19 BY MR. D'AMATO:

20 Q. I found the clean copy of the North Wildwood
 21 Ordinance. I marked it for identification as 47,
 22 Exhibit 47.

23 It says Article 1, government
 24 supervision, use, and policing. Then it gives
 25 definitions. I just want to hand this to you. It's

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1 pretty evident that these are regulations regarding
 2 what can be done on the beaches of North Wildwood,
 3 and what can't be done. Correct?

4 A. Yes.

5 Q. Now, I read the definition of beach that --
 6 you see at the top there, where it says "definition
 7 of beach"?

8 A. Yes.

9 Q. Yeah. Now, when I read that, and I checked
 10 with the people to my right, when it talks about
 11 Spruce Avenue -- well, let me rephrase that.

12 Would you not agree that that
 13 definition includes, A, Moore's Beach; B, what we've
 14 been calling here today The Inlet Beach?

15 A. Let me read it.

16 Q. Yeah.

17 (Discussion off the record.)

18 A. Yes.

19 Q. Okay. Thanks. Now, two final questions.

20 When you spoke to the chief of the
 21 North Wildwood Police Department, as you had shared
 22 with us a couple hours ago, what were the two of you
 23 talking about?

24 A. Who was I talking to?

25 Q. The chief of police of North Wildwood,

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1 regarding patrols on the beach. I asked, did you
2 ever speak to the chief of police of North Wildwood
3 about patrolling the beach, you said yes. I didn't
follow up on it.

A. Right.

6 **Q.** Do you remember generally what the
7 conversation was?

8 **A. That was instituted by the mayor to control**
9 **the rowdiness on the beach at Moore's Beach.**

10 **Q.** Okay.

11 **A. That's why the police were down there.**

12 **Q.** Okay, I see.

13 **A. He's been proactive of trying to clean it up.**

14 **MR. BARKER:** Who's he?

15 **A. Mayor Rosenello. Sorry.**

16 **Q.** Mayor.

17 Now, final question: If it was up to
18 you, would you have a manned lifeguard stand on what
19 we have called Moore's Beach and on The Inlet Beach?

20 **MR. BARKER:** Objection.

21 **A. No.**

22 **Q.** Okay. And can you tell us why not?

23 **A. Wouldn't have enough lifeguards to guard it.**
24 **It's too big an area.**

25 **MR. D'AMATO:** Okay. Thank you.

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1 Nothing else.

2 **VIDEOGRAPHER:** Anyone else?

3 **MR. D'AMATO:** Nope.

4 **VIDEOGRAPHER:** This concludes this
5 deposition of Joseph A. Cavalier. The time is 4:25.
6 We're off the record.

7 (Deposition concludes at 4:25 p.m.)

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CERTIFICATE

I, LYNN SMITH, a Certified Court Reporter of the
State of New Jersey, do hereby certify that prior to
the commencement of the examination, Joseph Anthony
Cavalier was duly sworn by me to testify the truth,
the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that I am neither a relative nor
employee nor attorney nor counsel of any of the
parties to this action, and that I am neither a
relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.

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EXHIBIT C

1 SUPERIOR COURT OF NEW JERSEY
2 LAW DIVISION - CAPE MAY COUNTY
3 DOCKET NO. CPM-L-331-14
4
5 SANDY SMITH,
6 INDIVIDUALLY AND AS
7 EXECUTRIX OF THE ESTATE
8 OF HER LATE HUSBAND
9 GEORGE BRADLEY SMITH,
10
11 Plaintiff,
12
13 vs.
14
15 CITY OF NORTH WILWOOD,
16 STATE OF NEW JERSEY,
17 JOHN DOE, MARY DOE, ABC
18 PARTNERSHIPS and XYZ
19 CORPORATIONS,
20
21 Defendants.
22
23
24
25
TAKEN BEFORE: LYNN SMITH, a Certified Court
Reporter of the State of New Jersey, License No.
X101520, at the Cape May County Administration
Building, 4 Moore Road, Cape May Court House, New
Jersey, on Thursday, February 18, 2016, commencing at
2:51 p.m.
WORD FOR WORD REPORTING, LLC
CERTIFIED COURT REPORTERS & VIDEOGRAPHERS
6 NORTH BROAD STREET, SUITE 202
WOODBURY, NEW JERSEY 08096
Ph. (856) 384-2770 Fax. (856) 384-2779
WORD FOR WORD REPORTING, LLC

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
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BY: BRIAN HUNKINS, DAG
For the State of New Jersey
Also present: Lou DiJoseph
Videographer: Tom Zanaras

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(Exhibits retained)

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1 (Map, received and marked for
2 identification as Exhibit P-55.)
3 VIDEOGRAPHER: Today is February the
4 18th, 2016. This is the videotaped deposition of
5 David Lindsay. Going on the record, the time is 2:51
6 p.m. The appearance of counsel will be noted in the
7 transcript.
8 Would the court reporter please swear
9 in the witness.
10 D A V I D L I N D S A Y,
11 having been first duly sworn, testified as follows:
12 EXAMINATION BY MR. D'AMATO:
13 Q. Lieutenant, before we began, you told me
14 that, once before, you had your deposition taken.
15 Did it relate to your employment with North Wildwood?
16 A. No, sir.
17 Q. All right. How long ago was that?
18 A. 1993.
19 Q. All right. Because that was some time ago,
20 let me go over some basic pointers. And with the
21 cooperation of all the attorneys here, we really have
22 been trying to expedite these depositions, and
23 getting to what is really important. And
24 incidentally, the young man to my left, Lou DiJoseph,
25 I don't know when he served the subpoena, if he told

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1 you, he's retired from the intelligence bureau of the
2 New Jersey State Police, and now he's a licensed
3 private investigator. Okay?

4 **A. Um-hum.**

5 **Q.** And that's why he's sitting here.

6 The most important recommendation I can
7 give you, that all of us would tell you, is if I
8 should ask you a question that is not clear, just say
9 to me, Paul, it's not clear.

10 I've been doing this for over 40 years,
11 and it just amazes me how people will answer
12 questions that are totally incomprehensible, because
13 they think they understand it. All right? I've been
14 known to do that. But fortunately, we have lawyers
15 here that, if I do it, they're going to say, Paul, I
16 object to the form of the question. That means,
17 Paul, it wasn't clear. Did you mean this? Did you
18 mean that? And I want them to do that, because I
19 don't want anybody to think that I was asking tricky
20 questions. I hope you'll leave here today going, he
21 asked me important questions, but not tricky
22 questions.

23 So, how we eliminate any confusion on
24 your part is to give you the opportunity to say I
25 don't understand the question. I won't think less of

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1 you. In fact, we'll all think more of you if you say
2 that to us, because that means there was something
3 structurally wrong with the question.

4 You are not a party to this litigation.

5 The reason you're here is a couple things. One was
6 an interview that was done, unbeknownst to you, and
7 the other one is all these reports that had your name
8 on it.

9 So, let me get started, and we'll try
10 to get you out of here as quickly as possible.

11 So far, we've taken the deposition of
12 the chief of the beach patrol, Anthony Cavalier,
13 former city administrator, Mr. Belasco, was here, and
14 administrative assistant Ronald Simone.

15 MR. ROZELL: Um-hum.

16 **Q.** All right? And what I've done with everybody
17 is -- terminology is important. And I did this with
18 the chief. And here's what I told the chief, and
19 these gentlemen were there. I said, there's a
20 certain area of beach in North Wildwood that people
21 call The Point, Moore's Beach, Moore's Inlet --
22 inlets beach, the inlet, and the spit. And what I'm
23 going to do is, I'm going to go over this aerial
24 photograph, and I'm going to show you how we're going
25 to do this in a second, but so far, the spit doesn't

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1 seem to -- people don't know about that. Do you know
2 what the spit is?

3 **A. No.**

4 **Q.** Okay. It was in one of the documents that we
5 read, it was called the spit. But that's okay.

6 So now, here's -- get your orientation
7 on that aerial photograph. And do you see where the
8 condos are right there, up -- right? Isn't that the
9 condos in -- where's the parking lot?

10 **A. This is the parking lot here.**

11 **Q.** That's the parking lot right there. Okay.
12 And you see where the condos are?

13 **A. Moore's?**

14 **Q.** Moore's Beach.

15 **A. Yes, um-hum.**

16 **Q.** Okay, fine. Now, here's what I'm going to
17 do: I'm going to give you this red marker, and I'm
18 going to ask you to draw lines as to where Moore's
19 Beach begins and where it ends, and where the inlet
20 beach begins and ends.

21 Now, to be fair to you, Mr. Belasco
22 said, I don't differentiate between the two. I call
23 that whole area the inlet beach. And then he used
24 the phrase inlet zone. The chief kind of broke it
25 up, he said, Moore's Beach kind of ends here, and the

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1 inlet starts here. And we got -- and as I expected,
2 everybody's, you know, geographical orientation is a
3 little bit different. So, if you could draw a -- let
4 me withdraw that.

5 Where -- for our purposes today, do you
6 differentiate between Moore's Beach and the inlet
7 beach?

8 **A. Yes, sir.**

9 **Q.** Okay. So, why don't you use the red marker,
10 and draw, like, about an inch, a line, saying where
11 does Moore's Beach begin and end?

12 **A. At --**

13 **Q.** Okay. That's all right. I see what you're
14 doing. You're doing it that way. Go ahead.

15 **A. Yeah.**

16 **Q.** Okay. And so it's complete, why don't you
17 just kind of take it all the way around, if you know
18 what I mean. Just show the entire Moore's Beach.
19 That's it.

20 **A. (Witness complies.)**

21 **Q.** Okay. Now, if I give you the blue -- the
22 blue marker, why don't you do for us what is the
23 inlet beach.

24 **A. (Witness complies.)**

25 **Q.** Okay. Now, what do you call the beach that

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1 we see in this aerial photograph between Moore's
 2 Beach and the inlet beach?
 3 **A. Well, this is the bird sanctuary.**
 4 **Q.** Here. I'll give you green for the bird
 5 sanctuary.
 6 **A. (Witness complies.)**
 7 **Q.** Is that working?
 8 **A. Not too well.**
 9 **Q.** Wait. Hold on.
 10 Tom, could you see if there's another
 11 green one in there, please.
 12 We also had an orange one. Where did
 13 that go?
 14 Okay. And could you see if there's an
 15 orange one in there?
 16 Here. Let me hand to you a green
 17 marker that hopefully will work. You were -- you
 18 were talking about the bird sanctuary?
 19 **A. Um-hum.**
 20 **Q.** Okay. Now, you -- yeah, go ahead.
 21 **A. Just making that one line --**
 22 **Q.** Now, the area to the right of the bird
 23 sanctuary is what? What do you call that?
 24 **A. This area?**
 25 **Q.** Yeah.

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1 **A. To my right?**
 2 **Q.** No, no. Let me -- I want all counsel to look
 3 at what I'm doing here. Okay.
 4 You bracketed off for us, and we
 5 appreciate it, what Moore's Beach is?
 6 **A. Um-hum.**
 7 **Q.** You did that for the inlet beach. And then
 8 you said, here is the bird sanctuary, which you
 9 covered, like, in green.
 10 **A. Um-hum.**
 11 **Q.** There's other beach here.
 12 **A. Um-hum.**
 13 **Q.** What do we call the other beach?
 14 **A. Well, there was no name for this section of**
 15 **the beach. And -- or this section. This is The**
 16 **Point. We call that The Point.**
 17 **Q.** Okay. Let's do this: The -- I have an
 18 orange marker now. The area that is The Point, could
 19 you mark it on there?
 20 **A. (Witness complies.)**
 21 **Q.** Okay. And that's in orange. All right?
 22 MR. D'AMATO: Can all counsel see that?
 23 MR. ROZELL: Yes.
 24 MR. HUNKINS: Okay, thanks.
 25 MR. D'AMATO: Do you see that?

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1 MR. DiJOSEPH: Yes.
 2 **Q.** Yeah, okay. All right.
 3 Now, the areas of beach that did not
 4 have a name, they don't have a name; is that it?
 5 **A. Yeah. This area of the beach, when the tide**
 6 **comes up, the tide was right in -- came right up to**
 7 **the bird sanctuary fence.**
 8 **Q.** Okay.
 9 **A. So, this looks like a low tide picture.**
 10 **Q.** I see.
 11 **A. So, at high -- you know, that's why that**
 12 **wouldn't have a name.**
 13 **Q.** Okay.
 14 **A. And this -- this part of the beach was --**
 15 **didn't really have a name for it, either.**
 16 **Q.** Okay. Now, so now we -- we have a good idea
 17 of the terminology that you'll be using.
 18 When we took the deposition of Mr.
 19 Simone, the administrative assistant, he said that
 20 when he was on the beach patrol, there was an inlet
 21 zone, a north zone, a central zone, and a south zone.
 22 Is that correct?
 23 **A. Yes, sir.**
 24 **Q.** All right. Now, and he told -- he told us,
 25 according to his experience, where a certain -- you

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1 know, where the zone would begin and end according to
 2 streets.
 3 I may get another copy of this exhibit.
 4 In fact, let me do that, and we'll mark it as Exhibit
 5 56.
 6 (Copy of photograph received and marked
 7 for identification as Exhibit P-56.)
 8 **Q.** This is, again, it's a copy of that April 6,
 9 2005 --
 10 **A. Were the condos built then?**
 11 **Q.** I don't know.
 12 **A. I don't think so. I think that's still**
 13 **Moore's Inlet Bar.**
 14 **Q.** Okay.
 15 **A. But that's not important.**
 16 **Q.** All right.
 17 MR. ROZELL: He can instruct you this,
 18 but, technically, you're really not supposed to be
 19 asking him questions, so.
 20 THE WITNESS: Oh. Well, he asked if --
 21 he referred to the condos.
 22 MR. ROZELL: Okay.
 23 THE WITNESS: And I don't think the
 24 condos are there. I think it's still Moore's Bar.
 25 **Q.** You're right. I think you're right. And

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1 I'll tell you why. The only reason I did that, is
2 people have been using the condos as a reference
3 point. Okay?

4 **A. All right.**

5 **Q.** Now, here is Exhibit 56. And if I said to
6 you, given the fact that you were a lieutenant --
7 that was your rank, lieutenant, right?

8 **A. Yes, sir.**

9 **Q.** In the North Wildwood Beach Patrol, could you
10 draw with a red marker where the inlet zone was?

11 **A. Sure.**

12 **Q.** All right. Now, you know the city better
13 than I do. I was raised in Atlantic City and
14 Margate.

15 Can you give us street names?

16 **A. Yes, sir.**

17 **Q.** Okay. Go ahead.

18 **A. Inlet zone went from Surf Avenue down to the**
19 **ocean, along the waterfront to the rock pile at**
20 **Second and JFK, and then back along the bulkhead or**
21 **walkway up to, I believe it's First and JFK.**

22 **Q.** First?

23 **A. First and Surf.**

24 **Q.** Okay.

25 **A. Sorry about that. That's me.**

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1 VIDEOGRAPHER: Going off the record,
2 3:04.

3 (Discussion off the record.)

4 VIDEOGRAPHER: Back on the record,
5 3:04.

6 BY MR. D'AMATO:

7 **Q.** Okay. The inlet zone, the city gave us, us
8 attorneys, all of these daily reports from the North
9 Wildwood Beach Patrol, and this is one of the reasons
10 you're here, because your name appeared on a lot of
11 these reports, along with other lifeguards, like Mr.
12 Taylor -- is that Mr. Taylor?

13 **A. Yes, sir.**

14 **Q.** Yeah. And you refer to the geographical area
15 where the report refers to as the inlet.

16 When you put down inlet, typically, in
17 these daily reports, that would be the inlet zone?

18 **A. Yes, sir.**

19 **Q.** Okay, fine. Now, let's go over your
20 background really quick. You became a lifeguard in
21 what year?

22 **A. 1984.**

23 **Q.** Okay. And what's your date of birth?

24 **A. 4/27/1967.**

25 **Q.** Okay. And you finished your career here as a

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1 lifeguard in 2015, or '14?

2 **A. 2014.**

3 **Q.** '14. Okay. And are you a resident of North
4 Wildwood?

5 **A. Yes, sir.**

6 **Q.** And were you a resident of North Wildwood
7 while you were a lifeguard?

8 **A. Yes, sir.**

9 **Q.** During --

10 **A. We bought a home here, my wife and I, in**
11 **1999.**

12 **Q.** Okay. The body of water that is adjacent to
13 the Moore's Beach, the inlet beach, the inlet zone,
14 that's Hereford Inlet. Correct?

15 **A. Yes, sir.**

16 **Q.** Okay. Before you were a lifeguard, did you
17 ever go on the beach that's located near Hereford
18 Inlet, Inlet?

19 **A. Before '84?**

20 **Q.** Yeah.

21 **A. No. I grew up in Cape May Point, so.**

22 **Q.** All right. Would you agree that from 1984
23 until Brad Smith drowned on July 27, 2012, that the
24 actual configuration of the inlet over the years has
25 changed?

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1 **A. Monthly.**

2 **Q.** Okay. All right. We've spoken to this
3 expert, Dr. Stewart Farrell, at Stockton?

4 **A. Um-hum.**

5 **Q.** He's at the Coastal Research Center. Does
6 that name mean anything to you?

7 **A. (Witness nods.)**

8 **Q.** Okay, all right. Given your personal
9 experience with this inlet, why is the -- the inlet
10 water, the path of it, changing monthly?

11 **A. That, I don't know. I mean, the currents,**
12 **the tides.**

13 **Q.** Okay.

14 **A. I -- you know, I really -- that's beyond my**
15 **--**

16 **Q.** Your grade pay, as they say?

17 **A. Yeah.**

18 **Q.** That's all right. No, that's okay.

19 And that's a good thing you just did.

20 If you don't know the answer, just say you don't know
21 the answer.

22 **A. Yeah.**

23 **Q.** We'll accept that as being truthful, and
24 we'll move on.

25 We took the deposition of the chief.

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1 And he told us, you know, in all the years that he
2 was the chief, up until July 27, 2012, that when the
3 back bays were going into the ocean, and vice-versa,
4 that the currents would really move quite quickly
o through the inlet. And he estimated that sometimes
the currents were five to nine miles an hour.

7 Based upon your own personal
8 experience, would you agree with him or disagree?

9 **A. Yes. Yeah. I mean, that I -- I know the**
10 **answer to that. That's because, if you have a bigger**
11 **picture of this area --**

12 **Q.** I do. How about this here, would that work?

13 **A. Yeah. Yes.**

14 **Q.** Okay. Let's mark it as Exhibit 57.

15 (Front page of Dr. Farrell's report,
16 received and marked for identification as Exhibit
17 P-57.)

18 MR. D'AMATO: And for the record, this
19 is the front page of a report that was written by the
20 -- Dr. Farrell's group.

21 **Q.** Okay?

22 **A. Um-hum. Yeah. So, you can see a little bit**
23 **in this picture. There are these sand bars here.**

24 **Q.** Okay. Now, what you're going to have to do
25 is, do me a favor, when you said here, on exhibit?

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1 **A. 56.**

2 **Q.** 56. Put a circle. I mean, we all see it
3 here, but for later reference, just put a circle
4 there?

5 **A. In, what, blue?**

6 **Q.** Yeah. Go ahead.

7 **A. (Witness complies.)**

8 **Q.** Okay.

9 **A. There.**

10 **Q.** Go ahead.

11 **A. Now, if you look at this picture --**

12 **Q.** This is Exhibit 57.

13 **A. You'll see the white caps, which show shallow**
14 **water.**

15 **Q.** Okay.

16 **A. From Stone Harbor all the way over to the**
17 **channel.**

18 **Q.** Why don't you put a big red circle about
19 those white caps.

20 **A. (Witness complies.)**

21 **Q.** Thank you.

22 **A. So, that indicates shallow water. So, at**
23 **high tide, you have this back bay filled with water.**
24 **In six hours, that water is going to empty back into**
25 **the ocean. And it doesn't go over this shallow**

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1 **water, it goes through this channel, boating channel**
2 **right there.**

3 **Q.** Got it. Okay.

4 **A. So, you're going to get a heavy flow of**
5 **water.**

6 **Q.** Yeah. And fast currents?

7 **A. Yes.**

8 **Q.** Right. You know, we lawyers try to do our
9 homework on this thing. And I was reading in
10 something about the history of Hereford Inlet, that
11 when the Iroquois Indians were here then, that this
12 was always known for the currents, and how they were
13 moving.

14 Did you know that?

15 **A. I didn't know that.**

16 **Q.** Yeah.

17 **A. No.**

18 **Q.** So, anyhow, let me tell you something the
19 chief said, which is really interesting to all us
20 lawyers. He said that when the tides are changing,
21 back bay to ocean, but vice-versa, that in a certain
22 area, there's an actual whirlpool or, as Dr. Farrell
23 calls it, a vortex that moves around and around. He
24 said -- the chief said you can actually see it at --
25 when it's mid tide and low tide, you can see the

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1 vortex or whirlpool.

2 Did you ever see that before?

3 **A. No.**

4 **Q.** No. Okay.

5 Now, let's go back to your experience
6 as a lifeguard when you were in the inlet zone.

7 **A. Um-hum.**

8 **Q.** For how many years before July 27, 2012 were
9 you assigned for the summer to, we'll call it, the
10 inlet zone?

11 **A. I believed in '98, I was moved to the inlet.**

12 **Q.** Okay. Now, I'm surmising this. And -- and
13 later, when we're finished, I'm going to tell you a
14 story when I tried out for the Margate lifeguards.
15 You'll leave here laughing.

16 (Discussion off the record.)

17 **Q.** Okay? True story.

18 But anyhow, I'm surmising that because
19 of your experience and your professionalism, you were
20 assigned to the inlet zone, as opposed to other
21 zones. Would that be a fair statement?

22 **A. Well, I was assigned to the inlet zone in '90**
23 **-- the dates aren't exactly clear, but around '96, I**
24 **was put in charge of the Jet Ski.**

25 **Q.** Right.

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1 **A. And then the Jet Ski was more or less put in**
2 **charge -- it was assigned to the inlet. So, I went**
3 **with the Jet Ski.**

4 **Q. Right.**

5 **A. So, that's kind of how it happened.**

6 **Q. In doing our research about the -- all of the**
7 **beaches, the ones that are protected and not**
8 **protected, am I correct in saying that the area where**
9 **is, say, Moore's Beach and the inlet beach is some of**
10 **the more dangerous beach area in North Wildwood,**
11 **because of these currents that we've been talking**
12 **about?**

13 **A. That's true.**

14 **Q. All right.**

15 **A. Yes.**

16 **Q. And that's why I -- I don't know who told me,**
17 **somebody told me that that's why you were assigned**
18 **there, because you were a veteran, and -- and because**
19 **of the condition of the inlet there.**

20 **Now, the chief said that in the early**
21 **'70s, I think it was 1977, 1975, that they actually**
22 **used to have lifeguard stands in the area that you**
23 **call Moore's Beach and The Point area.**

24 **Do you remember that?**

25 **A. No.**

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1 **Q. Okay. In looking at Exhibit 55, which you**
2 **call the inlet zone or beach, or the inlet beach, how**
3 **many lifeguard stands would typically be located in**
4 **that area before July 27, 2012 for the summer season?**

5 **A. It would vary between two and three.**

6 **Q. Okay. And the lifeguard stand that would be**
7 **closest to the -- what do you call it, the bird**
8 **sanctuary?**

9 **A. Yes.**

10 **Q. Would be how far from the bird sanctuary?**

11 **A. Right on the bird sanctuary line.**

12 **Q. Okay. Now, while we're talking about this**
13 **bird sanctuary, in the past summers I've been there,**
14 **and I see where they put up the fence all around that**
15 **area, and the bird in question, is it the plover?**

16 **A. Piping plover.**

17 **Q. Piping plover. Okay. How was that bird**
18 **sanctuary created?**

19 **A. Well, I mean, I don't know much about it.**
20 **It's -- I believe it's a -- on the verge of**
21 **extinction, and --**

22 **Q. Okay.**

23 **A. -- so, it's protected by the state. And --**

24 **Q. Was it the wildlife department?**

25 **A. I think so.**

WORD FOR WORD REPORTING, LLC

1 **Q. Okay.**

2 **A. Yeah. And they did a very good job of**
3 **sometimes there would be a guy there, in the peak**
4 **season, you know, we tried to keep people out of**
5 **there, it wasn't our job, but we would try to, if we**
6 **saw someone go in there, we would get them out. But**
7 **sometimes they would have someone in that area, you**
8 **know, keeping people out.**

9 **Q. Okay.**

10 **A. Yeah.**

11 **Q. And who put up the fence that I saw there --**

12 **A. The state.**

13 **Q. -- when we were there?**

14 **A. Wildlife.**

15 **Q. Okay. And how long ago did the state start**
16 **putting up a fence to protect the birds?**

17 **A. My -- it's -- I'd say --**

18 **Q. You can estimate.**

19 **A. Yeah. I'd say 2003 or '4.**

20 **Q. Okay. And every summer, they come and they**
21 **put up the fence?**

22 **A. Um-hum. And it was a certain -- it only**
23 **lasted a certain amount of time. So, towards the end**
24 **of the season, the fence would come down.**

25 **Q. Are the birds still there, or they go away?**

WORD FOR WORD REPORTING, LLC

1 **A. No, it's a -- it was a mate -- you know, a**
2 **mating type of --**

3 **Q. Area.**

4 **A. -- area, yeah. And then it only lasted, you**
5 **know, I couldn't tell you -- I know by the end of**
6 **August, the fences were down, and we didn't have to**
7 **worry about people walking back there.**

8 **Q. Okay. Now, Mr. DiJoseph and I and a couple**
9 **other investigators, and for the past summers, after**
10 **the drowning, we would go to the beach, and we**
11 **observed employees of the North Wildwood Public Works**
12 **Department cleaning the beach. Okay?**

13 **And near -- in the Moore's Beach area,**
14 **we saw an employee of the Public Works Department,**
15 **because he had something on that said public works,**
16 **picking up trash. Given your experience on the beach**
17 **patrol, what work would the Public Works Department**
18 **do cleaning the beaches north of the inlet zone?**

19 **A. I would -- they would clean them. Yeah.**

20 **Q. Yeah. I -- as I said, I was raised in**
21 **Margate, and they used to have a large tractor, and**
22 **it had this device in the back that would collect**
23 **shells.**

24 **A. A rake.**

25 **Q. A rake?**

WORD FOR WORD REPORTING, LLC

1 A. Yeah, the beach rake, yeah.

2 Q. Yeah, and --

3 A. That, I don't think they raked it. I don't
4 believe they raked it.

Q. Okay.

6 A. But I mean, you know, you being down there,
7 this section of the beach is --

8 Q. Moore's.

9 A. Moore's is -- is crowded. So, if they didn't
10 clean up down there, you know, the -- the trash and
11 whatnot, you know, would be --

12 Q. Okay. I see.

13 A. Out of control.

14 Q. Now, we also interviewed ice cream vendors.

15 A. Um-hum.

16 Q. And -- and we -- we were talking to one
17 gentleman that was -- had taken his cart almost --
18 well, I would say what you call The Point. Isn't
19 that where we met him; at The Point, we were talking
20 to him.

21 Now, would the beach patrol have the
22 responsibility of determining if a vendor of ice
23 cream and popsicles had a mercantile license? Who
24 would do that?

25 A. Police department.

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1 Q. Police department. All right. And speaking
2 of the police department -- well, no, let's go back a
3 little bit.

4 According to these records, which we'll
5 get into in a moment, it appears to us that there
6 were occasions where lifeguards, and not just saying
7 you necessarily just yet.

8 A. Um-hum.

9 Q. Where lifeguards that were posted in the
10 inlet zone had to effectuate rescues up north, the
11 Moore's Beach, and at The Point area. Is that
12 correct?

13 A. Yes, sir.

14 Q. All right. And how would you, if you were
15 posted in the inlet zone, know that somebody was in
16 trouble at the beaches, which is Moore's Beach, The
17 Point area? How would you know that?

18 A. Well, I actually was, you know, a lot of guys
19 made jokes, because I would always listen to scan.
20 But because of the section of the beach I was in
21 charge of, I would have my radio on scan all the
time, so I'm listening directly to dispatch.

22 Q. Okay.

24 A. So, if a 911 call comes in, I'm, you know,
25 instead of a 911 call coming in, going through our

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1 beach tent, filtering down to me, I'm -- I'm reacting
2 right away.

3 Q. All right. Would you take the Jet Ski down
4 there?

5 A. A lot depended on the call. If it was,
6 there's somebody on a raft, you know, if there's -- a
7 lot depended on the 911 call, itself. Always, we'd
8 go with the -- I would go in the Jeep first, because
9 you're going to get your quickest response time with
10 the Jeep in the truck. And you'll get an eyes on the
11 situation.

12 A lot of times, you know, the group I
13 work -- the guys I worked with were all really good,
14 and we all knew what we were dealing with. So, if I
15 started down -- if they saw the truck going towards
16 The Point, or at Moore's Beach, you know, not in its
17 normal 10 mile an hour pace, they would start to
18 gravitate towards the Jet Ski to get that piece of
19 equipment in motion.

20 So, you know, a 911 call comes in,
21 there's a situation in the Moore's inlet, The Point,
22 and it doesn't just affect here, we would go to the
23 island. I can't --

24 Q. Champagne Island?

25 A. Champagne Island.

WORD FOR WORD REPORTING, LLC

1 Q. Yeah.

2 A. Yeah. Any kind of water emergency, you know,
3 we're going to respond to.

4 Q. Now, what we've learned from doing research
5 is, it seems like every summer, you're affected or
6 infested with super stars that want to try to go from
7 Moore's Beach over to Champagne Island and back. Is
8 that correct?

9 A. Well, this actually isn't Champagne Island.

10 Q. Oh, okay.

11 A. That's just a sand bar that appears at low
12 tide. Champagne Island is more over here. Off the
13 -- off the map.

14 Q. Okay. So, it would be above Exhibit 55?

15 A. Yes.

16 Q. Okay. I see.

17 A. And, yeah, it's -- you know, visually, it
18 looks like a 75 to a hundred meter swim. But --

19 Q. What is it?

20 A. Probably 75 to a hundred meters. But it
21 looks like it's a -- you know, something you can get
22 to.

23 Q. I would agree.

24 A. But --

25 Q. Because, you know --

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- 1 **A. Right.**
 2 **Q.** That's what I would have thought it was.
 3 **A. Yeah. But at high tide, you can't see this.**
 4 **Q.** You can't see Champagne Island?
 5 **A. No. You can't see this sand bar right there.**
 6 **Q.** Oh.
 7 **A. So, that's only visible at mid to low tide.**
 8 **Q.** Okay. If you had to give me an estimate of
 9 the number of times when you were assigned to the
 10 inlet zone before July 27, 2012 that you had to
 11 assist in rescues of people who were trying to swim
 12 from Moore's Beach to Champagne Island, or back, give
 13 me your best estimate. How many times a summer?
 14 **A. Twice a week.**
 15 **Q.** Okay. And I have a buddy that was raised
 16 down here in Cape May County. And he told -- he's a
 17 tremendous swimmer, but he was explaining to me how
 18 difficult that swim is, because of the currents.
 19 Correct?
 20 **A. Yeah. It's treacherous.**
 21 **Q.** Okay. Now, in what situations, again going
 22 back to your experience as a lifeguard, would members
 23 of the North Wildwood Fire Department have to assist
 24 you in effectuating rescues from Moore's Beach to the
 25 beginning of the inlet zone?

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- 1 **A. Assist us, or show up?**
 2 **Q.** Or show up.
 3 **A. Well, never during a -- our working hours.**
 4 **We've never had the fire department show up during --**
 5 **Q.** Okay.
 6 **A. -- guarded hours of operation.**
 7 **Q.** Got it. Go ahead.
 8 **A. And then whenever there was an after water --**
 9 **an after hours call that came through 911, because**
 10 **the fire -- I work with the fire department, also.**
 11 **They're listening to the dispatch, also. So, they're**
 12 **-- they're responding, more than likely, whenever it**
 13 **comes through dispatch.**
 14 **Q.** What was your position on the fire
 15 department?
 16 **A. Part-time. And a volunteer.**
 17 **Q.** Okay. Got you. All right.
 18 On what -- In what type of situation
 19 would you have to request the assistance of North
 20 Wildwood police officers relative to any issues that
 21 were happening from Moore's Beach to the beginning of
 22 the inlet zone?
 23 **A. Only when we were dealing with intoxicated**
 24 **people on -- on the beach. Never called the police**
 25 **department for a water issue.**

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- 1 **Q.** Okay.
 2 **A. Not -- you know, it just --**
 3 **Q.** All right. In your experience as a lifeguard
 4 with the North Wildwood Beach Patrol, was there ever
 5 a discussion about closing the beaches? But before
 6 you answer that, because I want you to walk out of
 7 here saying that I was fair to you.
 8 **A. Um-hum.**
 9 **Q.** I want you to read what's been marked for
 10 identification as Exhibit 31, where you were -- an
 11 investigator, by the way, named Mrs. Simpson had a
 12 conversation with you. And to be candid with you,
 13 you weren't aware of the fact that she was wired.
 14 And I've highlighted in yellow certain questions.
 15 And I'm just going to focus in on, as you're reading
 16 this, it's about three or four pages, I've given
 17 copies to all counsel, I'm just going to ask you
 18 questions about the bars and the condominium owners,
 19 and then we'll get into these reports, and then we
 20 should be finished.
 21 **A. I'm just reading the yellow highlight.**
 22 **Right?**
 23 **Q.** Yeah, yeah. I just want you to do that,
 24 because I'm going to ask you questions about pressure
 25 from bar owners, and pressure from the owners of the

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- 1 condominiums.
 2 Okay. That's it?
 3 **A. Yeah.**
 4 **Q.** All right. The bars, Flip Flop -- you can
 5 leave it right there, yeah.
 6 The bars, Flip Flop, what's the one
 7 across the street from Flip Flop?
 8 **A. Westy's.**
 9 **Q.** Yeah, Westy's. We've been to both of them
 10 during the investigation of this case.
 11 What was the pressure that whomever
 12 that was associated with the bars was putting on to
 13 keep Moore's Beach open, as opposed to closing it?
 14 **MR. ROZELL:** Object to the form. You
 15 can answer.
 16 **A. Well, to be honest with you, I -- I don't**
 17 **know any pressure. When I was in that conversation,**
 18 **I was really just talking about my own personal**
 19 **opinion. And what I did a lot with -- and, you know,**
 20 **I still to that day feel the same way, it has nothing**
 21 **to do with how the city or the bartenders -- the bar**
 22 **owners, but it's just my personal opinion would be**
 23 **that if you were to -- if you were to shut that**
 24 **section of the beach down, which is really the -- the**
 25 **only way you're going to prevent another drowning,**

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1 and everything I say in there, you know, I'll stand
 2 by. I would have told Mrs. Simpson --
 3 Q. Right.
 4 A. -- the same thing if she told me she was with
 5 you guys.
 6 Q. Right.
 7 A. So, it's not a matter of any of the bar
 8 owners, or anyone. It's just my personal opinion
 9 that if you were to shut down this section of the
 10 beach --
 11 Q. Right.
 12 A. -- which, and you said you were there in the
 13 -- you know, the peak of the summer, I don't think
 14 the bar owners that are right over the bulkhead would
 15 be too happy. And I know for a fact that the -- the
 16 local people, who go to that beach, just to get away
 17 from the lifeguards, you -- you know, you wouldn't
 18 have a happy bunch of people.
 19 Q. Right. Well, the locals, like, let's be
 20 candid.
 21 A. Um-hum.
 22 Q. And I think everybody here has done it one
 23 time in their life. They like taking down some
 24 alcoholic beverages, and to sit there, and relax.
 25 And because it's not a protected beach, they can do

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1 it.
 2 A. And not be told what to do by jerk off
 3 lifeguards.
 4 Q. I get it. And also, too, I understand they
 5 can take dogs there, too. Right?
 6 A. Well, no.
 7 Q. No?
 8 A. Legally, you couldn't take dogs there. But
 9 it was unguarded, unprotected, you know, it wasn't --
 10 there was no -- there was no one there to tell you
 11 not to take dogs there.
 12 Q. Okay.
 13 A. So, I would hear a lot of times dispatch send
 14 down some Class II officers to -- because locals
 15 might call and say there's a dog on the beach. But,
 16 you know, for the most part, it's an area where
 17 people would take their dogs and not be hassled as
 18 much.
 19 Q. Okay. I got it.
 20 Now, let me ask you this: You told
 21 Mrs. Simpson on the bottom of page 3, "You know,
 22 there's been seven drownings in nine years."
 23 A. Um-hum.
 24 Q. When you say drownings, are they fatalities?
 25 A. Well, to be honest with you, there were four

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1 in nine years. What I would do is, I would sit here
 2 in my truck, and I would see people down there.
 3 Q. At The Point, you mean?
 4 A. At The Point.
 5 Q. Yeah.
 6 A. And what I would do is, I would go down
 7 there, and try to express to the people, you know,
 8 how dangerous it is down there. So, when I said
 9 that, it was just trying to get people -- because I
 10 could go down there, tell them what's going on, and
 11 on my way back, look in the rearview mirror, and
 12 they're going right back in the same spot.
 13 So, I was trying to -- to convey to her
 14 that it's not a place to be swimming.
 15 Q. You know, I think it was last summer, we came
 16 down here early in the morning, and we had a drone.
 17 And in the area -- you see that X on Exhibit 48
 18 there?
 19 A. Yes.
 20 Q. Okay. That is where Chief Cavalier said
 21 that, based upon his investigation, which he headed,
 22 is where the incident with Brad Smith took place.
 23 Would you concur with that?
 24 A. Between -- between here and there.
 25 Q. Okay. Let's do this.

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1 MR. DIJOSEPH: That's a prior exhibit.
 2 MR. D'AMATO: Yeah, I know. Okay.
 3 Hold on.
 4 Q. Why don't you do this. This is a clear copy.
 5 On Exhibit 56, why don't you bracket where the Brad
 6 Smith incident took place.
 7 A. You can see right here that it gets shallow
 8 right there. So, starting right here --
 9 Q. Make a nice long line, so we can see it later
 10 on.
 11 A. Um-hum.
 12 Q. Right.
 13 A. Starting right there, to right here.
 14 Q. Okay. And just put your initials, your two
 15 initials -- oh, no, in the -- in the -- on the sand,
 16 so we know we can see it better.
 17 A. Um-hum.
 18 Q. And that area is about how long, estimated?
 19 A. Twenty yards.
 20 Q. Okay. Now -- all right. You told me earlier
 21 that you never heard about the whirlpool or vortex,
 22 but --
 23 A. Not -- not in this area.
 24 Q. Okay.
 25 A. I have seen it happen at the rock pile back

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1 here.

2 Q. Okay. Now, you better put a -- a green X
3 where you're saying rock pile.

4 A. For the whirlpool. Right?

5 Q. The whirlpool, yeah.

6 A. Yeah. That's going to be right -- there's a
7 hole right here.

8 Q. Okay. For the record, he put a dot that --
9 he put an X over it. Okay.

10 And when does that whirlpool occur?

11 A. The change of tides. Yep.

12 Q. Okay. Now, let me finish with what the chief
13 said, and everybody here in this room was there,
14 including the stenographer. He said that when the
15 whirlpool is going like this, he estimated that it's
16 about 25 yards long. And that what it does is it
17 eats up a part of the beach. So that he theorized
18 that when Scott Sunderland and Brad Smith are walking
19 with their children, that they just walk -- they were
20 walking literally in ankle deep water, and they just
21 fell into this 10-foot hole, which had been cut out
22 because of the whirlpool.

23 Now, did you ever hear what I just said
24 before my saying it?

25 MR. HUNKINS: Object to the form.

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1 MR. D'AMATO: Okay. That's okay.

2 MR. HUNKINS: I mean, at least, part
3 it's mischaracterized.

4 MR. ROZELL: I'll join.

5 MR. D'AMATO: Okay.

6 MR. ROZELL: You can answer.

7 A. I don't know what he's talking about, to be
8 honest with you.

9 Q. Okay.

10 A. I don't know. A whirl -- I've never seen a
11 whirlpool, or -- yeah, none of that makes sense to
12 me.

13 Q. Okay. All right. Now, let me hand to you
14 Exhibit 32. I want to take these all back.

15 We're not going to go through all of
16 them.

17 A. Um-hum.

18 Q. Did I give you all copies? Here.

19 MR. ROZELL: Thanks.

20 Q. That's your copy. That's your -- we all have
21 copies, yeah.

22 Okay. All right. Now, in looking at
23 Exhibit 32, you see at the bottom there?

24 A. Yes.

25 Q. Is this your handwriting?

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1 A. No.

2 Q. That's Mr. Taylor. Correct?

3 A. Yes, sir. Um-hum.

4 Q. Now, I have highlighted in yellow what I'd
5 like you to look at. It says, "Rescued two boogie
6 boarding adults from the inlet with guard" is that
7 Lydon?

8 A. Yes, sir.

9 Q. All right. Now, I -- listen, if you say you
10 don't remember, I can appreciate it.

11 A. Um-hum.

12 Q. Do you remember this incident?

13 A. No.

14 Q. Okay. All right.

15 Now, go to the next exhibit, 33.

16 A. Um-hum.

17 Q. Is that your handwriting?

18 A. No, sir.

19 Q. All right. That's Lieutenant Taylor again?

20 A. No. That's Bill Whitey.

21 Q. Is he still a member of the beach patrol?

22 A. No.

23 Q. Is he retired?

24 A. No. He's in Wildwood.

25 Q. Okay. He works for the beach patrol there?

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1 A. Yes, sir.

2 Q. All right. Do you remember this incident,
3 "One inlet rescue, kayak in distress"?

4 A. No. I'm not on that day. Up top, it has the
5 -- the Taylor and --

6 Q. Yeah. You wouldn't be it?

7 A. That would be probably my day off.

8 Q. Okay. Go to 34.

9 A. Yes.

10 Q. That's your handwriting?

11 A. Yes, sir.

12 Q. All right. And we've highlighted it, it
13 says, "Kite surfer stuck in channel for 15 minutes,
14 para sailboat picked him up and dropped him off at
15 Tenth Street."

16 Do you remember this?

17 A. No, I don't.

18 Q. All right. Can you tell, in looking at this
19 form, where in the inlet this took place?

20 A. I could guess.

21 Q. Give me your best estimate.

22 A. I mean -- yeah. I would say, more than
23 likely, in this area here.

24 Q. Okay. Let's get the green marker, and make a
25 big circle at -- on Exhibit 56.

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1 **A. (Witness complies.)**

2 **Q.** And --

3 **A.** Initial it?

4 **Q.** Yes, please.

Is that because of past experience with
o other kite surfers?

7 **A.** I would -- I don't remember exactly, but I
8 would -- I would say, more than likely, it was due to
9 the kite surfer's experience.

10 **Q.** And what do you mean by that?

11 **A.** He wasn't very good.

12 **Q.** Ah. So, he wound up in a place that he
13 probably never intended?

14 **A.** Right.

15 **Q.** I see what you mean. Okay.

16 Now, go to Exhibit 35.

17 **A.** Okay.

18 **Q.** And we see your name at the top.

19 **A.** Yes.

20 **Q.** And it says 3:55 p.m.

21 **A.** Um-hum.

22 **Q.** "Guard Lydon saw a group at The Point that
23 was about 200 yards out. They drifted down from
24 Moore's and two of the victims were shaken up."

25 Now, here's what I want to ask you:

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1 **A.** Um-hum.

2 **Q.** Here we have people that were at Moore's
3 Beach, and they apparently go out into the water, and
4 they drifted down from Moore's Beach.

5 **A.** Yes, sir.

6 **Q.** Okay? Was this a common phenomenon where
7 people would enter the water at Moore's Beach, and
8 then, because of the currents, would be drifting down
9 toward the inlet zone?

10 **A.** Yes. Yes. You know, once again, it depends
11 on the tide. If the tide's dropping, they're going
12 to go in here and drift -- and drift this way. If
13 the tide's coming in, it works just the opposite.
14 The water's coming this way, and they'll -- you know,
15 there's -- it's unguarded down here at Moore's Beach.
16 So, they go out, and they get in that current, and
17 we've rescued people this way.

18 **Q.** Above Moore's Beach, north of Moore's Beach?

19 **A.** Yes, sir.

20 **Q.** Okay. Now, if you go to Exhibit 36, the next
21 one, here's another reference to people drifting down
from Moore's Beach.

22 **A.** Yes, sir.

24 **Q.** So, in a given month, how many times would
25 you see people that were at Moore's Beach, then --

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1 and they just can't get back to the beach, and

2 they're coming down toward the inlet zone?

3 **A.** Well, that's a difficult question to ask,
4 because the ocean could be like a lake for three
5 weeks at a time. And you have nothing. And then you
6 could have the ocean, you know, get angry, and we
7 could be in there twice a day for five days at a
8 time.

9 **Q.** Got it.

10 **A.** So, a lot of that depends on the conditions
11 of the ocean.

12 **Q.** All right. The next one, Exhibit 37, has
13 your name, August 25, 2010. This is where the
14 fisherman fell off the sea wall.

15 **A.** Okay.

16 **Q.** Do you remember this one?

17 **A.** I do remember that, yes, sir.

18 **Q.** Okay. It says here, "Major rescue off
19 Moore's Beach."

20 You've been very candid and truthful
21 today, and I respect that. And I'm almost finished.
22 I just want to ask you a question. I've been through
23 all of these reports, okay, yours and others. With
24 all the rescues that are documented, I keep asking
25 myself, why wasn't there a lifeguard stand with

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1 lifeguards close to Moore's Beach, as opposed to
2 being at, what, First and Surf?

3 **A.** First and Surf, yeah.

4 Well, the answer I would give to that
5 is, when you put a lifeguard stand on the beach,
6 you're telling the public that's a safe place to
7 swim. And that area of the beach is anything but
8 safe. Forget about the currents. It's a boating
9 channel. I explained to my -- Will the other day, we
10 joked about, we thought we were going to see Rodney
11 Dangerfield come in on Caddyshack with the horn
12 going, Jet Skis, you know, kite surfers, speed boats.
13 You name it. I mean, you've been down there.

14 **Q.** Yeah.

15 **A.** On a -- on July 4th, it's -- we would drive
16 down there, and we'd be, like, let's get out of here.
17 It's -- as a lifeguard, it was -- we didn't want to
18 be anywhere near it.

19 **Q.** I don't know if you know this, but no one's
20 going to disagree here with what I say, when Brad and
21 his wife and the Sunderlands came to the beach, they
22 were at the first -- the protected beach.

23 **A.** Yes, sir.

24 **Q.** They decided to take a walk down to Moore's
25 Beach, and on their way back, this horrible,

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1 catastrophic thing happens.

2 Now, I -- I asked the chief, is walking
3 in ankle deep water, or water up to your mid calf, is
4 that a violation of any ordinance in those
unprotected beaches, and he said no. Would you agree
6 with him?

7 **A. Yeah.**

8 **Q. Okay.**

9 **A. Yeah.**

10 **Q. Well, what warnings are there to people like**
11 **Brad Smith, who's walking with his daughter down the**
12 **beach, to say that there could come a time where**
13 **you're going to walk into 10 foot deep water when**
14 **you're only walking in ankle deep to mid calf water?**

15 There's no warning?

16 **A. No. The signs we put up, dangerous currents.**

17 **But --**

18 **Q. But you wouldn't see them if you're walking**
19 **from a protected beach to where this event took**
20 **place?**

21 **A. No. Nope.**

22 **Q. All right. Here's another thing I asked**
23 **myself. And it's easy for me to ask questions, and**
24 **it's tough for people to provide answers. I realize**
25 **that.**

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1 What do you think, given all your
2 experience on the beach patrol, and especially with
3 this area that we've been talking about, how do we
4 prevent another Brad Smith from drowning?

5 MR. HUNKINS: Object to the form.

6 MR. ROZELL: Join in the objection.

7 **Q. Go ahead. You can go ahead.**

8 **A. Yeah. You know, being a lieutenant down**
9 **there for so long, and being on a lot of these**
10 **drownings, you know, I asked myself the same thing.**
11 **And I think the only way to prevent it is to shut the**
12 **beach down completely. I mean, fences, you know,**
13 **guard dogs, 24/7. Not even -- not even walking down**
14 **there. Because there's -- you know --**

15 **Q. In a perfect world, if -- if you were king,**
16 **where would you shut the beach off; from what point**
17 **to what point?**

18 **A. Well, I mean, you know, we can control this**
19 **area. Is it all right with the green?**

20 **Q. Yeah, that's all right. You just put a green**
21 **line above the inlet zone. Correct?**

22 **A. Yeah, yeah.**

23 **Q. On Exhibit 56. Right?**

24 **A. Yeah.**

25 **Q. Okay.**

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1 **A. And that way. You want me to go all the way**
2 **around?**

3 **Q. Yeah, do it.**

4 You know what, I'll tell you what you
5 better do. Let's do this, because you had that
6 marking there.

7 **A. Yeah.**

8 **Q. What you're saying is you'd have to close the**
9 **beach from Moore's Beach to the inlet zone, where it**
10 **starts?**

11 **A. Yes.**

12 **Q. Okay.**

13 **A. And no one step a foot on -- onto the sand.**

14 **Q. All right. I have to tell you, I started to**
15 **tell you about the drone. I'm trying to get you out**
16 **of here, because I told my legal assistant to tell**
17 **the lawyers that I would get you out of here by four.**

18 **A. I'm in no hurry.**

19 **Q. Oh, okay. We were down here with a drone,**
20 **and we were at water's edge, and they all have these**
21 **photographs. And you see the drone, and if we had**
22 **walked out five, six, seven feet, we would have gone**
23 **right into very deep water. Okay?**

24 **A. Um-hum.**

25 **Q. You've seen that, yourself, in this area that**
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1 we're talking about here. Correct?

2 MR. HUNKINS: Object to the form.

3 **Q. Have you, personally, seen what I'm talking**
4 **about?**

5 **A. Yes, sir.**

6 **Q. The -- from the end of the inlet zone all the**
7 **way up to Moore's Beach, what are the variations in**
8 **the depth once you go off land and you're, you know,**
9 **you're in the water?**

10 **A. Of course, it's going to depend on the tide.**
11 **Because you got, you know, a low tide, opposed to**
12 **high tide, sometimes can be 40 feet difference. So**
13 **that --**

14 **Q. Okay.**

15 **A. -- that has a big -- that plays a big factor**
16 **in it. I can tell you out front here.**

17 **Q. Okay. Here -- you're --**

18 **A. Inlet beach.**

19 **Q. Right.**

20 **A. Down to The Point.**

21 **Q. Right.**

22 **A. It's gradual. You know, you walk 10 feet,**
23 **you're in knee deep water, you walk 10 more feet,**
24 **you're in thigh deep water, and then, you know --**
25 **similar --**

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1 Q. How -- go ahead.

2 A. Similarly, down here at Moore's Beach, it's
3 gradual. Until you get to the -- until you get to
4 the channel. And then it's a boating channel. It's
5 -- it drops off.

6 Q. I see. Okay.

7 MR. D'AMATO: I am -- I'm finished.

8 But let me just talk to Mr. DiJoseph.

9 Do you have any questions?

10 MR. HUNKINS: No questions.

11 MR. D'AMATO: Okay. Just two seconds.

12 VIDEOGRAPHER: Going off the record,
13 the time is 3:50.

14 (Discussion off the record.)

15 VIDEOGRAPHER: We're back on the
16 record, 3:51.

17 BY MR. D'AMATO:

18 Q. Two questions.

19 The Jeep that you were referring to,
20 where was that kept on the beach?

21 A. How do you want me to mark -- you want me to
22 mark it, or --

23 Q. Well, okay. Was it in the inlet zone?

24 A. Yes, sir.

25 Q. Okay. And, typically, was it at First and
WORD FOR WORD REPORTING, LLC

1 Surf?

2 A. No. We would bring it down, we'd bring the
3 Jet Ski on the trailer, we'd set the -- there would
4 be a stand that we would call Second and Ocean.

5 Q. Right.

6 A. And we'd have Second and JFK. They were the
7 -- the handles on the radio. And we would keep a
8 ramp at Second and Ocean with the Jet Ski in the
9 ramp, you know, cones, and the truck and the Jet Ski
10 would be at Second and Ocean. So, it would be --

11 Q. Okay.

12 A. In orange, it would be right there.

13 Q. Okay. Why don't you finish it off, and so,
14 we'll call it a rectangle.

15 A. (Witness complies.)

16 Q. There you go. The lieutenant put a rectangle
17 there to represent the location of the Jeep. Right?

18 A. Yes, sir.

19 Q. Okay. Now, here's the final thing: I think
20 you've answered this, but you were telling me, if you
21 would ride down on the Jeep to The Point area, and
22 tell people how dangerous it was, as you're driving
23 back, you could see in the rearview mirror that they
24 totally disregarded what you're saying, and they went
25 back into the water. What would you tell them when

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1 you went down there, when they're at The Point, as to
2 why they shouldn't be swimming there?

3 A. We would tell them that they're in
4 unprotected part of the beach, unguarded part, and
5 that it's not a safe place to swim.

6 Q. Okay. If somebody was walking at water's
7 edge; would you tell them not to walk there?

8 A. I couldn't. We just didn't have the --
9 because it was -- it's a pretty -- you know being
10 down there yourself, it's a pretty popular area to
11 walk. A lot of people -- a lot of people that are at
12 Moore's Beach will walk this way to get a hot dog, a
13 lot of people that are at the inlet beach will walk
14 that way to see the boats and Jet Skis, and -- so, it
15 -- you know, it just wasn't -- it wasn't --

16 Q. Yeah. The chief touched on that. Not enough
17 manpower, or woman power.

18 A. Right.

19 Q. To be politically correct.

20 The -- when people would walk from
21 Moore's Beach south, where would they go to get a hot
22 dog?

23 A. There was a stand -- there's a stand at First
24 and Surf, and also one at Second and JFK.

25 Q. Okay. In a perfect world, if North Wildwood
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1 had an unlimited budget, would you, if you were the
2 chief, have lifeguards walking on foot between
3 Moore's Beach and the beginning of the inlet zone to
4 warn people about that even walking in ankle deep
5 water could be dangerous?

6 A. Not lifeguards. Police.

7 Q. Who would you --

8 A. If you would -- you would have to have police
9 department. Because you'd have too much of a
10 confrontation with -- with the beach patrol.

11 Q. What do they call them, the Class II
12 officers?

13 A. Um-hum.

14 Q. Something like that?

15 A. Yeah. I mean, you'd have to really, it would
16 be like a military state. You'd have to -- you would
17 get such a -- have such a problem with locals.
18 That's their beach. They -- you know, they think,
19 you know.

20 Q. Um-hum. You know, I'm going to leave this up
21 to you if you want to answer it or not.

22 Mrs. Smith, her sole motive by this
23 litigation is never to let this happen to another
24 family, to lose, you know, a husband, two young --
25 you know, a father to, you know -- to two young kids.

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1 You don't have to answer if you don't want to.

2 **A. Um-hum.**

3 **Q.** And nobody's blaming you, please, think --
4 about this whole thing.

A. Oh, I know.

6 **Q.** What would you say to her about the future
7 for -- to prevent this from happening again?

8 MR. HUNKINS: Objection.

9 MR. ROZELL: Same objection. Join in
10 the objection.

11 **A. Yeah. You know, it definitely wasn't an easy**
12 **thing for me. I would tell her I don't know what the**
13 **answer is. And I sat -- I sit on the beach eight**
14 **hours a day, six days a week. And knowing how**
15 **dangerous it is down there, trying to do my best.**
16 **And, you know, I know, our response team couldn't**
17 **have done a better job. There was a Jet Ski on**
18 **scene.**

19 **Q.** Yeah.

20 **A. That was right there.**

21 **Q.** Right, yeah, we know.

22 **A. I don't know if Mr. Smith panicked. I don't**
23 **know if he had a heart attack. I know if he went on**
24 **his back and just treaded water, we would have been**
25 **-- we wouldn't have had any problems. It breaks my**

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1 **heart, what happened. But I thought about it, and**
2 **thought about it, and I don't know what -- I don't**
3 **know what --**

4 **Q.** Yeah.

5 **A. What it is is, you put big fences, electrical**
6 **fences with guard dogs, and police, and you don't let**
7 **people in there. That's -- that's what it comes down**
8 **to.**

9 **Q.** Right. I respect you for answering that
10 question. And I'll tell you, she'll appreciate it.

11 **A. Yeah. Well, like I said, I -- it breaks me**
12 **up thinking about it.**

13 **Q.** Yeah.

14 **A. I was -- I'm usually in the water on all the**
15 **rescues. This particular rescue, I was on the beach.**
16 **And I had to see the son come up and ask the friend**
17 **what's happening, and he said, they're looking for**
18 **your dad. And at that point, I had the Jet Ski in**
19 **the water, and two paddle boards, and I knew what**
20 **happened. So, yeah, it's not -- not easy.**

21 MR. D'AMATO: All right. Thank you.
We're finished.

23 MR. HUNKINS: Just a couple.

24 THE WITNESS: Yes.

25 EXAMINATION BY MR. HUNKINS:

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1 **Q.** Is North Wildwood a busy place in the summer?

2 **A. Yes, sir.**

3 **Q.** Are the beaches we're talking about, Moore's
4 Beach and down to the protected beach, a very busy
5 beach in the summer?

6 **A. Yes, sir.**

7 **Q.** Are there thousands of people on that beach
8 during the course of the summer?

9 **A. Yes. More than --**

10 **Q.** Is it a common thing for people to walk up
11 and down between Moore's Beach and the protected
12 beach in ankle or knee deep water?

13 **A. Yes, sir.**

14 **Q.** Would you say, over the course of a summer,
15 thousands of people do that?

16 **A. You know, yeah. I can't -- it's tough to get**
17 **a number, I mean, but, it's -- all you'd have to be**
18 **down there is on a busy July day, and you can -- it's**
19 **a very common thing for people to do.**

20 MR. HUNKINS: Thank you. That's all I
21 have.

22 VIDEOGRAPHER: This concludes the
23 videotaped deposition. Off the record, 3:59.

24 (Deposition concludes at 3:59 p.m.)

25

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1 CERTIFICATE

4 I, LYNN SMITH, a Certified Court Reporter of the
5 State of New Jersey, do hereby certify that prior to
6 the commencement of the examination, DAVID LINDSAY
7 was duly sworn by me to testify the truth, the whole
8 truth and nothing but the truth.

9
10 I DO FURTHER CERTIFY that I am neither a relative nor
11 employee nor attorney nor counsel of any of the
12 parties to this action, and that I am neither a
13 relative nor employee of such attorney or counsel,
14 and that I am not financially interested in the
15 action.

16
17
18
19 *Lynn Smith, CCR*

20 Certified Court Reporter

21 License No. XIO1520

22

23

24

25

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By: Kasi M. Gifford, Esquire - NJ ID#: 152582015

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Attorney for Plaintiff

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

Plaintiff,

-vs-

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

Defendants,

**SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY- LAW
DIVISION**

DOCKET NUMBER: CPM-L-331-14

Civil Action

PROOF OF MAILING

The original of the within Motion has been filed with the Atlantic County Clerk at 1201 Bacharach Boulevard, Atlantic City, NJ 08401.

On October 28, 2016, I mailed to All Counsel of Record at their respective addresses, by regular mail, copies of the Notice of Motion, Certification, Exhibit and Proposed Order.

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.

**D'AMATO
LAW FIRM**
COUNSELORS AT LAW
A PROFESSIONAL CORPORATION

2900 Fire Road
Suite 200
Egg Harbor Township, NJ 08234

By: Laura Pastore

Laura Pastore

Assistant to Kasi M. Gifford, Esq.

Dated:

D'AMATO LAW FIRM, P.C.
By: Kasi M. Gifford, Esquire - NJ ID#: 152582015
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(609) 926-3300
Attorney for Plaintiff

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

Plaintiff,

-vs-

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

Defendants,

**SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY- LAW DIVISION**

DOCKET NUMBER: CPM-L-331-14

Civil Action

ORDER

THIS MATTER having been brought before the Court by Kasi M. Gifford, Esquire, on behalf of Plaintiff, and the Court having considered the matter and good cause having been shown,

IT IS on this _____ DAY OF November, 2016, hereby ORDERED that **Plaintiffs be permitted to amend the Complaint to include Joseph Anthony Cavalier and David Lindsay as named Defendants.**

IT IS FURTHER ORDERED that Plaintiff shall be required to file the Amended Complaint within ten days of the execution of the within Order.

IT IS FURTHER ORDERED that a copy of this Order be served on all parties within 7 days of the date hereof.

By: _____
Joseph L. Marczyk, P.J.S.C.

Dated:

**D'AMATO
LAW FIRM**
COUNSELORS AT LAW
A PROFESSIONAL CORPORATION

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