A. Michael Barker, Esquire
Attorney ID#009511976
Barker, Gelfand & James
A PROFESSIONAL CORPORATION
210 New Road, Ste. 12
Linwood, New Jersey 08221
(609) 601-8677
AMBarker@BarkerLawFirm.net
Attorney for Defendant, City of North Wildwood

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

Plaintiff,

v.

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

Defendants.

BRANDY SMITH, by her guardian ad litem, SANDRA SMITH,

Plaintiff

v.

CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE (1-5) fictitious names, MARY DOE (1-5) fictitious names, ABC PARTNERSHIPS (1-5) fictitious names, and XYZ CORPORATION (1-5) fictitious names,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAPE MAY COUNTY
DOCKET NO. CPM-L-331-14
CPM-L-324-16

Civil Action

NOTICE OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF THE CITY OF NORTH WILDWOOD

TO: Paul R. D'Amato, Esquire
D'AMATO LAW FIRM
2900 Fire Road ~ Suite 200
Egg Harbor Township, New Jersey 08234
Attorney for Plaintiff Estate of George Bradley Smith

Joseph C. Grassi, Esquire
BARRY, CORRADO & GRASSI, P.C.
2700 Pacific Avenue
Wildwood, NJ 08260
Attorney for Plaintiff Brandy Smith

TAKE NOTICE that the undersigned will apply to the above named Court, at 9 North Main Street, Cape May Court House, New Jersey 08210 on Friday, October 28, 2016, at 9:00 a.m., or as soon thereafter as counsel may be heard, for an Order granting Summary Judgment in favor of the Defendant, City of North Wildwood, upon the following grounds:

The moving party places reliance upon the attached Statement of Facts, Brief, and Exhibits in Support of the present Motion for Summary Judgment.

Pursuant to R.1:6-2(c) the undersigned requests oral argument only if opposition is received.

A proposed form of Order is attached.

BARKER, GELFAND & JAMES
A Professional Corporation

By: A. Michael Barker
A. Michael Barker, Esquire
Attorney for Defendant
City of North Wildwood

Dated: September 30, 2016

A. Michael Barker, Esquire
Attorney ID#009511976
Barker, Gelfand & James
A PROFESSIONAL CORPORATION
210 New Road, Ste. 12
Linwood, New Jersey 08221
(609) 601-8677
AMBarker@BarkerLawFirm.net
Attorney for Defendant, City of North Wildwood

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

Plaintiff,

v.

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

Defendants.

BRANDY SMITH, by her guardian ad litem, SANDRA SMITH,

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v.

CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE (1-5) fictitious names, MARY DOE (1-5) fictitious names, ABC PARTNERSHIPS (1-5) fictitious names, and XYZ CORPORATION (1-5) fictitious names,

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAPE MAY COUNTY
DOCKET NO. CPM-L-331-14
CPM-L-324-16

Civil Action

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT CITY OF NORTH WILDWOOD

On the Brief:
A. Michael Barker, Esquire
Greg DiLorenzo, Esquire

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I. PREAMBLE

Plaintiffs allege that the City of North Wildwood (hereinafter "the City") is responsible for the death of Mr. Smith by creating a dangerous condition and/or failing to warn or protect against a known dangerous condition, and/or the City of North Wildwood was negligent in the supervision of the subject premises.

The City first argues that it is a public entity, the location where the subject incident took place was unimproved public property, the harm was caused by conditions of the unimproved property, and therefore, the City is immune from liability pursuant to N.J.S.A. 59:4-8, which trumps any liability provisions under the New Jersey Tort Claims Act.

Moreover, the City argues that the City is immune for a failure to supervise pursuant to N.J.S.A. 59:2-7, and there is no liability provision which imparts liability upon a public entity for negligent supervision, nor can a public entity by found vicariously liable for negligent supervision where no public employee has been found liable. In addition, even if the City could be found liable for negligent supervision, Plaintiffs have not established that any employee of the City undertook supervision of the location of the subject incident.

Finally, in the alternative, Plaintiffs cannot establish the elements necessary for a finding of liability for the creation of, or a failure to protect against, a dangerous condition pursuant to N.J.S.A. 59:4-2.

For the reasons set forth below, the Court should, as a matter of law, enter an order granting the present motion for summary judgment and dismiss all of Plaintiffs' claims against the City, with prejudice.[1]

II. STATEMENT OF MATERIAL FACTS

For the Court's convenience, Defendants' Statement of Material Facts has been removed from the Brief and separately bound pursuant to N.J. Ct. R. 4:46-2(a).

III. LEGAL ARGUMENT

A. Standard of Review

"N.J. Ct. R. 4:46-2 provides that a court should grant summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is

---

[1] Plaintiff, Estate of George Bradley Smith, also pleads a claim for injunctive relief at Count IX. Now, all parties have agreed to stipulate to the dismissal of Count IX without prejudice; however, the Stipulation of Dismissal has not yet been executed. Plaintiff's claim for injunctive relief is not addressed in the instant motion. If, for some unforeseen reason, Count IX is not dismissed by stipulation, the City reserves the right to file a separate motion for summary judgment addressing specifically Plaintiff's claim for injunctive relief. (See, Certification of A. Michael Barker, Esquire for the Pending Motion for Consolidation and Stipulation of Dismissal for Count IX Without Prejudice).

no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-29 (1995) quoting, R. 4:46-2(c).

"[A] determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. Brill at 540. "Competent evidence is evidence that is trustworthy, reliable, and probative of the fact or facts at issue and admissible in court in accordance with the Rules of Evidence. In re Estate of Fassett, No. A-3310-10T3, 2012 N.J. Super. Unpub. LEXIS 464, at *4 (Super. Ct. App. Div. Mar. 2, 2012)[2], citing, Calabro v. Campbell Soup Co., 244 N.J. Super. 149, 169 (App. Div. 1990) (Competent evidence is evidence that is "'[l]egally qualified or adequate,'" (quoting, Webster's Ninth New Collegiate Dictionary at 268 (1983))), aff'd, 126 N.J. 278 (1991)).

[2] Unpublished case attached as Exhibit 14

B. Pursuant to the New Jersey Tort Claims Act, Defendant, City of North Wildwood, is a public entity and is, therefore, immune from liability.

The New Jersey Tort Claims Act (NJTCA) provides that:

a. Except as otherwise provided by this act, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.

b. Any liability of a public entity established by this act is subject to any immunity of the public entity and is subject to any defenses that would be available to the public entity if it were a private person.

N.J.S.A. § 59:2-1.

"N.J.S.A. 59:2-1(a) 'provides that the basic statutory approach of the [Act] shall be that immunity of all governmental bodies in New Jersey is re-established'." Rochinsky v. State, Dep't of Transp., 110 N.J. 399, 407 (1988), quoting, N.J.S.A. 59:2-1(a), Legislative Comment. Under the NJTCA, "the approach should be *whether an immunity applies and if not, should liability attach.* It is hoped that in utilizing this approach the courts will exercise restraint in the acceptance of novel causes of action against public entities." Rochinsky v. State, Dep't of Transp., 110 N.J. 399, 408 (1988), quoting, N.J.S.A. 59:2-1, Attorney General Task Force Comment. "Even when one of the Act's provisions establishes liability, that liability is ordinarily negated if the public entity possesses a corresponding immunity. Rochinsky v. State, Dep't of Transp., 110 N.J. 399, 408 (1988),

citing, Malloy v. State, 76 N.J. 515, 521 (1978); Costa v. Josey, 83 N.J. 49, 61 (1980) (Clifford, J., dissenting) (finding Comment to section 2-1(b)[3] to be "as explicit as possible").

The Legislative Declaration of New Jersey Tort Claims Act provides:

> The Legislature recognizes the inherently unfair and inequitable results which occur in the strict application of the traditional doctrine of sovereign immunity. On the other hand the Legislature recognizes that while a private entrepreneur may readily be held liable for negligence within the chosen ambit of his activity, ***the area within which government has the power to act for the public good is almost without limit and therefore government should not have the duty to do everything that might be done.*** Consequently, it is hereby declared to be the public policy of this State that public entities shall only be liable for their negligence within the limitations of this act and in accordance with the fair and uniform principles established herein. All of the provisions of this act should be construed with a view to carry out the above legislative declaration.

N.J.S.A. § 59:1-2. (Emphasis added).

Moreover, immunity prevails over liability to the extent that immunity has become the rule and liability is the exception." Henebema v. S. Jersey Transp. Auth., 219 N.J. 481, 490 (2014). "Immunity is the

---

[3] "Subsection 2-1(b) reflects the Legislature's intent to preserve common-law immunities:

> Subsection (b) is intended to [e]nsure that any immunity provisions provided in the act or by common law will prevail over the liability provisions. It is anticipated that the Courts will realistically interpret both the statutory and common law immunities in order to effectuate their intended scope."

Rochinsky v. State, Dep't of Transp., 110 N.J. 399, 408 (1988), quoting, N.J.S.A. 59:2-1 Task Force Comment.

dominant consideration" of the NJTCA. Lynch v. Thorwart, 2010 N.J. Super. Unpub. LEXIS 1430, *7, 2010 WL 2696742 (App.Div. June 29, 2010)[4] (quoting, Weiss v. N.J. Transit, 128 N.J. 376, 381 (1992). "[W]hen one of the [the NJTCA]'s provisions establishes liability, that liability is ordinarily negated if the public entity possesses a corresponding immunity." Id., see also, Tice v. Cramer, 133 N.J. 347, 356 (1993) ("When both liability and immunity appear to exist, the latter trumps the former").

As will be explained below, Defendants are first entitled to immunity for injuries caused by conditions of unimproved public property, pursuant to N.J.S.A. 59:4-8. Defendants are entitled to a second immunity for a failure to supervise, pursuant to N.J.S.A. 59:2-7. Finally, should the Court find that none of these immunities apply, Plaintiffs' claims should still be dismissed because Plaintiffs cannot meet the requirements for establishing liability for a dangerous condition under N.J.S.A. 59:4-2 and therefore cannot be liable for a failure to provide proper warnings.

1. ***Plaintiff's alleged injuries were proximately caused by the conditions of the beach and the ocean, therefore, Defendant is entitled to unimproved property immunity pursuant to N.J.S.A. §59:4-8, and such immunity trumps any NJTCA provision for potential liability.***

N.J.S.A. §59:4-8 provides that, "[n]either a public entity nor a public employee is liable for an injury caused by a condition of any unimproved

[4] Unpublished case attached as Exhibit 15

public property, including but not limited to any natural condition of any lake, stream, bay, river or beach."

> Sections 59:4-8 and 59:4-9 reflect the policy determination that it is desirable to permit the members of the public to use public property in its natural condition and that **the burdens and expenses of putting such property in a safe condition as well as the expense of defending claims for injuries would probably cause many public entities to close such areas to public use.** In view of the limited funds available for the acquisition and improvement of property for recreational purposes, **it is not unreasonable to expect persons who voluntarily use unimproved public property to assume the risk of injuries arising therefrom as part of the price to be paid for benefits received.** A similar statutory approach was taken by the California Legislature. [....]
>
> The exposure to hazard and risk involved is readily apparent when considering all the recreational and conservation uses made by the public generally of the foregoing acreages, both land and water oriented. **Thus in sections 59:4-8 and 59:4-9 a public entity is provided an *absolute immunity irrespective* of whether a particular condition is a *dangerous one.***

Troth v. State, 117 N.J. 258, 266-67 (1989) (quoting, N.J.S.A. §59:4-8 & 9, *N.J. Attorney General Task Force Comments*) (emphasis added).

The location where the fatal incident occurred was unimproved public property. Plaintiffs have not presented any evidence to the contrary. (R. 30 - 44). Where the cause of the injury was a condition of unimproved public property, the public entity is entitled to an absolute immunity.

In Lee v. State, a case involving the death of an individual as a result of swimming in the Delaware River, the plaintiff argued that the

unimproved property immunity is inapplicable because of the "alleged awareness of defendants and their employees of the severe dangers of the Delaware River. Plaintiff also emphasized defendants' alleged failure to provide warnings to, or supervision of, bathers in the river, including her husband." Lee v. State, No. A-1077-08T2, 2009 N.J. Super. Unpub. LEXIS 1661, at *3-5 (Super. Ct. App. Div. June 23, 2009)[5]. Among other things, the plaintiff introduced evidence that the State Park Superintendent "conced[ed] that the upper portion of the Delaware River contains 'swift currents' and that the location is a 'very unsafe place to swim'." Lee at 15. The Court held that such "assertions are insufficient, however, to overcome the clear immunities mandated by the TCA. ***The hazards described by the witnesses are inherent in the Delaware River itself, an unimproved and natural condition.***" Id. (emphasis added).

Thus, as the comments to N.J.S.A. 59:4-8 and the Appellate Division in Lee make undeniably clear, unimproved property is inherently hazardous and public entities are expressly immune from liability for any injury caused by unimproved property. There are no exceptions for unimproved property that is allegedly more hazardous than other unimproved property. If that were the case, public entities would never see the end of litigation for injuries caused by unimproved property if a

[5] Unpublished case attached as Exhibit 16.

Plaintiff could simply argue that the injurious unimproved property was exceptionally dangerous. Such an argument would leave N.J.S.A. 59:4-8 toothless and open public entities up to infinite potential liability. It is not difficult to prove that public entities are on notice that beaches and rivers are hazardous, but "the area within which government has the power to act for the public good is almost without limit and therefore government should not have the duty to do everything that might be done." N.J.S.A. 59:1-2, supra.

Therefore, all of Plaintiffs' claims must be dismissed as a matter law because Defendant is immune from liability for injuries caused by conditions of unimproved property pursuant to N.J.S.A. 59:4-8. Moreover, "[i]mmunity is the dominant consideration" of the NJTCA, Lynch, supra. at 7, and "when one of the [the NJTCA]'s provisions establishes liability, that liability is ordinarily negated if the public entity possesses a corresponding immunity." Id. Hence, any liability claims alleged by Plaintiffs under the NJTCA for negligent supervision, or for a failure to protect against or warn of a dangerous condition, are superseded by unimproved property immunity and must be dismissed as a matter of law.

2. *In the alternative, the City of North Wildwood is immune from a failure to supervise, and in addition, Plaintiffs' negligent supervision claim against the City of North Wildwood must be dismissed because there is no provision under the NJTCA in which a public entity can be liable for negligent supervision.*

Even though Defendant is entitled to unimproved property immunity, Plaintiffs' claims against Defendant for negligent supervision is nonetheless immunized pursuant to N.J.S.A. §59:2-7, which provides that "[a] public entity ***is not liable for failure to provide supervision of public recreational facilities***; [6] provided, however, that nothing in this section shall exonerate a public entity from liability for failure to protect against a dangerous condition as provided in chapter 4."[7]

Although the NJTCA establishes *respondeat superior* liability for negligent supervision on the part of a public employee under N.J.S.A. 59:3-11, Plaintiff has not and cannot establish such liability. N.J.S.A. 59:2-2 provides:

---

[6] "Under New Jersey statutes and case law beaches are considered public recreational areas." Kleinke v. Ocean City, 163 N.J. Super. 424, 432 (Super. Ct. 1978).

[7] A "dangerous condition as provided in chapter 4" is not applicable to unimproved property and will be discussed in detail in Section 3 below.

> a. A public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances.
>
> b. ***A public entity is not liable for an injury resulting from an act or omission of a public employee where the public employee is not liable.*** (Emphasis added).

The statute makes it clear that a public employee must first be found liable before imposing any vicarious liability upon the entity. Plaintiffs have not named any individual defendant employee, nor have Plaintiffs identified any specific employee that undertook a supervisory role at the subject premises. Merely alleging that the entity's "employees, agents, and/or servants" were negligent is insufficient. "New Jersey is a fact rather than a notice pleading jurisdiction, which means that a plaintiff must allege facts to support his or her claim rather than merely reciting the elements of a cause of action." Nostrame v. Santiago, 420 N.J. Super. 427, 436 (App. Div. 2011) (internal quotations and citations omitted), affirmed in relevant part by, Nostrame v. Santiago, 213 N.J. 109 (2013). "A plaintiff cannot simply assert that any essential facts that the court may find lacking can be dredged up in discovery." Id., citing Printing Mart-Morrison, 116 N.J. 739, 768 (1989). The discovery period has run its course. Plaintiffs have conducted more than enough discovery to

sufficiently amend the pleadings and name an individual employee or employees.

Furthermore, "[t]o establish liability based on negligent supervision, a plaintiff must show that an injury was sustained (1) at a public recreational facility; (2) that a public employee undertook supervision of a public recreational facility, and (3) that the employee was negligent in supervision of the public recreational facility." Sharra v. City of Atlantic City, 199 N.J. Super. 535, 539 (App.Div.1985). In Sharra, the Court held that "any supervision by Atlantic City over the boardwalk is no more than a general overall supervision, much the same as supervision of activities on public streets and sidewalks. To prevail pursuant to N.J.S.A. 59:3-11 much more is required: plaintiff must prove a specific act or omission on the part of a municipal employee who has undertaken supervision of the recreational facility, i.e. the boardwalk." Sharra at 540.

> The mere presence of an employee at the scene does not imply supervision without something more. In the presence of statutory immunity or the absence of a duty otherwise imposed, there must be some conduct, no matter how minute, evidencing an intention to supervise by way of monitoring, entering into or becoming a part of the activity itself from which the injury sprang. ***Liability for negligent supervision will not be imposed simply because there was an incidental undertaking at the same place only tangentially related to the recreational activity.***

Morris v. Jersey City, 179 N.J. Super. 460, 464 (App. Div. 1981) [emphasis added]. In Burroughs v. City of Atl. City, the Appellate Division was given

a factual scenario with which it could further clarify just what may exemplify an incidental undertaking:

> Plaintiff contends that the facts establish "supervision" by the lifeguards because they routinely patrolled beaches #2 and #3 to remind people on those beaches that they were "unprotected," and, in this case, by specifically advising the people in plaintiff's group that they should not swim for their own safety. Whether supervision was assumed under these facts is a question of law, albeit fact sensitive, since it undergirds the presence or absence of immunity under the statute. Plaintiff conceded in oral argument that had the lifeguards done nothing with reference to beaches #2 or #3, no liability would attach. However, plaintiff reasons that liability exists because the lifeguards patrolled the beach for the purpose of warning people to swim only in the protected area.
>
> [....]
>
> ***At best, plaintiff's proofs in this case establish only general supervision and policing by the lifeguards.*** The lifeguards' warnings to sunbathers on beach #2 and #3, and plaintiff's group in particular, can be reasonably viewed only as communications which both limited and defined the scope of their supervisory undertaking. [...] Thus, we conclude the supervision was not undertaken within the meaning of N.J.S.A. 59:3-11.

Burroughs v. City of Atl. City, 234 N.J. Super. 208, 221-22 (App. Div. 1989) [internal citations omitted] [emphasis added]. The facts presented in Burroughs, at least insofar as they relate to the lifeguards' involvement in patrolling the area of the beach at which the injury occurred, are nearly identical to the facts alleged in the Smith case. If Plaintiffs allege that North Wildwood undertook the responsibility to supervise the Inlet Beach area,

Plaintiffs needs to show much more than mere "policing" or control over the area on the part of the lifeguards, which she has not.

For the reasons stated above, any claims of negligent supervision against Defendant must be dismissed because (1) Defendant is a public entity and there is no liability provision that establishes liability upon a public entity for negligent supervision, (2) Defendant cannot be found vicariously liable for negligent supervision through N.J.S.A. 59:3-11 because Plaintiff has not and cannot find an employee liable pursuant to N.J.S.A. 59:2-2(b) since no employee has even been named as a defendant, and (3) Plaintiffs have not established the elements needed to establish "supervision" over the location of the subject incident.

3. *In the alternative, should the Court find that North Wildwood is not entitled to any statutory immunity, Plaintiffs' claims of a dangerous condition should be dismissed.*

To the extent the Smith Plaintiffs allege that North Wildwood failed to protect against a dangerous condition or created a dangerous condition pursuant to N.J.S.A. § 59:4-2, that claim must also fail.

N.J.S.A. 59:4-2 provides:

> A public entity is liable for injury caused by a condition of its property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the

> dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:
>
> a. a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
> b. a public entity had actual or constructive notice of the dangerous condition under section 59:4-3 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.
>
> Nothing in this section shall be construed to impose liability upon a public entity for a dangerous condition of its public property if the action the entity took to protect against the condition or the failure to take such action was not palpably unreasonable.

First, clearly no employee created the dangerous condition, it is the ocean. Second, although the ocean is a "known" danger, N.J.S.A. 59:4-2 has never been applied to cases involving unimproved public property, such as that which is involved in the instant case. The purpose of the unimproved property immunity is to shield public entities from requiring them to protect against every inherent danger posed by nature, even if a particular danger is known. As stated in Lee v. State above, "The **hazards** described by the witnesses are **inherent** in the Delaware River itself, an **unimproved and natural condition**." (Emphasis Added). The danger posed by the ocean, or specifically the Hereford Inlet, is not the type of "dangerous condition" anticipated by N.J.S.A. 59:4-2.

To the extent that Plaintiffs alleges that Defendant created the dangerous condition by failing to warn of the conditions, or by failing to properly supervise the area in question, "dangerous conditions" under §

59:4-2 only applies to physical conditions of the property. Since a failure to warn or failure to supervise is not a physical condition of property, this assertion, as a matter of law, must also fail.

Moreover, in Stempkowski v. Manasquan, the Appellant Court found:

> [T]he municipality and its employees were protected by N.J.S.A. 59:2-7, relating to "Recreational Facilities" N.J.S.A. 59:2-7:
>
> > A public entity is not liable for failure to provide supervision of public recreational facilities; provided, however, that nothing in this section shall exonerate a public entity from liability for failure to protect against a dangerous condition as provided in chapter 4.
>
> This section, by reference, refers back to the meaning of "dangerous condition" in N.J.S.A. 59:4-2, and the construction of this term is crucial to plaintiff's case. Concerning this meaning, plaintiff maintains on appeal:
>
> > The critical question before the Court is the absence of lifeguards/beach supervisory personnel which is the direct and proximate result [sic] of injuries sustained by Plaintiff, Margaret Stempkowski. This absence led to her undertaking to rescue her children when left with no alternative.
> >
> > A dangerous condition was created by the absence of lifeguards and the creation thereby of a forseeable [sic] risk of harm to third parties such as Plaintiff, Margaret Stempkowski.

Stempkowski v. Manasquan, 208 N.J. Super. 328, 330-32 (App. Div. 1986). The Appellate Court continues:

> By analysis of the cases interpreting "dangerous condition," Judge Deighan concluded in Sharra that the term "'dangerous condition' . . . **refers to the physical condition of the property itself and not to activities on the property**."
>
> We are satisfied that the trial judge was correct in granting summary judgment to defendant Manasquan, based upon the absence of a "dangerous condition". ***There can be no liability on the part of the municipality for injuries caused exclusively by the action of the ocean. The presence or absence of lifeguards was not material***, since it was unrelated to physical condition of the property.

Id., quoting, Sharra at 540 [emphasis added] [internal citations omitted].

Moreover, in Fleuhr, a case in which a surfer was seriously injured, the Court determined that the waves driving the plaintiff into the ocean floor was the proximate cause of his injuries, holding that:

> Viewing those facts in light of the *Brill* standard convinces us that the alleged negligence of the lifeguards is too remotely or insignificantly related to plaintiff's accident, so that in a legal sense, ***the alleged fault of the lifeguards does not constitute "a cause of [the] accident, . . . [but] simply presents the condition under which the injury was received***." Brown v. United States Stove Co., 98 N.J. 155, (1984). Stated differently, we conclude that a reasonable jury could find only that plaintiff's accident was caused by the waves and that any negligence by the lifeguards was not a proximate cause of plaintiff's accident.

Fleuhr v. City of Cape May, 159 N.J. 532, 544-45 (1999) [emphasis added].

In the instant case, a failure to warn of a danger of unimproved public property is not a cause of the injury. A failure to warn merely creates a condition under which the injury occurred. Id. Moreover, as in Stempkowski, supra., a failure to warn, similar to the lack of lifeguards, is

an activity, and not a condition of property. The dangerous condition of property that caused the injury in the instant case was the instability of the sandy soil, the water, and current; the failure to warn is not a condition of property. For the reasons stated above, Plaintiffs' allegations that Defendant created a dangerous condition or failed to protect against a dangerous condition under N.J.S.A. 59:4-2 must be dismissed as a matter law.

IV. CONCLUSION

For the foregoing reasons, all of Plaintiffs' claims against the City of Cape May should be dismissed with prejudice, and the City's Motion for Summary Judgment should granted.

Respectfully submitted,

BARKER, GELFAND & JAMES
a Professional Corporation

By: A. Michael Barker
A. Michael Barker, Esquire

Dated: September 30, 2016

A. Michael Barker, Esquire
Attorney ID#009511976
Barker, Gelfand & James
A PROFESSIONAL CORPORATION
210 New Road, Ste. 12
Linwood, New Jersey 08221
(609) 601-8677
AMBarker@BarkerLawFirm.net
Attorney for Defendant, City of North Wildwood

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

Plaintiff,

v.

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

Defendants.

BRANDY SMITH, by her guardian ad litem, SANDRA SMITH,

Plaintiff

v.

CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE (1-5) fictitious names, MARY DOE (1-5) fictitious names, ABC PARTNERSHIPS (1-5) fictitious names, and XYZ CORPORATION (1-5) fictitious names,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAPE MAY COUNTY
DOCKET NO. CPM-L-331-14
CPM-L-324-16

Civil Action

STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT CITY OF NORTH WILDWOOD

STATEMENT OF FACTS

A. The Incident

1. On July 27, 2012, the Smith family and the Sunderland family were staying at a rental property on Ash Avenue in the City of North Wildwood, New Jersey. (See, Exhibit 1, Plaintiff Sandra Smith Deposition Transcript, 6:11 – 6:20).

2. On July 27, 2012, the Smiths and Sunderlands went to the beach at or about 3:00 p.m. and set up behind a lifeguard stand. (See, Exhibit 1, Plaintiff Sandra Smith Deposition Transcript, 10:8 – 11:2; and Exhibit 2, Scott Sunderland Deposition Transcript, 26:15 – 27:6).

3. According to Plaintiff, Sandra Smith, the surf "didn't seem all that rough." (See, Exhibit 1, Plaintiff Sandra Smith Deposition Transcript, 14:21 – 15:3).

4. At or about 5:00 p.m., Plaintiff's husband, George Bradley Smith ("Brad Smith",) daughter Brandy Smith, and Scott Sunderland and his children, Ally and Aiden Sunderland, left the families' place on the beach and went for a walk. (See, Exhibit 1, Plaintiff Sandra Smith Deposition Transcript, 11:10 – 11:17; and Exhibit 2, Scott Sunderland Deposition Transcript, 26:15 – 26:20).

5. The group initially walked in a generally northerly direction along and through the edge of the surf. (See, Exhibit 2, Scott Sunderland Deposition Transcript, 27:7 – 31:2).

6. The group turned around when near a rock wall and they began to walk in the direction from which they came. (See, Exhibit 2, Scott Sunderland Deposition Transcript, 31:3 – 31:7).

7. Scott Sunderland testified that as they were walking the surf "was perfectly flat." (See, Exhibit 2, Scott Sunderland Deposition Transcript, 89:6 – 89:23).

8. Scott Sunderland testified that as the group walked back down the beach, he was walking in calf deep water when he "took a step on [his] left leg and it just dropped." (See, Exhibit 2, Scott Sunderland Deposition Transcript, 35:8 – 36:22).

9. Scott Sunderland further testified that "I was walking and then it's just like I just stepped right into, like, nothing. It was like it almost slid, like it slipped, and then with that I just went over. So it was like my leg just went out from underneath me." (See, Exhibit 2, Scott Sunderland Deposition Transcript, 36:25 – 37:5).

10. Scott Sunderland described to North Wildwood Police Detective Sergeant Richard Schmidt that it was like he walked into "a deep gully." (See, Exhibit 2, Scott Sunderland Deposition Transcript, 37:6 – 37:9; 66:5

– 66:8; and Exhibit 2A Sunderland Dep. Exhibit 12 – Supplemental Report of Det. Sgt. Richard Schmidt).

11. North Wildwood Police Officer Scott Breland, who responded to the scene at the beach, states in his police report that, "Sunderland advised me that he and his daughter, along with Smith and his seven-year-old daughter, were walking along the shoreline when they slipped into the water and were pulled out to sea by the undertow. (See, Exhibit 2, Scott Sunderland Deposition Transcript, 57:17 – 57:21; and Exhibit 2B - Sunderland Dep. Exhibit 11 – Supplemental Report of Officer Scott Breland).

12. North Wildwood Police Detective Sergeant Richard Schmidt states in his report that he spoke with Scott Sunderland at the hospital and that Sunderland stated that "they were all walking in knee-deep water along the surf," when "all of a sudden," "the ground went out from under them and they fell into the water." (See, Exhibit 2, Scott Sunderland Deposition Transcript, 65:15 - 65:24; and Exhibit 2A, Sunderland Dep. Exhibit 12 – Supplemental Report of Det. Sgt. Richard Schmidt).

13. Scott Sunderland told Plaintiff's Counsel's investigator, Lou DiJoseph, that his daughter Ally and he "fell into the water." (See, Exhibit 2, Scott Sunderland Deposition Transcript, 74:13 – 74:14; Exhibit 2C, Sunderland Dep. Exhibit 5, Investigator Lou DiJoseph Report).

14. Scott Sunderland stated in a news interview that "I took a step and dropped. All of a sudden there was nothing under my feet." (See, Exhibit 2, Scott Sunderland Deposition Transcript, 93:8 – 93:11; and Exhibit 2D, Sunderland Dep. Exhibit 13, July 24, 2014 Philly.com news article).

15. Scott Sunderland testified that Ally Sunderland, Brad Smith and Brandy Smith also went into the water. (See, Exhibit 2, Scott Sunderland Deposition Transcript, 37:12 – 39:1).

16. Aiden Sunderland testified that the group "just started walking towards the ocean," and that as they "continued walking," "[his] Dad, [his] Sister, Brad and Brandy fell into the ocean. It dropped down." (See, Exhibit 3, Aiden Sunderland Deposition Transcript, 13:15 – 13:22).

17. Ally Sunderland testified that "we just fell in." (See, Exhibit 4, Ally Sunderland Deposition Transcript, 18:21).

18. Brandy Smith testified that she and her father were walking in the water when she fell into the water and "ended up somewhere in the ocean" where she could not feel the bottom. (See, Exhibit 5, Brandy Smith Deposition Transcript, 21:5 – 23:17).

19. Scott Sunderland testified that Brad and Brandy Smith were walking behind him along the beach and that he did not witness how they ended up in the water. (See, Exhibit 2, Scott Sunderland Deposition Transcript, 38:15 – 39:1).

20. Scott Sunderland testified that after falling in the water, he began swimming toward shore with his daughter Ally on his back, when he "realized that [they were] further from shore from when [they] started." (See, Exhibit 2, Scott Sunderland Deposition Transcript, 39:9 – 39:24).

21. Scott Sunderland testified that Ally and he eventually made it to shore when he saw Brad and Brandy Smith still in the water, approximately "a hundred, 120 feet" from the beach. (See, Exhibit 2, Scott Sunderland Deposition Transcript, 39:25 – 41:24).

22. Scott Sunderland testified that he flagged down two (2) jet skiers for help. (See, Exhibit 2, Scott Sunderland Deposition Transcript, 44:21 – 44:23).

23. One of the jet skiers picked up Brandy Smith and brought her to shore. (See, Exhibit 2, Scott Sunderland Deposition Transcript, 46:12 – 46:20).

24. Scott Sunderland testified that he lost sight of Brad Smith around the time the jet skier returned to the beach with Brandy Smith. (See, Exhibit 2, Scott Sunderland Deposition Transcript, 46:20 – 47:2).

25. Emergency personnel, including EMS and police officers, arrived on the scene and started a search for Brad Smith. (See, Exhibit 2, Scott Sunderland Deposition Transcript, 50:22 – 52:19; and Exhibit 6, Jeffrey Cole Deposition Transcript, 24:2 – 24:21).

26. Brad Smith's body was found in the water off the North Wildwood beach on July 30, 2012. (See, Exhibit 7, Investigator Richard Schmidt Investigation Report, N. Wildwood/000020).

B. The Location of the Incident

27. Both Mayor Rosenello and former North Wildwood Director of Public Works, Harry Wozunk, testified that there have been no beach replenishment projects performed on the area of beach where the drowning accident occurred. (See, Exhibit 8, Patrick Rosenello Deposition Transcript, 12:22 – 13:5; and Exhibit 9, Harry Wozunk Deposition Transcript, 49:13 – 49:25).

28. North Wildwood Beach Patrol Chief Tony Cavalier has been employed with the North Wildwood Beach Patrol since 1966. (See, Exhibit 10, Tony Cavalier Deposition Transcript, 7:9 – 7:11).

29. According to Chief Cavalier, at least during his time with the North Wildwood Beach Patrol, there have never been lifeguards posted on the beach where the drowning incident occurred. (See, Exhibit 10, Tony Cavalier Deposition Transcript, 27:13 – 27:16).

C. Reports of Dr. Stewart Farrell, Ph.D. and Dr. J. Richard Weggel

30. Dr. Stewart Farrell, Ph.D., prepared an expert report, dated June 23, 2016, on behalf of the Defendant State of New Jersey. (See, Exhibit 11, Dr.

Stewart Farrell Deposition Transcript, 14:13 – 14:19; and Exhibit 12, June 23, 2016 Expert Report of Dr. Stewart Farrell, Ph.D.).

31. Dr. Farrell is the Executive Director of the Stockton University Coastal Research Center. (See, Exhibit 11, Dr. Stewart Farrell Deposition Transcript, 9:19 – 9:20; and Exhibit 12, June 23, 2016 Expert Report of Dr. Stewart Farrell, Ph.D.).

32. The Coastal Research Center is an in-house institute of Stockton University, whose "purpose is to serve the public sector, mostly local municipalities, county, and the State of New Jersey, in terms of gathering information about conditions that affect the coastal zone in general, and beaches, in particular." (See, Exhibit 11, Dr. Stewart Farrell Deposition Transcript, 8:18 – 9:1).

33. Dr. Farrell founded the Coastal Research Center in 1986, "following Hurricane Gloria, driven by requests from the Department of Environmental Protection." (See, Exhibit 11, Dr. Stewart Farrell Deposition Transcript, 9:5 – 9:7).

34. Dr. Farrell has a Bachelor of Science degree in chemistry from Lafayette College; a Master's degree in geology and coastal science and Ph.D. in plasticine geology from the University of Massachusetts. Dr. Farrell testified that plasticine geology covers the time period from "the last

10,000 years to modern coastal processes." (See, Exhibit 11, Dr. Stewart Farrell Deposition Transcript, 6:25 – 7:7).

35. Dr. Farrell is personally familiar with the North Wildwood beaches, having first become involved with those beaches "[t]hrough a joint project between the State of New Jersey, Bureau of Coastal Engineering, and the City of North Wildwood, to restore the beach along the oceanfront." (See, Exhibit 11, Dr. Stewart Farrell Deposition Transcript, 12:7 – 12:17; and Exhibit 12, June 23, 2016 Expert Report of Dr. Stewart Farrell, Ph.D.).

36. Dr. Farrell states in his June 23, 2016 report that he "reviewed the map on which Mr. Sunderland marked the location where he and Mr. Smith went into the water." (See, Exhibit 12, June 23, 2016 Expert Report of Dr. Stewart Farrell, Ph.D.; Exhibit 2E – Map of Mr. Sunderland).

37. According to Dr. Farrell, "[i]n the area where Mr. Sunderland and Mr. Smith went into the water, there is a channel that has been created by water flowing into and out of the inlet with the tides. The water can be turbulent in the area of this channel where the incident occurred specifically where the ebb currents meet a sand wedge deposited along the beach at or near low tide elevations that is formed by the flood tide. The slope of sand that forms the margin of the channel is inherently unstable." (See, Exhibit 12, June 23, 2016 Expert Report of Dr. Stewart Farrell, Ph.D.).

38. Dr. Farrell states that in his opinion, "Mr. Sunderland and Mr. Smith stepped onto the channel margin slope and the slope gave way." (See, Exhibit 12, June 23, 2016 Expert Report of Dr. Stewart Farrell, Ph.D.).

39. Dr. Farrell opines that "[w]ithin a reasonable degree of coastal engineering probability, the water and sand conditions that contributed to the incident in this case were completely natural and unaffected by any improvements in the area." (See, Exhibit 11, Dr. Stewart Farrell Deposition Transcript, 145:8 – 145:16; and Exhibit 12, June 23, 2016 Expert Report of Dr. Stewart Farrell, Ph.D.).

40. Plaintiff produced through discovery, a report, dated April 16, 2016, and prepared by Dr. J. Richard Weggel, Ph.D., P.E., D.CE,. (See, Exhibit 13, April 16, 2016 Report of Dr. J. Richard Weggel).

41. Dr. Weggel opines in his April 16, 2016 report that a submerged slope on which the Smiths and Sunderlands were walking, failed, causing the group to slide into the inlet and into the ebb flowing current. (See, Exhibit 13, April 16, 2016 Report of Dr. J. Richard Weggel, p. 13).

42. Dr. Weggel does not state or opine in his April 16, 2016 report that Brad Smith's death was the result of anything other than a natural condition of the shoreline. (See, Exhibit 13, April 16, 2016 Report of Dr. J. Richard Weggel).

43. Dr. Farrell reviewed the April 16, 2016 report of Dr. Weggel and stated that he "disagree[s] with Dr. Weggel to the extent that [Dr. Weggel] may be saying that a shelf of sand was created and collapsed." (See, Exhibit 12, June 23, 2016 Expert Report of Dr. Stewart Farrell, Ph.D.).

44. Dr. Farrell opined that even if Dr. Weggel's theory was correct, that a shelf of sand was created and collapsed "it would have been completely the result of interacting natural forces," and "would not have been the result of any improvements in the area." (See, Exhibit 12, June 23, 2016 Expert Report of Dr. Stewart Farrell, Ph.D.).

A. Michael Barker, Esquire
Attorney ID#009511976
Barker, Gelfand & James
A PROFESSIONAL CORPORATION
210 New Road, Ste. 12
Linwood, New Jersey 08221
(609) 601-8677
AMBarker@BarkerLawFirm.net
Attorney for Defendant, City of North Wildwood

SANDRA SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND, GEORGE BRADLEY SMITH, Plaintiff, v. CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE, MARY DOES, ABC PARTNERSHIPS, and XYZ CORPORATIONS, Defendants. --- BRANDY SMITH, by her guardian ad litem, SANDRA SMITH, Plaintiff v. CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE (1-5) fictitious names, MARY DOE (1-5) fictitious names, ABC PARTNERSHIPS (1-5) fictitious names, and XYZ CORPORATION (1-5) fictitious names, Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION CAPE MAY COUNTY DOCKET NO. CPM-L-331-14 CPM-L-324-16 Civil Action **CERTIFICATION OF AUTHENTICITY OF EXHIBITS**

I, A. Michael Barker, Esquire, of full age, hereby certify and state follows:

1. I am an attorney-at-law licensed to practice in the State of New Jersey, the Senior Partner with the Law Offices of Barker, Gelfand & James. I am the attorney entrusted with the handling of this matter on behalf of the Defendant, City of North Wildwood, and as such, I am fully familiar with the facts set forth herein.

2. I certify that, pursuant to Rule 1:6-6, the Exhibits attached in support of Defendants' Motion for Summary Judgment are true and accurate copies of any reports, facts, and information exchanged in discovery; and, they are part of the record in this matter.

3. I make this Certification in support of the Defendant's Motion for Summary Judgment.

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.

BARKER, GELFAND & JAMES
a Professional Corporation

By: A. Michael Barker
A. Michael Barker, Esquire

Dated: September 30, 2016

A. Michael Barker, Esquire
Attorney ID#009511976
Barker, Gelfand & James
A PROFESSIONAL CORPORATION
210 New Road, Ste. 12
Linwood, New Jersey 08221
(609) 601-8677
AMBarker@BarkerLawFirm.net
Attorney for Defendant, City of North Wildwood

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

Plaintiff,

v.

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

Defendants.

BRANDY SMITH, by her guardian ad litem, SANDRA SMITH,

Plaintiff

v.

CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE (1-5) fictitious names, MARY DOE (1-5) fictitious names, ABC PARTNERSHIPS (1-5) fictitious names, and XYZ CORPORATION (1-5) fictitious names,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAPE MAY COUNTY
DOCKET NO. CPM-L-331-14
CPM-L-324-16

Civil Action

CERTIFICATION OF A. MICHAEL BARKER, ESQUIRE FOR THE PENDING MOTION FOR CONSOLIDATION AND STIPULATION OF DISMISSAL OF COUNT IX WITHOUT PREJUDICE

I, A. Michael Barker, Esquire, of full age, hereby certify and state as follows:

1. I am an attorney-at-law licensed to practice in the State of New Jersey. I am the Senior Partner with the Law Offices of Barker, Gelfand & James, P.C. I am the attorney entrusted with the handling of this matter on behalf of the Defendant, City of North Wildwood, and as such, I am fully familiar with the facts set forth herein.

2. On or about August 4, 2016, Attorney Joseph C. Grassi filed a Complaint on behalf of Brandy Smith in the Superior Court of New Jersey, Cape May County, Docket Number CPM-L-324-16.

3. On or about August 4, 2016, simultaneously with filing the Complaint, Brandy Smith filed a motion for consolidation to consolidate the Brandy Smith case, CPM-L-324-16, with the Estate of George Bradley Smith case, CPM-L-331-14. The motion to consolidate went unopposed, and is currently pending. It is expected the motion will be granted and the two cases will be consolidated.

4. On or about September 14, 2016, Defendant, City of North Wildwood, filed its responsive pleadings to the Brandy Smith Complaint.

5. The instant motion for summary judgment is intended to apply to the Complaint for the Estate of George Bradley Smith and the Complaint for Brandy Smith against the City of North Wildwood.

6. Count IX of the Complaint for The Estate of George Bradley Smith demands injunctive relief. All parties have agreed to stipulate to the voluntary dismissal of Count IX without prejudice to Plaintiff to file a separate complaint for injunctive relief.

7. At the time of this certification, the stipulation of dismissal as to Count IX has not been executed by all parties, but has been drafted and is expected to be executed and filed in a timely manner.

8. Since the City of North Wildwood has the good faith belief that Count IX will be voluntarily dismissed, the City of North Wildwood does not address Count IX, or injunctive relief, in the instant motion; however, the City of North Wildwood reserves the right to file a separate motion and brief related to the claim for injunctive relief should the injunctive relief claim not be dismissed.

9. I make this Certification in support of the Defendant's Motion for Summary Judgment.

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.

BARKER, GELFAND & JAMES
a Professional Corporation

By: _____
A. Michael Barker, Esquire

Dated: September 30, 2016

A. Michael Barker, Esquire
Attorney ID#009511976
Barker, Gelfand & James
A PROFESSIONAL CORPORATION
210 New Road, Ste. 12
Linwood, New Jersey 08221
(609) 601-8677
AMBarker@BarkerLawFirm.net
Attorney for Defendant, City of North Wildwood

SANDRA SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND, GEORGE BRADLEY SMITH, Plaintiff, v. CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE, MARY DOES, ABC PARTNERSHIPS, and XYZ CORPORATIONS, Defendants. --- BRANDY SMITH, by her guardian ad litem, SANDRA SMITH, Plaintiff v. CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE (1-5) fictitious names, MARY DOE (1-5) fictitious names, ABC PARTNERSHIPS (1-5) fictitious names, and XYZ CORPORATION (1-5) fictitious names, Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION CAPE MAY COUNTY DOCKET NO. CPM-L-331-14 CPM-L-324-16 Civil Action **ORDER**

This matter having come before the Court by way of notice on behalf of Defendant City of North Wildwood represented by A. Michael Barker, Esquire of Barker, Gelfand and James, P.C.

IT IS, on this _____ day of _____, 2016; ORDERED and ADJUDGED that:

Summary Judgment be and hereby is GRANTED in favor of the Defendant City of North Wildwood dismissing all of Plaintiffs' claims against Defendant City of North Wildwood with prejudice.

IT IS further ORDERED that a copy of this Order shall be served on all parties of record within 10 days of the above date

_____

JSC

A. Michael Barker, Esquire
Attorney ID#009511976
Barker, Gelfand & James
A PROFESSIONAL CORPORATION
210 New Road, Ste. 12
Linwood, New Jersey 08221
(609) 601-8677
AMBarker@BarkerLawFirm.net
Attorney for Defendant, City of North Wildwood

SANDRA SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND, GEORGE BRADLEY SMITH, Plaintiff, v. CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE, MARY DOES, ABC PARTNERSHIPS, and XYZ CORPORATIONS, Defendants. --- BRANDY SMITH, by her guardian ad litem, SANDRA SMITH, Plaintiff v. CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE (1-5) fictitious names, MARY DOE (1-5) fictitious names, ABC PARTNERSHIPS (1-5) fictitious names, and XYZ CORPORATION (1-5) fictitious names, Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION CAPE MAY COUNTY DOCKET NO. CPM-L-331-14 CPM-L-324-16 Civil Action **CERTIFICATION OF SERVICE**

The original of the within Motion for Summary Judgment on behalf of the Defendant, City of North Wildwood, was hand delivered to the Superior Court of New Jersey, County of Cape May, 9 North Main Street, Cape May Court House, New Jersey 08210, for filing.

Additionally, on Friday, September 30, 2016, a true and correct copy of the Motion for Summary Judgment on behalf of the Defendant, City of North Wildwood was hand delivered to the following:

Paul R. D'Amato, Esquire
D'AMATO LAW FIRM
2900 Fire Road ~ Suite 200
Egg Harbor Township, New Jersey 08234
Attorney for Plaintiff Estate of George Bradley Smith

And

Joseph C. Grassi, Esquire
BARRY, CORRADO & GRASSI, P.C.
2700 Pacific Avenue
Wildwood, NJ 08260
Attorney for Plaintiff Brandy Smith

And

Additionally, on Friday, September 30, 2016, a true and correct copy of the Motion for Summary Judgment on behalf of the Defendant, City of North Wildwood was emailed and mailed first class mail to the following:

Brian Hunkins
Deputy Attorney General
R.J. Hughes Justice Complex
P.O. Box 116
Trenton, New Jersey 08625
Attorney for Defendant, State of New Jersey

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.

BARKER, GELFAND & JAMES
a Professional Corporation

By: Gail Butcher
Gail Butcher, Legal Assistant to
A. Michael Barker, Esquire

Dated: September 30, 2016

EXHIBIT LIST

No.	Description
1	Sandra Smith Deposition Condensed
2	Scott Sunderland Deposition Condensed
2A	Exhibit 12 to Scott Sunderland's Deposition
2B	Exhibit 11 to Scott Sunderland's Deposition
2C	Exhibit 5 to Scott Sunderland's Deposition
2D	Exhibit 13 to Scott Sunderland's Deposition
3	Aiden Sunderland Deposition
4	Ally Sunderland Deposition
5	Brandy Smith Deposition
6	Jeffery Cole, Sr. Deposition
7	N. Wildwood 20-21 – Supplemental Incident Report
8	Patrick Rosenello Deposition
9	Harry Wozunk Deposition
10	Chief Joseph Anthony Cavalier Deposition
11	Dr. Stewart Farrell Deposition
12	6-23-16 Farrell Report
13	4-16-16 Dr. Weggel Report
14	In re Estate of Fassett, 2012 N.J. Super. Unpub. Lexis 464
15	Lynch v. Thorwart 2010 N.J. Super Unpub. LEXIS 1430
16	Lee v. State, 2009 N.J. Super. Unpub. Lexis 1661

Exhibit 1

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

SANDY SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND GEORGE BRADLEY SMITH,	:	CIVIL ACTION
Plaintiff,	:	DEPOSITION TESTIMONY OF: SANDRA SMITH
vs.	:	
CITY OF NORTH WILDWOOD, STATE OF NEW JERSEY, JOHN DOE, MARY DOE, ABC PARTNERSHIPS and XYZ CORPORATIONS,	:	
Defendants.	:	

TAKEN BEFORE: LYNN SMITH, a Certified Court Reporter of the State of New Jersey, License No. XI01520, at the D'Amato Law Firm, 2900 Fire Road, Suite 200, Egg Harbor Township, New Jersey 08234, on Tuesday, March 1, 2016, commencing at 11:30 a.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

APPEARANCES:

D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
BY: PAUL R. D'AMATO, ESQUIRE
For the Plaintiffs

BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
BY: A. MICHAEL BARKER, ESQUIRE
For the Defendant, North Wildwood

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
(609) 777-4872
BY: BRIAN HUNKINS, DAG
For the State of New Jersey

Videographer: Tom Zanaras

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EXHIBITS

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(Exhibit attached)

REQUESTS

Page 20, Line 20 - Address for rental property
Page 31, Line 18 - Financial information for 2011
Page 31, Line 24 - Financial information for 2010
Page 36, Line 5 - Sandra's income, 2012 through 2015
Page 39, Line 21 - Business debt
Page 40, Line 14 - Financial obligations of business from July 27, 2012 until children took over
Page 40, Line 18 - Any debt at the time of husband's death
Page 44, Line 4 - Life insurance benefits
Page 44, Line 15 - Funeral expenses
Page 47, Line 2 - Household expenses in 2012
Page 47, Line 10 - Household expenses in 2016
Page 51, Line 4 - Expenses from 2012 to present
Page 80, Line 8 - Photographs
Page 84, Line 8 - Brandy's height at the time of the incident
Page 84, Line 22 - Brandy's weight at the time of the incident

VIDEOGRAPHER: Today is March the 1st, 2016. This is the videotaped deposition of Sandy Smith. Going on the record. The time is 11:30 a.m. The appearance of counsel will be noted in the transcript.

Would the court reporter please swear in the witness.

SANDRA SMITH,

having been first duly sworn, testified as follows:

EXAMINATION BY MR. BARKER:

Q. Mrs. Smith, my name is Michael Barker. I'm an attorney, and I represent North Wildwood in this case, which has been brought by you, and on your behalf. I'll be asking you questions today. This proceeding is called a deposition.

A deposition is a question and answer session, which allows the attorneys in the case to find out facts, information that could be useful to the court and to the lawyers and to the parties in the proceedings that are called litigation.

A. Okay.

Q. So, we'll be here for awhile, we've already said. If you need to take a break at any time, we're going to do that.

A. Thank you.

Q. Certainly. If I ask you a question, which is not clear at any time, please stop me. I'll be happy to go back and rephrase it. Please don't answer a question unless and until you completely understand it.

A. Okay.

Q. Please don't guess in responding to any question. What you know, tell us what you know. What you remember, you can tell us what you remember. And importantly, what you can't remember, tell us what you can't remember.

If you never had an opportunity to observe what I'm asking about, just let us know that.

A. Okay.

Q. Now, your full name, is it just Sandra Smith?

A. Sandra Poust-Smith is my legal name.

Q. What's the middle name? How do you spell that?

A. Lynn. Oh, it's Sandra Lynn Poust-Smith. P-O-U-S-T dash S-M-I-T-H.

Q. And your date of birth?

A. 7/2/65.

Q. The event involved in this case was July 27, 2012. And before that July of 2012, had you and your family come to the beaches of North Wildwood?

A. Yes. Just trying to figure out what days -- I think we went two days before that day.

MR. D'AMATO: I think Mr. Barker meant, didn't you mean before the week.

THE WITNESS: Not ever before in the past, no. But we were -- it was a Friday, and we had gotten there on Sunday.

Q. Oh. So, that means you had been there about five days?

A. About, yeah.

Q. And during the five days before the event on July 27, 2012, were you staying in the same place?

A. Yes.

Q. And what was the address of where you were staying?

A. It was on Ash Avenue. I don't remember the -- the exact address.

Q. All right. And were the two families staying together?

A. Yes.

Q. And did you and the other members of your family and the Sunderland family go down to the beach on days prior to the date of the event?

A. Yes.

Q. And when you went down to the beach on the

days prior to the date of the event, did you go to the same location to set up?

A. Yes.

Q. And here's what Brandy marked as Brandy-1, and she put a red circle, you may recall, about where you set up.

A. Yes.

Q. Is that approximately correct?

A. I'm not sure. Wherever the lifeguard stand was, that's where we were, right behind, right behind the lifeguard stand. And it's the first one from this way.

Q. This way, meaning --

A. First --

Q. If we're moving from north to south --

A. From north to south, it was the first one south.

Q. First one south?

A. Yeah.

Q. Okay.

A. Because that's the closest to where we were. Because we were back over by the bay side, on Ash. So, when we drove over, it was just right -- you know, we just had to park, and --

Q. Where did you park?

A. There was, like, a paid parking place right there. I don't -- it was a metered --

Q. Was it further north, where you parked?

A. No. Because we just had to walk right in, and then right -- it was right there where the lifeguard stand was.

Q. Okay. On the dates that you had been down to the beach before the date of the event, did -- well, let me take it this way.

The first day you got there was Friday. Right? The Friday before July 27.

A. No. Sunday was the first -- our first day.

Q. I -- I got it backwards.

A. Yes.

Q. I'm sorry. So, the first day you got there was the Sunday before July 27, 2012. Do I have that right?

A. Correct.

Q. And you arrived in time to go to the beach or not?

A. Not that day, no.

Q. Right. The next day was Monday. Did you go to the beach that day?

A. I think -- I think we went Monday and Wednesday are the two days I think we went before.

Q. When you went on Monday, how long did you and the other members of the group stay at the beach?

A. I don't -- I don't really remember. I know -- yeah, I -- I don't really remember if we stayed -- you know, because sometimes we go, we stay all day, or sometimes we -- because we're there, we only stay a couple hours.

Q. Okay.

A. I'm sorry. I don't remember. But yeah.

Q. No problem. I understand.

When you went on the Monday before July 27, 2012, did you or any of the members of your group take a walk on the beach?

A. No.

Q. The next day that you went to the beach was the Wednesday before July 27, 2012.

Do I have that correct?

A. Correct.

Q. And do you recall when you went there, what time of day?

A. It might have been later that day, because I remember Andrea didn't go with us that day.

Q. Andrea?

A. My friend. The mother of the other three children. But the rest of us, we all went, and we

met one of their nieces there. She was there in Wildwood, and she met us there and sat with us for awhile.

Q. When you went to the beach on the Wednesday before July 27, 2012, did you or any members of your group take a walk on the beach?

A. No.

Q. The next day that you went to the beach was the date of the subject event?

A. Yes.

Q. That was July 27, 2012?

A. (Witness nods.)

Q. Yes?

A. Yes, correct. Sorry.

Q. And what day of the week was that?

A. A Friday.

Q. And what time did you arrive at the beach?

A. I would say about three o'clock.

Q. And when you arrived at this beach, approximately in the area where the red circle is on Brandy-1. Correct?

A. Wherever the lifeguard stand was, that's where we were, yes.

Q. And you all were situated more inland, that is, behind the lifeguard stand?

A. Behind him, yes. In between where the flags were. Because the boys were boogie boarding.

Q. And is that an area for boogie boarding, between the red flags?

A. Swimming, boogie boarding. They're allowed to do whatever there, I guess.

Q. All right. Okay. So, did you tell me what time you arrived on that Friday?

A. Approximately three.

Q. All right. And approximately what time was it that your husband and Scott Sunderland and the children accompanying them went to go on a walk?

A. Approximately five. We were just talking about where we were going to go for dinner, and they said, Well, we're just going to go for a walk, and we'll be right back, and then we'll -- and then we'll leave.

Q. Um-hum. I recall seeing that you gave a statement to a policeman that they went for a walk about the time that the lifeguards were going off duty.

Do you remember that?

A. Yes. Because right after they left, that's when the lifeguards called everybody in, and Jett and Kole came in, and they were sitting on the beach

there by the water.

Q. Okay. So, I understand that the lifeguards go off duty and call everybody in at about 5:25 p.m.?

A. Is that what time? Okay.

Q. So, would that --

A. So, they must have -- yeah.

Q. Does that sound right to you?

A. I guess. I mean, we were sitting there, and the boys got called in, but then I'm not sure when we started hearing all of the sirens and seeing the police boat --

Q. But don't get ahead of me.

A. -- go by. Okay.

Q. I was just asking what time --

A. I know. I'm just trying to figure out my time frame.

Q. I was only trying to get the pinpoint on the time that they commenced their walk.

A. Yeah. They did -- they left before they -- because that's why Jett and Kole didn't go with them on the walk, because they were still out boogie boarding. And then, in that time, the lifeguards called everybody in.

Q. A few minutes later?

A. Yeah.

Q. Okay. When you were there on that Friday, July 27, 2012, you were seated facing the ocean. Correct?

A. Correct.

Q. And did you have your own time to go in the ocean that day at all?

A. I didn't go in the ocean, no.

Q. You just stayed, sat in the chair on the beach?

A. Sat. I was reading. Yes, I was actually reading.

Q. All right. And did you have the opportunity to view the ocean from where you were seated?

A. Yes. Because I was watching the boys, too. And I could see, they would start on one end, and end up on the other side. You know, they'd start one side of the flag, end up, and then come out, and then go back in again. Like, they kept going back and forth.

Q. All right. And how would you describe the surf on that day? What was the surf condition?

A. I don't -- just that things were moving, you know, sometimes you know when it's going sideways, and people -- you're in the water, and then you're moving from one side to the other kind of thing.

Q. So, you're saying there was a kind of a current in the water?

A. Yeah.

Q. And was the current moving from north to south or south to north?

A. South to north.

Q. As you're facing the ocean, it was moving from your right to your left?

A. Right.

Q. Correct?

A. Yes. Correct.

Q. Got you. Anything else you observed about the water? Were the waves high, were the waves low, anything?

MR. D'AMATO: At what point in time?

MR. BARKER: Good question, actually.

Q. At about the time that the boys were still in the water, just before the lifeguards had called people out, that's the end of the day.

A. Correct.

Q. Did you have the opportunity to observe the surf at that time?

A. No. The boys were sitting at the edge of it, and they were fine -- I mean, they weren't getting knocked all over the place or anything. They were

just sitting there with their legs in the water, and -- so, it didn't -- no, to me, it didn't seem all that rough.

Q. All right.

A. Yeah.

Q. And they had been on their boogie boards and playing in the water for about two hours?

A. Pretty much the whole time we were there, yeah.

Q. All right. And the whole time that they were there playing in the water, you thought it was safe?

A. Yeah. Yes.

Q. Now --

MR. D'AMATO: Wait. Can we go off the video record, please.

VIDEOGRAPHER: Sure. Going off the record, 11:43.

(Discussion off the record.)

VIDEOGRAPHER: We're back on the record 11:43.

BY MR. BARKER:

Q. I'm going to just read you a reference that was made by the policeman, Richard Schmidt, who wrote a supplemental report. And it's North Wildwood Document 16. And in pertinent part, he said -- he's

talking about his speaking with you.

A. Okay.

Q. And he recorded it this way, and I'm just trying to see whether you confirm it.

A. Okay.

Q. So, he wrote --

MR. D'AMATO: Are you quoting now?

MR. BARKER: I will read it directly in just one second, yes.

MR. D'AMATO: Yeah.

Q. "I asked what time they arrived at the beach, and she stated that it was around three p.m."

That's correct?

A. Correct.

Q. Right?

A. Yeah.

Q. "I asked what time her husband and daughter took the walk, and she stated that she was unsure, but she did remember that the lifeguards appeared to be leaving for the day." That's correct?

A. Correct. Yeah, all of that happened, and -- yes, in the same time period.

Q. Are you the administrator of the estate of your husband, George Bradley Smith?

A. Yes.

Q. Were there some kind of court documents filed that created you in that position?
A. **Yes.**
Q. And was that done in Atlantic County?
A. **Norristown. Montgomery County, Pennsylvania.**
Q. What was the date of marriage for you and Mr. Smith?
A. **March 15th, 1997.**
Q. Did you have any previous marriages?
A. **Yes.**
Q. To whom?
A. **Michael Finley.**
Q. And when were you married to Michael Finley?
A. **I was 21. I'm not sure of the date. I'm sorry.**
Q. How long were you married to Michael Finley?
A. **Three years.**
Q. Did it end by divorce?
A. **Yes.**
Q. What was the date of divorce?
A. **It was probably after -- like, the two years, or whatever, when you can do a no-fault divorce, or something like that. I don't know.**
Q. Okay. So, do you remember the year of the divorce?

A. **No.**
Q. Okay.
A. **I was 23; 23, I think.**
Q. And do you remember what county and state the divorce took place?
A. **Bucks County, Pennsylvania.**
Q. After the marriage to Michael Finley, and before the marriage to George Bradley Smith, was there any marriage in between?
A. **No.**
Q. Did you have any children with Michael Finley?
A. **No.**
Q. Did Mr. Smith, George Bradley Smith, have any previous marriages before his marriage with you?
A. **Yes.**
Q. To whom was he married?
A. **Laura Smith.**
Q. And do you know for how long he was married to Laura Smith?
A. **I don't know exactly, no, I don't.**
Q. And do you know if that marriage ended in divorce?
A. **Yes.**
Q. And do you know when that marriage ended in

divorce?
A. **I -- I don't know exactly. Sorry. I know I have it in my papers, but I just don't know the date.**
Q. You had children with George Bradley Smith. Correct?
A. **Correct.**
Q. You had how many children?
A. **Two.**
Q. And their names and ages?
A. **Brandy, 11; and Kole, 15. K-O-L-E, 15.**
Q. And what's the date of birth for Kole?
A. **2/3/01.**
Q. And Brandy is 9/20 --
A. **9/20/04.**
Q. -- 04.
Do you have any children from any other relationship?
A. **No, no.**
Q. And Mr. George Bradley Smith had children from his first marriage?
A. **Yes.**
Q. And their names?
A. **Nicole. And her last name, she's married, Gaeta, G-A-E-T-A.**
Q. And -- and --

A. **And Kyle Smith.**
Q. That's Kyle Bradley Smith. Correct?
A. **Yes.**
Q. And the date of birth for Kyle Bradley Smith?
A. **He is 12/5 -- he just turned 30 this year. And Nicole is 7/31 -- and she just turned 35 this year, or last year. Last year, I'd say.**
Q. Last year?
A. **Yeah, last year.**
Q. What is your current address?
A. **610 Mann, M-A-N-N, Road, Horsham.**
Q. Road, did you say?
A. **Um-hum. Horsham, PA 19044.**
Q. And how long have you lived at that address?
A. **Since 2000. January of 2000.**
Q. When you came to North Wildwood for the time that you were there in July of 2012, you rented a place?
A. **Yes. Two weeks.**
Q. For two weeks. If you come across anything that indicates the address for that rental property, would you please give it to Mr. D'Amato?
A. **Yes.**
Q. I'm going to ask you to look for that, and then I'll ask the court reporter to make a note on

the record that I'm making the request.
So, if there's any documentation that shows us the street address, we would appreciate that.
A. Okay.
Q. So, as of the date of the event involved in this case, your residence, and that of your husband, George Bradley Smith, was 610 Mann Road, Horsham, Pennsylvania?
A. Correct.
Q. And you lived there with, at that time, how many children?
A. Two.
Q. The two youngest children?
A. Correct.
Q. And you had been living there together for 12 years?
A. Yes.
Q. Before the date of this event, in the year of 2012, did Mr. Smith pay any costs associated with the residence of his daughter, Nicole Gaeta?
A. Yes. He would pay lots of money. Yeah. He was helping them out a lot, all the time.
Q. Gaeta?
A. Yes.

Q. Before the date of this event, and in the year 2012, did your husband pay any costs associated with the residence of -- of his adult son, Kyle Bradley Smith?
A. I guess I would say yes. Because he lived at an apartment that was attached to the shop for free. So, yes.
Q. He what?
A. We -- we have a shop, a mechanic shop, and it has an apartment next to it. And that's where Kyle lives. So, he lived there for free.
Q. How long had Kyle lived there for free before his dad passed away?
A. He lived -- he probably moved in there shortly after 2006, when he started working there.
Q. For how long, to your knowledge, did your husband provide assistance to Gaeta for her residence before the year 2012?
A. I'm not really sure. I mean, we would give them money now and then. So, I -- I'm not exactly sure. Nicole's husband's had some back issues, and he's been out of work for a really long time. So, there were -- you know, we would help them out when they needed it.
Q. Was there any regular support to Gaeta and

her husband?
A. Nothing -- no, not regular. But as needed.
Q. Is there any record as to how much support was provided to them?
A. Not that I knew of, unless Nicole has kept some track of it. I don't know. And knowing him, he probably gave them more than he ever told me, too, so. He was just like that.
Q. Do you own the home at 610 Mann Road?
A. Yes.
Q. Do you still live there?
A. Yes.
Q. Is there any mortgage?
A. No. That's -- when I got the money from the life insurance, I paid the house off so we could stay there.
Q. What did you receive in life insurance benefits?
A. One policy was a million, and the other one was a hundred thousand.
Q. And what was the amount of mortgage that you paid off?
A. One was 200,000, and the other one was about 140,000.
Q. You paid them both off?

A. Yes.
Q. And they were on the same property?
A. Yes. Yeah. One was the first, and one was a home equity line.
Q. The 140 was the home equity line?
A. The opposite way.
Q. The opposite. Oh, okay.
Did Mr. Smith, your husband, own any other properties or homes at the time of his death?
A. Yes. The shop.
Q. You say it's a mechanic's shop. What kind of mechanic's shop?
A. Auto repair.
Q. And did your husband own that free and clear, or was there a mortgage?
A. Mortgage.
Q. Did you pay that mortgage off?
A. No.
Q. Okay. What happened to the auto repair business?
A. Nicole and Kyle are running it. And when Brad passed away, they each received 25 percent of ownership of the business. That -- it was something we had done, we had just done a will the year before -- should I be saying all this?

Q. Yeah, go ahead.
A. **And I was just -- because then I -- we were giving them the shop, basically, if anything happened to us. So, they got -- they each got 25 percent when -- when he passed away. And then I was still 50 percent owner.**
Q. And what happened to your 50 percent ownership?
A. **I just recently signed that over to them. Because they're -- they've been running it. I mean, they've been paying the bills, they've been doing, you know.**
Q. Okay. And from the time of July 27, 2012, up until -- up until you recently signed over your 50 percent of the ownership, did you derive any income from the auto repair?
A. **No. I just work for them, for free.**
Q. You did?
A. **Yes. I still do. But I -- and I always will, so.**
Q. All right.
A. **Yeah.**
Q. Apart from those that you've already indicated to me to be next of kin of George Bradley Smith, was there anyone else that was next of kin to

your husband?
A. **I don't understand.**
Q. Well, he had two children, Kyle and Nicole, he had Brandy and Aidan. Do I have that right?
A. **No. Brandy and Kole.**
Q. Brandy and Kole.
A. **Um-hum.**
Q. So, that's four children, and you. Any other next of kin?
A. **Oh, well, like, mom and dad, and -- yes. Mother, father.**
Q. They still were alive in July of 2012?
A. **Yes. Two sisters, and a brother.**
Q. They're all still alive?
A. **Yes.**
Q. Did Mr. -- did your husband provide any support to other family members, other than you and the four children?
A. **Not that I know -- I laugh, because he helped everybody. But no, not -- no. We wouldn't say support, per se. He gave them cars, and, you know, did all of that stuff for them. So, I would say, yes, he was, you know -- he supported them all in one way or another, but.**
Q. Anything you can pinpoint for us?

A. **Well, no, just his brother. I don't know how many cars he gave to his brother, but.**
Q. Anything else?
A. **That's -- that's it.**
Q. Okay. Did you keep any kind of record as to how many cars he gave to his brother?
A. **No. I tried to forget. Stop giving him things.**
Q. Why did he give him things?
A. **I -- I don't know. He just wanted to take care of him. He was just like that.**
Q. Was it his little brother?
A. **Yeah. Yeah.**
Q. So, Mr. Smith was employed at the time of his passing?
A. **Yes.**
Q. And he was employed by running this auto repair shop?
A. **Correct.**
Q. Did he have any other type of employment?
A. **No.**
Q. How long had he done the auto repair shop?
A. **Since he was 18.**
Q. What was your husband's date of birth?
A. **6/11/58.**

Q. So, how old was he on the date that he passed away?
A. **Fifty-four.**
Q. Do you know what his yearly income was? Let's take it from the year 2011, that full year.
A. **I don't know. I mean, we tried -- I do all the bookkeeping. We always tried to do, like, a thousand dollars a week. I mean, that was the goal. So, it would be, like, 52,000 a year.**
Q. For how long had that been the income that he would derive from this auto repair shop?
A. **Before 2006, it used to be a little bit more, because he had a partner then, and they didn't have much of a mortgage. But in 2006, we bought the partner out, so we then had a mortgage again, so we had -- you know, you cut down a little when it's your own business.**
Q. Right. So, would you say between 2006 and through the year 2011, the average income was $52,000 a year?
A. **Yes. And I probably made about 400 a week working there, also.**
Q. Okay. That's in addition to the 52,000?
A. **Yes.**
Q. Do you have an estimate as to what the weekly

take-home was for Mr. Smith? This would be before the July 27, 2012. We could --

A. And you mean, like, taking taxes out?

Q. Right. What you -- what's net? What's the take-home that he would show on his pay stubs?

A. I'm trying to -- if I had a calculator, I could think more. But I think --

MR. D'AMATO: Do you want me to get one, Mike?

A. If I had a brain extension, I could think.

Q. If that helps you, fine, let's do that.

MR. D'AMATO: You know what, hold on one second. I think I have one in the drawer there. Hold on.

(Discussion off the record.)

A. Yeah. See, our thing, too, is, if we made a certain amount, we also had a huge depreciation that came out from the K1s from -- there's two businesses. One was the mortgage account, and because of the property, and the property depreciation started all over again in 2006 because we bought the property.

Q. Okay.

A. So, our -- our tax rate was probably cheaper then, is what I'm saying. Because you get to a certain -- you get your income down to a certain

amount, and then you -- you don't pay 30 percent in taxes, you pay 10.

Do you know what I mean?

Are you still waiting for an answer from me?

MR. D'AMATO: I'm sorry. What did you say?

THE WITNESS: Nothing.

MR. D'AMATO: Whatever you say, it goes on the transcript there.

THE WITNESS: Okay.

BY MR. BARKER:

Q. I'm going to show you now what Mr. D'Amato was good enough to give to us on January 5, 2015, which includes some tax returns.

A. Okay.

Q. Some tax return information for the year, it says 2012 on this.

So, it's all together here. And I've turned it to the place.

A. Okay.

Q. I'm trying to figure out, would this show your income for the year 2011, and you're reporting it in 2012 or not? So, here's your document, and you can explain it to me.

A. Right. Well, yeah, this would be for 2012.

Q. That's the 2012 income?

A. Right.

Q. I see. So, what we don't have -- we have the year -- if you flip back to the very cover page that Mr. D'Amato was good enough to -- right in your left hand there.

A. Yes. 2012, 2013.

Q. Okay. So, would you have documents like that for 2013 -- I'm sorry, for 2011?

A. Yes.

Q. I'm trying to get a point of comparison here, so I can see what the earnings were in the year before the subject event.

A. Yes.

Q. You have that?

A. I do.

Q. And would you be good enough to retrieve that, and provide it to Mr. D'Amato, please.

A. Yes.

Q. And for the year 2010, were your answers -- would your answers be the same?

A. I think I can get that, sure.

Q. And would you also provide that to Mr. D'Amato, please.

A. Yes.

MR. BARKER: And would the court reporter please note that we have a request for that information.

Q. Thank you, ma'am. I better take that before I walk out of here and forget it. Right?

A. Take that back.

Q. Okay.

A. It's quite a stack.

Q. Pardon?

A. It's quite a stack of paper.

Q. Yes. Okay.

By the way, this shop, the auto repair shop, what was the real name of the business?

A. Brad -- well, the legal name is Turnpike Auto. What we call it is Brad's Turnpike Auto.

Q. All right. It was an LLC?

A. LLC, yes.

Q. All right. Did Mr. Smith, your husband, have any other sources of income at the time that he passed away, other than that which he derived from Turnpike Auto?

A. No.

Q. At the time Mr. Smith passed away, did he have any investments, other than the house and the --

the auto repair business? That includes the property.

A. A little. We were trying to save some. But mainly, the business was something we were banking on as being our retirement some day.

Q. So, did he have an IRA, or a 401K?

A. An IR 1 -- IRA, yes.

Q. IRA?

And did he have any stocks?

A. No. Just -- just the IRA.

Q. What about you? Did you have any?

A. I had an IRA. I have an IRA, too, yeah.

Q. Okay. So, the two of you in terms --

A. I did a SEP. Yeah, mine was a SEP. Because I'm self-employed as a bookkeeper.

Q. What do you call it; a what?

A. Bookkeeper. Oh, a SEP? Yeah, it's --

Q. It's a type of IRA?

A. Yeah. If you're self-employed, you can get it.

Q. All right. What's the amount that was in the IRA for your husband at the time he passed?

A. Maybe 50 -- 50,000.

Q. And yours, at that time, was?

A. Maybe 20,000.

Q. What was the highest level of education for your husband?

A. High school.

Q. Did he hold any certificates or licenses?

A. He did, because he had to do some schooling for -- for mechanic. And then also emissions and state inspection license. Those are something he had to go for, I think, you know, every couple of years, you have to go back and do some continuing --

Q. In order to run the auto repair business?

A. Yeah, yeah, because it's with the state.

Q. Okay. Are you currently employed?

A. Yes.

Q. And where?

A. I'm self-employed. As a bookkeeper.

Q. And how long have you been -- well, you were self-employed as a bookkeeper even when you were doing the work for the auto business. Right?

A. Correct.

Q. And you're still doing that?

A. Yes.

Q. For free?

A. Yeah. Well --

Q. Is that true?

A. I have to. Yes.

Q. I'm just asking. Okay. But who pays you?

A. I have to help them.

Q. Somebody's got to --

A. No, somebody pays -- yeah, I do have other clients. I have several businesses that I work for, and I also do some personal books.

Q. Okay. As a self-employed bookkeeper, do you know what your income was in the year 2013?

A. I was actually just finally starting to make some decent money. I was probably making a thousand to 1500 a week.

Q. In the year 2013?

A. Not 2013, no. No.

Q. In the year 2012, you mean?

A. Yes. 20 -- a little prior to 2012, I started -- the kids were getting a little older, I had more time that I could -- and I picked up more jobs, and I had a huge job that I worked 40 to 60 hours a week, just that one job.

Q. Um-hum. What --

A. That I lost after my husband passed away.

Q. All right. What -- what -- we just went through 2015. Do you know what you earned in 2015?

A. Oh. I should know this, because the Marketplace asks me this all the time for insurance.

I think it's -- oh, I don't know. Can I -- can I get that back to you, too?

Q. Yes, ma'am.

A. Okay. Sorry.

Q. And if you could do that for 2012 through 2015.

A. Okay.

Q. And it's good. Don't guess.

A. Okay. I know, I know.

Q. As I say, don't -- if you don't know, just let me know you don't know. And my follow-up question is going to be, is there another source that might tell us the answer to that question, and then we'll take it from there. All right? So, that's what we just did.

A. Okay.

Q. And if you would provide that information to Mr. D'Amato, we would appreciate that.

A. Okay.

MR. HUNKINS: Keep going, counsel. I'm going to step out.

Q. Other than being employed as a bookkeeper, in the year 2012, did you have any other employment?

A. No.

Q. What is your highest level of education?

A. **High school, and some college.**
Q. And how much college is that?
A. **No degree. I made some -- you know, I took accounting courses, and marketing. A company that I went -- I worked at full-time sent me to school, because I worked in the accounting department. So, they paid for school, as long as it was related.**
Q. Do you have any certificates, certifications, licenses, degrees, other than a high school diploma?
A. **I was a real estate agent once.**
Q. But that's lapsed?
A. **Um-hum.**
Q. Long time ago?
A. **Yeah. I think since Kole was two. I think I -- yeah. I missed one year of going back for the continuing ed when he was two, and that was it.**
Q. Is anyone, other than you, providing financial support to your household at this time?
A. **Social security.**
Q. And would you explain to us what that social security income is, and what the amount is.
A. **It's 1200 a month for each of us.**
Q. That's for you?
A. **Kole, and Brandy.**
Q. Kole, Brandy. So, it's $3600 a month?

A. **Approximately, yeah. Close. And that goes until -- I get it until Brandy's 16, unless I earn enough to not get it.**
Q. What's the limit that you can earn?
A. **I -- I -- you know what? I don't know what it is. I just -- you know, they figure it out year to year, so.**
Q. And Kole gets it until what age?
A. **Kole gets it until he's 18. Brandy gets it until she's 18.**
Q. Oh, you just said 16.
A. **I get it until Brandy is 16. Until my youngest child is 16, I -- then it's over.**
Q. And Brandy and Kole get it until they're 18?
A. **Correct.**
Q. Got you. Other than you and Mr. Smith, your husband, was anyone providing financial support to your household at the time that he passed away?
A. **No.**
Q. Did your husband have any debts at the time that he passed away?
A. **Yes.**
Q. And what do you recall about that? There's a couple mortgages. Right?
A. **Well, the -- yes. And we did have some -- we**

had some credit card debt, too, because we're working on trying to fix -- the shop also has rental properties out front. So, we were trying to renovate everything to get them rented out. So, there was some debt involved there.
Q. All right. So, you told us about the mortgages. I think there were two mortgages. The 200,000 mortgage was for a line of credit. The 140 mortgage was for the real estate. They were both on the house. Correct?
A. **Correct.**
Q. There was no mortgage on the business property?
A. **There is a mortgage on the business property.**
Q. There was. So, that's another debt. What was that amount?
A. **Probably, at the time, 350,000.**
Q. On the business property?
A. **Yes.**
Q. Any other debt?
A. **Yes. There's two -- two lines of credit with the business. I -- I have all of that written down somewhere, which I can give that to Paul.**
Q. Thank you.
A. **Yeah, I have a whole list of what I paid.**

Because I paid a few things off, too. And then some of the things the kids have been paying off, as they go along, you know, with the business. They've paid off one loan already, and trying to get the mortgage in their name now.
Q. So, there's a mortgage for the business that was 350, that -- as of July 27, 2012, and then there were two lines of credit, and you paid them for awhile, and then, at some point, the children took -- the adult children took over?
A. **Correct.**
Q. And they've been paying them?
A. **Correct.**
Q. All right. So, from the time of July 27, 2012, until the time that they took over those obligations, we would -- we would need to know that.
A. **Okay.**
Q. And any other debts that your husband, Mr. Smith, had at the time that he passed away, if you could give all that information to Mr. D'Amato, and if the court reporter would please note that we're making a demand for that information.
A. **Okay.**
Q. At the time Mr. Smith, your husband, passed away, did he have any outstanding judgements pending

against him?
A. **No.**
Q. At the time Mr. Smith, your husband, passed away, did he receive any governmental assistance at all?
A. **No.**
Q. Did anyone in the family at that time receive any governmental assistance?
A. **No. Except for my son-in-law. I don't know if -- does disability fall under that? Is that government?**
Q. Yes.
A. **Or is that insurance? I don't know.**
Q. Well, so, this is your --
A. **Nicole's husband. My stepdaughter's husband.**
Q. How long has he received that governmental assistance?
A. **I'm not sure.**
Q. What's his name?
A. **Jared, J-A-R-E-D.**
Q. He receives some type of disability policy?
A. **On disability, yeah.**
Q. Disability insurance?
A. **I guess.**
Q. Is that from -- social security? You don't

know?
A. **I don't know. I thought it was maybe -- it could have been just from a -- because he worked at a job, that's how he hurt his back. So, I'm not -- I'm not sure. But how long, that doesn't last forever. Right?**
Q. Other than what you and your children receive for governmental assistance from social security, that you told me about, those monthly payments of about $1,200 a month.
A. **Right.**
Q. Is there any other form of governmental assistance or aid that you and the children receive?
A. **The kids are on CHIP. Does that count?**
Q. Yes.
A. **And I get a discount from the Marketplace. Or -- is that the government? I don't know.**
MR. D'AMATO: Say that again.
A. **It's based on government -- it's based on your income, and -- it's the Obamacare thing.**
Q. You call it the Marketplace?
A. **I do. Because they -- because I'm always constantly giving them more information. But yeah, they're called the Marketplace. Isn't that what it's called?**

Q. I don't know.
A. **Marketplace.gov, or something like that, I think it is.**
Q. So, you get some type of assistance for healthcare from Obamacare?
A. **Yeah.**
Q. Other than the life insurance, which you told me about, the $1 million policy, and the $100,000 policy, did you or the children receive any other life insurance benefits?
A. **The only other one would be, there was, like, a thousand dollars from a bank one, you know, when -- the bank sends those free ones, or whatever. I think -- I can't tell you if I ever got it, but.**
MR. D'AMATO: But, Mike, it's -- it's 12:30. And they were up really early. And I have a sandwich tray.
Do you think we could take a 15 -- just a 15-minute break. Okay?
MR. BARKER: Absolutely, okay.
MR. D'AMATO: We'll go off both records. All right?
VIDEOGRAPHER: Going off the record, 12:25.
BY MR. BARKER:

Q. Just your last answer was, you're not even sure if you got that, right, the thousand?
A. **I would, if I looked. But I'm not even sure.**
Q. Put it on your list.
A. **Okay.**
(There was a recess.)
VIDEOGRAPHER: This is the beginning tape of number 2. Back on the record, and the time is 1:04.
BY MR. BARKER:
Q. What was the amount of Mr. Smith's funeral expenses?
A. **I don't -- I don't know exactly. Again, I do have all of that. I can get that for you.**
MR. BARKER: Okay. I'd like to make a request for that information. Please provide it to Mr. D'Amato.
Would the court reporter please note the request in the index.
MR. D'AMATO: Mike, you already have it. Do you want me to go get it?
MR. BARKER: No.
MR. D'AMATO: Okay.
MR. BARKER: It's okay. If I already have it, I apologize. I didn't -- I didn't remember

that.

MR. D'AMATO: Yeah.

MR. BARKER: But you've given me so many documents.

MR. D'AMATO: Exactly. Yeah.

MR. BARKER: So, I apologize.

BY MR. BARKER:

Q. Do you recall, ma'am, how they were paid?

A. I paid for them.

Q. Out of the insurance policy benefits?

A. Yes.

Q. Now, we need to get some information that's more specific. Just do the best you can in answering these questions.

At the time Mr. Smith passed away, we're trying to determine the monthly household expenses. So, for instance, were there car payments that were monthly car payments?

A. I'm not sure if we had a car payment at that time.

Q. Utilities, monthly?

A. (Witness nods.)

Q. No knowledge?

A. I don't -- I don't know right now, no.

Q. Okay. Food?

A. (Witness nods.)

Q. No knowledge?

A. No knowledge. Sorry.

Q. Medical expenses?

A. No knowledge. I have it all. I'm a bookkeeper. So, I have everything in Quicken. Like, I can print out reports in a few seconds.

Q. You could do all of that for us?

A. Yes.

Q. Well, I'm sure that's going to be beneficial.

And I'm just going to keep asking. I only have one more on this part.

A. Okay.

Q. Children's activities. Do you know how Brandy was telling us she goes to classes, and there might be costs with that.

A. Yes.

Q. And you have two young children living at home, so for all I know, they're in private school. I don't know.

So, any -- any expenses that are part of the household expenses just prior to the date of death. We're looking for the monthly household expenses. And if you can recreate that through your Quicken.

A. Yes, I can.

MR. BARKER: We make the request, Madam court reporter, that this be noted in the record, and that the information be provided to Mr. D'Amato, who, in turn, will provide it to us.

Thank you.

Q. Now, I'm going to have the same set of questions at the present time.

A. Okay.

Q. In the year 2016. So, you could go through and do the same printout. You could look for car payments, utility payments, food payments, medical expense payments, children activity payments, and any other normal operating expenses for your household at this time.

A. Yes.

Q. So, we'll be looking at what it was in 2012, let's say, for instance, the first six months of 2012, compared to the first several months of 2016. We can do a comparison.

A. Okay.

Q. All right, ma'am?

A. Yes.

Q. During the break, perhaps you thought about this. Apart from what you already told us about

financial support that your husband provided to other children outside of the house, anything to add to that which you've already told us?

A. No.

Q. Anything that he might have provided for Kyle Bradley Smith or Nicole Gaeta, other than what you've told us?

A. No. Because there was nothing on a consistent basis. It was, you know, as-needed.

Q. Whether it was a continuing expense or a prior expense which he paid, did your husband pay any college tuition expenses at the time of his death for either one of his adult children?

A. Some. For Nicole, yes. Not -- not a lot. But yeah, some. But that was a long time ago. I mean, she's 35 now, so.

Q. Right. But at the time that he passed away in 2012, was he paying any --

A. No.

Q. -- college debts, loans, anything like that?

A. No.

Q. And you're saying that for Nicole, he had paid some at one point in time?

A. Yes.

Q. But you don't know what?

A. **No.**
Q. Did he pay any such college debts or loans for Kyle?
A. **No.**
Q. Now, there may have been certain household chores, repairs, or upkeep duties that your husband did on a routine basis.
If so, tell us what they were.
A. **Well, of course, all of the yard, everything in the yard, he did. Any repairs on the house, he did. He could -- he could do anything, really. Plus, he cooked, he cleaned, he did everything. Not all of the cooking. I do some -- I did some of it. But I mean, he cook -- we were a great team. We, you know, it was I did my thing, he did his thing. You know, we both picked each other's slack up. Like, whenever needed. So, we were -- I always said, we were such a great team.**
Q. Does that mean that you were doing the yard work and the household chores?
A. **I did the gardening. Mine -- I was gardener, and -- we have a -- almost two acres. So, I mean, he -- you know, took quite a bit to do the lawn. So, I did the flowers, and the vegetable garden, and he did the grass, and -- so, yeah, we --**

Q. Okay. Were there any household repairs that you recall, or was the home not in need of that type of thing?
A. **I -- well, it's always in need. I mean, you start one room, and you finish that, and then you have to go back -- you know, you go -- it's constant. I have a list. I have someone now that comes, that I pay, to do things. And I have a list for him all the time that, you know, things that I can't do.**
Q. And how long have you had this person?
A. **I guess a little after Brad passed away. And he's someone I've known for a long time. He was friends with my one friend, and he does repairs at her house, and I was, like, oh, I got to call him, please, so.**
Q. All right. So, is that another line item in your Quicken system?
A. **Yeah, I guess. Yeah. I might have paid him cash sometimes, too. I don't know. But yeah.**
Q. Well, let's make it a line item, and let's make it an item that I would like for you to produce that information.
A. **Yes. His name's Tom.**
Q. Okay. Let's --
A. **The Tom list.**

Q. The Tom list from --
A. **Yeah.**
Q. -- from 2012 to the present.
MR. BARKER: And I ask the court reporter to note, I'm making a request for that financial information be provided by the witness to Mr. D'Amato, and that request should be noted in the index.
Q. Did your husband, Mr. Smith, have any hobbies?
A. **Golfing.**
Q. Some people call that a sport, you know.
A. **Yes, I know. Well, it's four hours.**
Q. All right. Anything else?
A. **Well, yeah, we played tennis, bowling.**
Q. Anything else?
A. **And went to the shore.**
Q. You did that every year?
A. **Yes.**
Q. But this was the first year, 2012 was the first year that you went to North Wildwood?
A. **Correct.**
Q. And that ties in somewhat with the next question, which deals with the activities that your husband, Mr. Smith, engaged in with you, and then

we're going to talk about what he engaged in with the children.
So, what were the activities that he would engage in with you before he passed away?
A. **We played tennis, and bowling. We all did bowling as a family. I told him I wasn't ready for golf yet. I had to -- I wanted to be older and play golf. He was going to teach me.**
Q. Any other activities that he did with the family, then? I've got for activities with you, it's tennis, and then bowling with the family. Correct?
A. **Yeah.**
Q. And then just your husband and the children, anything that you recall that he would --
A. **Well, with -- with Brandy, their thing was, he would -- he would sit and watch her sing and dance for hours. I mean, he had the endless patience to -- and they would watch their Taylor Swift things together, and their -- they had their whole TV show lineup that they would watch together.**
Q. Anything else?
A. **I just -- well, I mean, of course, you know, always doing things with Kole outside, and all -- you know, playing catch with Kole, or -- but Kole said to me, like, one of the things that were the hardest for**

him, like, was the wrestling around. You know, like --

MR. D'AMATO: It's okay, it's okay. Do you want me to get you a fresh bottle of water?

THE WITNESS: No, I'm okay, I'm okay.

MR. D'AMATO: Okay.

Q. Should I proceed?

A. Yeah. Go ahead.

Q. I'm going to ask you some medical background information about Mr. Smith.

To your knowledge, had he ever been hospitalized?

A. No.

Q. Was your answer no?

A. No. Yes.

MR. D'AMATO: That also includes emergency room visits, same-day surgeries, things like that.

THE WITNESS: Not that I can think of, no. I mean, he hardly ever went to the doctor, really. I mean -- not that he didn't go to the doctor, but he hardly ever. I mean, he wasn't a person that ever complained about anything.

Q. Okay. To your knowledge, did your husband, Brad Smith, have any chronic illness?

A. No. The only thing that bothered him, his knee did bother him. So, that would be the only thing he would ever -- that's the only thing he went to the doctor about was his knee. Because he was concerned about it, because we were going to go to Disney, and he didn't want it to bother him.

Q. Which knee?

A. I think it was his right knee. But again, I say, not a -- much of a complainer. So, he didn't complain much. So, it's not, like, he was always, like, oh, my knee, you know. And he's a man who stood every day on a concrete floor, you know, working all day, so.

Q. Did he have a primary care physician?

A. Yes.

Q. Who was that?

A. North Willow Grove Family Practice. He probably went there three times ever.

He did have a vasectomy. I forgot about that. You asked -- now you're saying that. Sorry.

MR. D'AMATO: Was that done in a hospital?

THE WITNESS: Yes.

Q. Where is the North Willow Grove Family

Practice?

A. In Willow Grove, Pennsylvania. Blair Mill Road. I don't know the address exactly.

Q. Do you have any health issues at this time?

A. Not that I can think of, no.

Q. Do any of the children of Mr. Smith have any health issues at this time?

A. No.

Q. Are you receiving at this time, meaning, generally, at this time frame, any psychological or emotional counseling?

A. Not at this time, no. I haven't been to someone in awhile.

Q. Okay. Where did you ever receive psychological or emotional counseling, and when?

A. Well, everything happened in July, end of July. September, we all started going to Safe Harbor, and that's in Willow Grove, Pennsylvania. And they have a group -- they had a group for parents. They had a group for Brandy's age group. They had a group for Kole's age group. And they had a group, a young adult group for -- Nicole and Kyle went, also.

Q. How many visits were made; do you know?

A. Well, we went there for -- for, like, two

years, probably. We went there for awhile. And they have a summer camp. Brandy went to their summer camp, too. Like, just a week. It's right around the corner from our house, so it wasn't --

Q. And what did you do there?

A. They had a parent group there that -- it was kind of -- kind of, like, a group therapy.

Q. Do you know approximately how often you went?

A. I think it was twice a week. So, we -- we would either go once or twice a week.

Q. And for how long did you go once or twice a week?

A. For the same amount of time as the kids. We all went together, when we went.

Q. About two years?

A. Yeah. We went pretty much the whole first year, and then we -- maybe the second year, we didn't go as many times the second year. But in between there, we did go do some other counseling, too.

Q. With whom?

A. One was -- it was called Crystal. The kids went. I would -- I didn't go at that time. I would take them, and they each saw someone. But neither one of them -- like, you saw the thing from Dr. Debbie. Neither one of them would talk about it.

And, like, what happened. Like, they -- they never went through it all. They just kind of sat back and watched everybody else kind of go through it, you know.

Q. So, Kole went, and Brandy went?

A. Yes.

Q. To Crystal?

A. Yeah.

Q. Is that right?

A. I know. I'm thinking he's got all the copies of all of that. But I think it was called Crystal -- I don't know. I'm not sure.

Q. Was it in Willow Grove?

A. No. This was in Flourtown, Pennsylvania.

Q. Are any of the children at this time receiving any kind of psychological or emotional counseling?

A. Not right now, no.

Q. And you are not either. Correct?

A. I would like to go back. But yeah, I just haven't had the time.

Q. When do you recall that you were last receiving any such psychological or emotional counseling?

A. I think during the last summer was probably

the last time I went to the place I was going to.

Q. The summer of 2015?

A. Yeah.

Q. And the place you were going to was called?

A. I don't remember. Sorry. And that's in Horsham. It's right down the street from me. I just don't remember the name of the place.

Q. All right.

A. I have all that, though.

Q. All right. If you don't mind, we'll start a new piece of paper, and you can continue your list.

A. Okay.

Q. There you are.

THE WITNESS: But you have all that, Paul, don't you? All the places that we've gone to?

MR. D'AMATO: Yeah.

THE WITNESS: Yeah.

A. Insight, insight.

Q. There you are.

A. Insight Counseling. That's the name.

MR. D'AMATO: I thought we had mentioned that in our answers to interrogatories. I thought, but.

MR. BARKER: You might have, but we didn't receive answers to interrogatories. I have

lots of documents from you, though.

MR. D'AMATO: Oh, no, no, no. We answered. Do you want me to get them? Oh, yeah. Okay.

Can you just go off the video record?

VIDEOGRAPHER: Okay. Going off the record. The time is 1:24.

(There was a brief recess.)

VIDEOGRAPHER: We're back on the record, 1:28.

BY MR. BARKER:

Q. Other than Mr. D'Amato, have you spoken with anyone about what happened on the date of the event?

A. Yes.

Q. Who was that?

A. The lady at Insight Counseling, I've talked to her, when we -- I've talked to Dr. Debbie, myself, also. I don't know. My -- my parents. Of course, everyone's asked me. I don't -- I don't know at what time I -- when I started being able to talk about it. I don't -- I'm not quite sure. But when I could. And I've talked about it.

Q. Do you have any knowledge of your own about how this event took place?

A. No.

Q. Apart from the observations about the ocean that you told me on the date of the event, do you have any other knowledge of your own about the conditions of this beach that you were at on July 27, 2012?

A. No. Only what I was told.

Q. Okay. And who told you something about the conditions of the beach?

A. The police officers.

Q. And anyone in particular, any particular police officer?

A. I don't -- there were two police officers that came to the house probably every night to, I guess, give us an update on -- and I don't know their names. But there's probably -- they're probably in a report, I guess.

Q. Okay. And what did either one of them tell you?

A. They just told us how dangerous it is in that area, and how -- told us that several people were rescued there again today. And like -- it was strange -- like, it was strange to hear. Like, why are -- like, what does this all mean? You know, like, why are -- so they were kind of, like, painting the picture of this place is dangerous.

So, that's where it started, you know. And Andrea would be there with me, too. And we would be, like, why -- you know, like, because we were just thinking they went for a walk, and a terrible accident happened. And to find out here they keep telling us, it's a dangerous area. Like, well, why didn't we know it was a dangerous area? Like, why didn't someone tell us that before we went there? Like, why would a man -- two men and three little children go on a walk in a dangerous area, if they would have known it was dangerous.

Q. Um-hum. Well, what did they -- what area, in particular, if any, did they say was dangerous?

A. Where he -- where they went in the water.

Q. And what did they say was dangerous about that area?

A. They said that people get rescued from that area all the time, because they get swept out, or -- something, you know, because that was a thing, too, because that -- none of us would have gone swimming there, ever, because there's no lifeguard there. So, that wasn't the issue. The issue was walking along the beach. And they're telling me it's dangerous, that whole area is dangerous. So, that's where we even started, you know -- but then the more we talked

to everybody else, even around the complex, people were saying, oh, yeah, that area is dangerous, you know. And again, we were, like, well, again, why didn't we know it was dangerous?

Q. Um-hum. Well, what specifically was it that was dangerous in the area? And that's the first question.

A. I -- from what I -- what the police -- all the police were telling us were that area is dangerous, and people -- they would say, three people were saved from there today. Like, that's what they would come back to us at night and say that to us. So, you know, that was our first idea that, why -- you know, that this place was dangerous.

Q. That area, does that mean the inlet?

A. The inlet area, yes, where -- yeah.

Q. The inlet area?

A. (Witness nods.)

Q. And in the inlet area, there's a -- a flow of water; is that true?

A. (Witness nods.)

Q. You don't know?

A. I -- that's what I hear. That's what I've heard from others. And I -- yes. I've read it in several things now, and I've seen it. And I've heard

it said. I'm -- even a woman who I talked to recently, after the boy disappeared out there this past summer, talked to an ice cream vendor, and he told her about it.

Q. Okay. So, first of all, let's start with this: There's two policemen, and you say one or both of them told you something about the area being dangerous.

A. Correct.

Q. Okay. Was it one or both of the police officers?

A. Both of them.

Q. Okay. Next, can you tell me the names of either one of the policemen?

A. I cannot, no.

Q. Could you describe either one of the policemen?

A. No. Maybe my friend Andrea could. I don't know.

Q. Next, the ice cream vendor who told you something about the area being dangerous.

A. Not me. Another -- another person that I know.

Q. Okay. So, an ice cream vendor told a person that you know that the area was dangerous?

A. Right. That there's a well-known vortex there, in -- in the area, yes.

Q. In the water?

A. In the water, yeah.

Q. So, where is the vortex?

A. At the inlet beach, yeah.

Q. But do you know where in the inlet?

A. No. I mean, and I've seen the depositions of the lifeguard chief, and he -- he was saying it's right off of the beach. I mean, basically. I don't -- I, personally, no, don't know where it is.

Q. Okay. Who was the person that the life -- sorry, sorry, sorry.

Who was the person that the ice cream vendor was speaking to?

A. A -- a lady that I've been in contact with, because she's been trying to get a Disney -- well, she did get a Disney grant to put signs up in that area to warn people about the danger.

Q. Okay. What's her name?

A. Jacqueline -- I don't know the -- I don't know the spelling of her last name. She lives -- she's a Girl Scout troop leader in New Jersey. And she must go to North Wildwood a lot. And when that boy was missing last year, she started doing a lot of

research, herself, and that's how she realized that -- you know, everyone was telling her it was dangerous, and then they actually saved someone while they were out there on their Jet Ski that was basically on his last breath.

Q. He was out in the water?

A. He was out in the water, yes. And they said, You can't be out here, it's dangerous. And he said, I didn't know.

Q. Okay. Now, Jacqueline, have you recalled what her last name is?

A. No.

MR. D'AMATO: D'Uria, it's spelled D-'-U-R-I-A. I have her telephone number and e-mail in the other room, if you want it.

MR. BARKER: All right. When we finish, if you'll give me that, I'd appreciate it.

MR. D'AMATO: Yes. I'll write it down.

BY MR. BARKER:

Q. Now, is there any other source of information that you can point to which you indicate is a source of information about danger in the inlet area?

A. Lots of articles from Atlantic City Press, and there's some quotes from the old mayor and the new mayor, and -- talking about the vortex, Stewart Farrell talking about the vortex.

Q. Anything else?

A. That might be it. That's all I can think of right now.

Q. To your knowledge, had your husband ever been to this area of beach before you arrived there in July of 2012?

A. No. I'm pretty sure he's never been -- he used to go to Ocean City all the time. So. I don't even know if he's ever been to Wildwood.

Q. Have you ever given a statement about what you observed on the date of this event, other than what you reported to the police, which we have?

A. I don't know when we did our press conference. Does that count as a statement of --

MR. D'AMATO: Yeah.

Q. Yes, it would.

A. Okay.

Q. You did a press conference with whom?

A. We did that in July of 2014?

MR. D'AMATO: Yeah.

Q. Do you recall --

A. We did it here. I don't know. There were a lot of different radio -- or TV station -- Scott was here, and Andrea was here.

Q. Do you have any knowledge of how this event occurred? If I refer to it as an accident, do you have any knowledge as to how this accident occurred involving your husband?

A. Direct knowledge?

Q. Yes, ma'am.

A. I mean -- no. I mean, only what I know from what Brandy says, and what Scott has said. I mean, you know, what happened with them. I just know they went for a walk, and didn't come back, so.

Q. Other than speaking to Brandy and Scott, have you spoken to anyone else that reportedly was a witness to what happened?

A. No. I didn't even talk to the Jet Ski guy, really, that much. I mean, to me, that was all, like, in denial that that even happened. You know, so I'm so glad other people rallied around him, because I felt like I left him out. Because I just couldn't believe she was even out there, you know.

Q. There's a statement in the complaint, that's the pleading that was filed on your behalf in court, there's a statement in the complaint that says that the sand collapsed.

Did you make that statement?

A. I don't know -- I don't know. That's what I

was told happened.

Q. Do you know who was the source of information that the sand collapsed?

A. I think that's Scott.

Q. You think?

A. Yeah.

Q. Do you have anyone else that you think may have made a statement that would support that allegation in the complaint; that the sand collapsed?

A. I don't know. And I'm not sure what Brandy -- I thought she had said something like that to the doctor, when that -- you know, when she was going through everything. But we haven't gone through it ever again. We only did it that one time at the doctor's office. And --

Q. Is that Dr. Debbie?

A. Yeah. And I -- you know, because I don't -- I'm not going to, like, sit there and say to her, let's go through this again, kind of thing. You know, I want her to do it, if she wants to. And that was the whole reason we were there, was because she had it so bottled up, she was exploding. Like, she just -- she was afraid of everything she said and did, and thought something bad was going to happen because of it. And that was, what, two years after

it happened, you know. Like, it was scary. Because she -- it was so out of character for her. I mean, she just totally -- I'm surprised -- I was so happy that she came out of it, and the doctor said it's because she needed to talk about it, and get it out. So, you know -- I don't know. Whatever it was, it helped her.

Q. When you -- when your husband went for the walk with Scott Sunderland and the children, you stayed at your belongings back on the beach --

A. With Andrea.

Q. -- true?

With Andrea --

A. And the two boys, Jett and Kole.

Q. Okay. And then what happened? Did somebody come to you at that location?

A. Yeah. Well, we started hearing lots of sirens, and -- and Andrea kept going, God, what's taking them so long? And I kept going, Well, it has nothing to do with them, they're just for a walk. They're probably just standing there watching whatever is going on. And I kept saying, No, you know, has nothing to do with them, nothing to do with them. And finally, she said, I'm just -- I'm going to go walk down there and see what's going on. And

then she walked down there. And they must have sent Aidan -- Aidan. I only remember seeing Aidan, and Aidan was 11 at the time. And I saw his face, and he said -- he just looked at me, and I just ran. Because then, as soon as he came back by himself, I knew something -- something was wrong.

Poor Aidan.

Q. Did Aidan talk to you about what he saw?

A. No, I don't think either one of her kids have talked in -- I don't know. Yeah, I don't think either one of them has talked about it. And he didn't fall in. He must have been just far enough away that it didn't get him.

MR. D'AMATO: How do you spell Aidan.

THE WITNESS: A-I-D-A-N.

MR. D'AMATO: How old is he now?

THE WITNESS: He's -- no, wait a minute. If he -- if they were seven, he was probably nine. Because he's 13 now.

MR. D'AMATO: Okay. Thank you.

THE WITNESS: Right. Because he just turned nine, because he's July 1st.

BY MR. BARKER:

Q. Date of birth of July 1 --

A. I don't know. I don't know his year. I only

know, because he's the day before my birthday. But I'm not sure of the year.

2003.

Q. Were you at the beach when the lifeguards at that beach said that they were leaving for the day?

A. Yes.

Q. Did you hear them say that?

A. Yes. Because the boys came in.

Q. And when they were saying that, had the group of Brad and Scott and the children already left?

A. Yes.

Q. And how long was it from the time that they left to the time that you heard the lifeguards say, That's it. It's the end of the day. Everybody's out?

A. I'm not really sure. Not sure.

But one thing I have to say is, Kole was at the edge, because the lifeguards told them to get out, and he could see Brad, and Brad was waving to him, and telling him to come. And he stayed, because he didn't go, and he stayed there. So, they --

Q. So --

A. So, they could see -- he could see them still.

Q. So, it's rather simultaneous --

A. Yeah.

Q. -- close in time?

A. Yeah.

Q. Did you have any conversations with any of the lifeguards that day prior to the incident?

A. No.

Q. Did your husband have any conversations with any of the lifeguards before this event?

A. I don't think so, no.

Q. Did you have any conversations with any North Wildwood personnel after the event?

A. I'm sure. Because when I walked up, I didn't know where the kids were. I don't know. This -- that's hard. And then they -- then they told me they were looking for Brad. And I'm, like, well, why isn't anyone in the water? Like, why are we standing here? I'll go look for him. And then they pulled me away, and then they put me in the back of the ambulance. And then that's where Brandy and Kole were. Because they said Brandy had to go to the hospital, because she was in there. And I'm, like, what do you mean she was in there? They went for a walk on the beach. Like, what are you even talking about? And sorry, I'm freaking, but -- okay. But,

yeah. So, then to see her wrapped up in a towel, and it -- all of it was just shocking, just --

Q. And after that, did you have any conversations with any North Wildwood personnel of any type?

A. I don't know. They took us in the ambulance to the -- to the hospital from there.

Q. What happened at the ambulance -- in the ambulance, if anything?

A. Nothing. I'm just -- we were just riding and looking out the back, waiting for another ambulance to come behind us, thinking, you know, he's going to be right behind us.

Q. What happened when you arrived at the hospital?

A. They took -- they took Brandy in. I don't know. They -- they took her in, they hooked her all up to I.V.'s. I guess they took her in to make sure she didn't have water in her lungs. We sat -- we sat there forever. We sat there forever just looking and waiting at the door, waiting for them to come in with Brad. Like, that's -- but with Brandy sitting in the hospital bed, and Kole and I just sitting there waiting.

Q. Did Brandy have any physical injuries?

A. I don't know. I -- I'm still in denial, but when I read the report of possibly drowning with her, you know, like, that's -- I have the report from the Cape May Hospital. And it was, like, you know, what are you even talking about? Like -- but, yeah, there -- I mean, they were checking her for that. Because she was out there awhile.

Q. Well, to your knowledge, did Brandy have any physical injuries?

A. No. Not that I --

Q. Did you speak to any Coast Guard personnel after this event?

A. No.

Q. Did you speak to any New Jersey State Police personnel after this event?

A. I -- yeah. Someone came and talked to us, and came and talked to Scott, too.

Q. Was that on the date of the event?

A. Yes.

Q. Do you know the name of the person?

A. I don't.

Q. Do you know rank?

A. I don't know -- I don't know his name, anything.

Q. Was this a member of the New Jersey State

Police?

A. I -- again, I don't know. I don't know who he was. I -- yeah. I was in shock. I just -- to say -- to even believe that I was there in the first place was -- yeah.

Q. Okay. So, I had asked you whether you spoke to anybody from the New Jersey State Police, and you said yes.

A. Well, he was police. But I don't know state police, local. I don't know.

Q. Okay. Thank you for the clarification.

A. Yeah.

Q. Do you happen to know whether the person that you were speaking to, who you say was police, whether that was someone from a marine police unit, meaning they have some kind of job on a boat?

A. I don't know. He seemed like a regular police officer. I just don't know what his rank, or where --

Q. Now, you and Mr. D'Amato have indicated that you did answer written questions, and I have a set here with me, which Mr. D'Amato's been good enough to provide. And --

MR. D'AMATO: I have an extra copy, if you want me to put it in front of her, if you want.

MR. BARKER: Oh.

MR. D'AMATO: If it's necessary.

MR. BARKER: Yes, please, if you don't mind. I'm just trying to find, Mr. D'Amato, where the certification page is.

MR. D'AMATO: Well, you just asked me for answers to interrogatories. But now you're really getting demanding. Now you want a certification page, hum?

MR. BARKER: Okay.

MR. D'AMATO: You know, Mike, I looked in the file, there wasn't one.

MR. BARKER: Okay.

MR. D'AMATO: So, I can --

BY MR. BARKER:

Q. Let me ask a couple questions, then.

Here, ma'am, this is the set that we have here that Mr. D'Amato was good enough to give to us.

A. Okay.

Q. And there's -- you'll see after the first couple pages, there's a lot of typewritten answers.

Do you see that?

A. Yes.

Q. Do you remember answering written questions,

and providing information to answer written questions?

A. Yes. Yeah, a long time ago.

Q. Okay. Are those the answers that were prepared based on information you provided?

A. Yes.

Q. At some point in time, you reviewed it, these answers?

A. About three years ago, yeah.

Q. And you reviewed it for accuracy. Is that correct?

A. Yes.

Q. To see that your answers to the written questions were accurate; is that right?

A. Sure. I haven't read it in three years, but.

Q. I'm just asking what you did it --

A. I know. I'd like to read it again, and say, oh, yeah, okay, yes, it's accurate.

Q. But what I'm asking you is, did you go through that process? See, what generally happens is -- well, strike that.

It may have happened that you provided information to Mr. D'Amato, or somebody on his staff, they prepared it in a typewritten form, and you would then read the questions, and read the answers, and

make sure it says what you want it to say.

A. Correct.

Q. Did that happen?

A. Yes.

Q. Okay. And that's what the work product is, what I have here now. Right?

MR. D'AMATO: Yes.

MR. BARKER: Okay.

MR. D'AMATO: But with your permission.

MR. BARKER: Sure.

MR. D'AMATO: You -- I'll give you another copy, with the questions and the answers, because we have a continuing obligation to update the answers. So, you'll take it home.

THE WITNESS: Okay.

MR. D'AMATO: And then send me an e-mail, and I'll send -- if there's any changes, you'll note it. And then I'll send the e-mail to Mike and Brian. Okay?

THE WITNESS: Okay.

MR. D'AMATO: All right?

MR. BARKER: Good suggestion.

And since we've been referring to this document, I'm going to mark it Sandy-1. I think you're the first -- this is our first exhibit with

you. So -- is that all right?

THE WITNESS: That's fine.

MR. BARKER: Thank you.

(Answers to Interrogatories, received and marked for identification as Exhibit Sandy-1.)

THE WITNESS: I'm trying to figure out where the rainbow's coming from.

MR. D'AMATO: You'll take this with you. Okay?

THE WITNESS: Okay.

MR. D'AMATO: This is what he was referring to. Okay?

THE WITNESS: Okay.

BY MR. BARKER:

Q. Now, did you provide any photographs to your attorney -- to your attorneys, to this law firm, that were taken at or about the time of the event?

A. In -- if they were taken when we were at --

Q. Yes.

A. -- at the shore that time?

I'm not sure if I did or not. I -- the only reason I'm hesitating is because there was this guy at the beach on probably the Wednesday before this happened, and he took a lot -- he took some pictures, like, he was a hired, you know, person that

works there, and he did a bunch of pictures of the kids.

Q. Do you have those photographs?

A. I probably do. Probably Andrea's probably asked me for them a thousand times, and I probably never gave them to her. So, yeah, I probably do have them somewhere. They were on a disk.

Q. Would you write that down on your list, please.

A. Yeah, yeah.

MR. D'AMATO: I don't have them, Mike, the ones she's talking about.

MR. BARKER: So, those photographs we are requesting, Madam Court Reporter, and if you would so note that request at the index at the beginning of the transcript.

Q. Do you recall that you provided any other photographs in discovery?

I should really say, do you recall whether you provided any photographs in discovery?

A. No. The only photographs I gave were to Paul, just of pictures of Brad, and -- and the family. He wanted some -- you know, he has a picture of Brandy and Brad.

MR. D'AMATO: I sent you just what she

said, family photos before the event. She never provided me with any photographs that were taken by her, friends, or family, you know, at the time of this incident.

Q. Any photographs from the date of the incident, that you know of?

A. Not that I know of, no. And now, I wish I had them, but I don't. Yeah.

Q. Since you are the executrix and the named plaintiff in this case, what is your goal at the conclusion of this case?

A. My goal is to make sure this doesn't happen to somebody else. I want whatever it takes. If it has to be shut down, if it -- it just -- it needs to -- it's not a safe area for people to be walking on. It's not -- and that's -- that's my goal. I need people to know. I don't want people going there, as tourists, and have no idea what's a nice, look -- seemingly beautiful walk on a beach could turn into; losing your family.

Q. Anything else?

A. That's -- that is my main goal. And -- and I wish they could have done the right thing from the beginning.

Q. Meaning?

A. Meaning, they knew that it was dangerous, it should have been -- well, it should have been done from the beginning. And then when it happened again and again, it should have happened -- it should have -- they should have done the right thing and shut the beach down a long time ago. But here we are.

Q. Any other goal?

A. That's it. I want to be -- you know, I want my kids to be okay. I want us to be okay. And that's --

Q. You mean emotionally?

A. I -- in every way, I want us to be okay. I want us emotionally, physically. I know we'll never be the same, for sure. We'll never -- you know, and I worry about Brandy, how her life will go. I mean, how Kole, his -- my poor son is so quiet, and sweet. But I know that he -- you know, has had a hard time with this, too. And it's just unfair their father was taken away from them so early. They didn't have enough time.

So, that's it. We want to do right by Brad. I want to make sure this doesn't happen to anybody else again.

Q. Have you spoken to anyone about closing the inlet beach?

A. Sure. Yes.

Q. To whom did you speak?

A. Well, I know when we did the press conference, that was one of our main things was, please, shut down this beach. You -- you know, that was everywhere. And it wasn't, like, we didn't ask for that before, too. Because that was asked for right from the beginning.

Q. Did you go meet with anyone to make a request that the beach be closed?

A. No. I know the former mayor must have called Brad's father in Michigan, and I -- I don't know what was the outcome of that phone call. But I know he probably went off on him about it at that point.

Q. Who went off on who?

A. Brad's father, on the mayor, you know, because I think the mayor called him. He might have been the only person he called. He probably was the wrong person to call, anyway, but.

Q. Meaning, to call Brad's father was the wrong idea?

A. Yeah, probably. Yeah. He probably wasn't the best person to call.

Q. Anyone else that -- strike that.

My question should be: Did you meet

with anyone in person or by telephone to discuss closing the beach?

A. No.

Q. Next question, how tall was Brandy in July of 2012?

A. I can tell -- I can tell you that from her doctor, but I'd have to get that information.

Q. Would you mind writing that down on your list.

A. Certainly, not as tall as she is now. She shot up, like, a I don't know what lately.

Q. I noticed she's almost as tall as you.

A. I know. No.

Q. You can use the other piece of paper, if you like.

A. Yeah. I know. I don't know why I keep writing.

I'll tell you, Ally, her friend, who was also seven at the time, was probably, like, 35 pounds, and Ally's, like, teeny, teeny, tiny. So, she was a lot smaller than Brandy even.

Q. While you're getting her height, you might as well get her weight at the time.

A. Yeah. That's what I'm doing. I'm writing that, too.

Q. Thank you.

MR. D'AMATO: The piece of paper to your left that you wrote on, is that an exhibit?

MR. BARKER: Yes.

MR. D'AMATO: Oh, okay. All right.

MR. BARKER: It's the opposite side of Brandy-1, I think.

MR. D'AMATO: Okay.

MR. BARKER: That's the first time we've had anyone do that.

THE WITNESS: Sorry.

MR. D'AMATO: That's the truth, that's the truth. We'll make a copy of that.

MR. BARKER: Yes. Don't --

MR. D'AMATO: When she lifted it up, I went, that's an exhibit.

THE WITNESS: Oh, oh, sorry. That's an actual --

MR. D'AMATO: Don't worry about it. Don't worry about it.

MR. BARKER: I have no further questions at this time.

MR. D'AMATO: Brian.

MR. HUNKINS: No questions. Thank you.

MR. D'AMATO: I have no follow -- I

have no questions.

VIDEOGRAPHER: This concludes the videotaped deposition. Off the record. The time is 2:05.

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, SANDRA SMITH 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.

Lynn Smith, CCR

Certified Court Reporter
License No. XIO1520

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Exhibit 2

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

SANDY 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

* * *

Videotape Oral Sworn Deposition of SCOTT SUNDERLAND, held at the D'Amato Law Offices, 2900 Fire Road, Suite 200, Egg Harbor Township, New Jersey, on Tuesday, March 22, 2016, commencing at 11:13 a.m., before Lisa Reagan, CCR in the State of New Jersey, there being present:

* * *

WORD FOR WORD REPORTING, LLC
CERTIFIED COURT REPORTERS
6 NORTH BROAD STREET
SUITE 202
WOODBURY, NEW JERSEY 08096
PHONE: (856) 384-2770
FAX: (856) 384-2779
email: office@word4word.net

APPEARANCES:

D'AMATO LAW OFFICES
BY: PAUL R. D'AMATO, ESQUIRE
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
and
BARRY, CORRADO, GRASSI & GIBSON, P.C.
BY: JOSEPH C. GRASSI, ESQUIRE
2700 Pacific Avenue
Wildwood, New Jersey 08260
Attorneys for the Plaintiffs

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
BY: BRIAN HUNKINS, DAG
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
Attorneys for the Defendant
State of New Jersey

BARKER, GELFAND & JAMES
BY: A. MICHAEL BARKER, ESQUIRE
210 New Road
Linwood, New Jersey 08221
Attorneys for the Defendant
City of North Wildwood

Also Present: Tom Zanaras, Videographer
Lou DiJoseph, Investigator

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* * *

WITNESS: SCOTT SUNDERLAND

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EXHIBITS

* * *

NUMBER	DESCRIPTION	MK'D
Sunderland-10	Photograph	4
Sunderland-11	North Wildwood Police Department Supplemental Report	55
Sunderland-12	Report prepared by North Wildwood Investigator Richard Schmidt	63
Sunderland-13	Newspaper Article	92
Sunderland-14 through 25	Set of Enlarged Photos	120

REQUESTS FOR PRODUCTION

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(Photograph was marked for purposes of identification as Exhibit Sunderland-10.)

THE VIDEOGRAPHER: Today is March 22nd, 2016. This is the videotape deposition of Scott Sunderland. We're going on the record and the time is 11:13 a.m. The appearance of counsel will be noted in the transcript. Will the court reporter, please, swear in the witness?

SCOTT SUNDERLAND, after having been first duly sworn, was examined and testified as follows:

* * *

THE VIDEOGRAPHER: Thank you. You may proceed.

* * *

EXAMINATION BY MR. HUNKINS:

Q. Mr. Sunderland, good morning.

A. Good morning.

Q. I introduced myself a little earlier. My name is Brian Hunkins. I'm a Deputy Attorney General, and I represent the State, and we're here today for a deposition, as you know. You heard some of the instructions

already, but I'll just repeat them for you real quick.
A. Sure.
Q. You're sworn to tell the truth. Do you understand that?
A. Yes, I do.
Q. If I ask you a question that you don't understand, please do not answer it. Okay?
A. Yes.
Q. Instead, what you should do is tell me you don't understand it and I'll rephrase it. Okay?
A. Okay.
Q. All right. So if you answer any of the questions that you're asked today, we will all assume that you understood the question and gave us your best answer. Okay?
A. Okay.
Q. There will probably be things that we ask you about that you just don't know the answer to, and if that's the case, you should say "I don't know." Okay?
A. Okay.
Q. You are not to guess. Do you understand that?

A. Yes, I do.
Q. There may be facts or details, though, in fact, the location of the incident itself, where you are not going to know the exact answer but you will be able to approximate for us, and estimate, and if you can give us estimates, we will want you to do that, but you should let us know that they are estimates. Okay?
A. Yes.
Q. You can take a break at any time. Are you okay to proceed now?
A. Yes.
Q. Okay. Do you have any questions for me before we start?
A. No.
Q. Okay. Just for the record and to let you know, we marked a few things before we got started. First we have a video that was taken of a site visit to the beach on February 5, 2016, and we marked the DVD as Sunderland-1.
Then we marked as Sunderland-2 a color photograph, aerial photograph taken March 14th, 2012, of the beach area.
Then Sunderland-3 is a typed

report, which is, as I understand it, a summary of Investigator DiJoseph's meeting and discussion with you about the incident.
A. Correct.
Q. Okay. And Sunderland-3 is five pages. And the last page has an aerial photograph of the beach which we marked as Sunderland-4. Then Sunderland-5 is the same statement as Sunderland-3 but it's got some markings on it. From what I understand, are these your markings or edits to the statement?
A. Yes, they are.
Q. And I called it a statement but really we'll call it a report by the investigator.
A. Right.
Q. Does Sunderland-5 make corrections to what the report says?
A. Yes.
Q. And I'm sure we will go into those changes later, but if we turn to the last page of Sunderland-5, we, again, see that aerial photograph; is that correct?
A. Yes.
Q. But we marked this one as Sunderland-10 as a separate exhibit because it

has an X mark on it; is that right?
A. Yes.
Q. And is that an X mark that you put there?
A. I put that there, yes.
Q. And it looks like you also put your initials?
A. Initials, correct.
Q. Maybe just to kind of cut to the chase, let me hand you Sunderland-10, or you can have the equivalent. It's the aerial photograph with your X and your initials SAS. And that's your X, correct?
A. That is my X.
Q. Was that your effort to mark the location of the incident as carefully and as accurately as you could?
A. Yes.
Q. When I say incident, I mean the location where you and the people with you suddenly went into the water. Do you understand that?
A. Correct. Yes, I do.
Q. What I would like to do, now that you have identified that, though, is see if we can

find an approximate -- the approximate location on another exhibit. Let's look at Sunderland-2. Let me show you that. It's another aerial photograph. And I want to note for the record Sunderland-2 has a green dot off the beach at one point. Do you see that?

A. Yes, here (indicating.)

Q. For today's purposes or for right now at least, I want you to ignore that green dot because there's probably a story as to how that got on there, but you don't know how that green dot got on there, correct?

A. No, I have no idea.

Q. That has nothing to do with you and we're going to ignore that. Don't assume that means anything. Okay?

A. Yes.

Q. To orient ourselves, I just want to ask you whether it seems to you the beach at this location, generally speaking, kind of has a -- I'll use the term shoulder -- that juts out into the ocean a little bit. Do you know what I mean?

MR. D'AMATO: Can I have the question read back, please?

MR. HUNKINS: I'll rephrase it.

BY MR. HUNKINS:

Q. If you look at Sunderland-2, and if you look at -- yes, that's this photograph, Sunderland-2.

A. Okay.

Q. And if you look at where I'm pointing, do you see where the beach kind of protrudes out somewhat from the land?

A. Okay.

Q. I'm going to refer to that as a shoulder. Is that okay with you?

A. Yeah, that's fine.

Q. Does it seem to have somewhat the shape of somebody's shoulder?

A. Okay.

Q. Okay. Now, if you look back at Sunderland-10, which is the photograph where you marked the location of the incident, do you see what appears to you to be part of the shoulder on Sunderland-10?

A. I mean it juts out.

Q. And if you, again, compare Sunderland-10 with Sunderland-2, if you look at some landmarks, you notice that on

Sunderland-10 that your X is approximately adjacent to a curve in the roadway?

A. Okay, yes.

Q. All right. And if you look at Sunderland-10, can you find that same curve in the roadway?

A. I can.

Q. And so then sort of comparing the two, if you were to put an X on Sunderland-2 approximately where the incident occurred, do you think you would be able to do that?

A. Not accurately, no.

Q. Okay. Looking at Sunderland-10, which is where you put your X, use your own words, but is that sort of like on the top side of the shoulder?

MR. D'AMATO: What is?

MR. HUNKINS: The X. I'll rephrase the question.

BY MR. HUNKINS:

Q. Did you put your X, generally speaking, on the top of the shoulder?

A. I'm not really quite understanding what you are asking. I mean you're saying -- you're saying it looks like a shoulder. So

I'm trying to imagine what you are saying it looks like, if that makes any sense. So if you are asking me to put the X here onto this, it doesn't look...

MR. D'AMATO: I have an objection.

MR. HUNKINS: I'm going to withdraw it. I'm going to let him finish and then withdraw it.

THE WITNESS: In order to put this area, I would have to go off of the curve and the angle, because it looks different to me.

MR. D'AMATO: I have an objection.

MR. HUNKINS: I'm going to withdraw that question.

MR. D'AMATO: Let me tell you what my objection is, and I'm not trying to interrupt. Somebody has to identify what exhibits he's looking at because we're going to have a transcript.

So, Mr. Sunderland, this here is Sunderland-2; this is Sunderland-10. A transcript is going to be made of this. So if you could, when you are pointing here, say Sunderland-2.

THE WITNESS: Okay.

MR. HUNKINS: Thank you.
BY MR. HUNKINS:
Q. Just to get back on track, looking at Sunderland-10, that is where you put your X identifying the location?
A. Correct.
Q. All right. When you put your X on Sunderland-10, what is it that you used to look at your X there? Is it because you have a memory of some certain landmarks?
A. Yes.
Q. Okay. What are they?
A. It would be where the rock wall and the parking lot are and where I believe the oceanfront is.
Q. Okay. So looking at Sunderland-10, can you just point with your finger at the rock wall that you just referred to?
A. The rock wall would be here, in that corner (indicating.)
Q. And immediately next to it is the parking lot?
A. Yes, behind it.
Q. All right. So with your permission, I'm going to write the words "rock wall" and a

"parking lot" with an arrow. Is that all right with you?
A. That's fine.
Q. Okay. Rock wall and parking lot.
Point for me one more time at the rock wall.
A. Rock wall would be right there. I believe it to be a rock wall (indicating.)
Q. It looks like a line of rocks almost?
MR. D'AMATO: May I suggest something? Here's a marker. Let's mark it.
BY MR. HUNKINS:
Q. Take the color marker and just draw a circle around the rock wall and the parking lot.
A. (Complies.)
Q. Thank you. I'm going to draw an arrow in black pen to your colored circle. So if I understand you correctly, looking at Sunderland-10, when you drew your X, you used the rock wall and parking lot as your landmark to locate the incident?
A. Well, the overall -- I use the whole overall.
Q. Okay.

A. But yes, that is one of the landmarks I looked at it, yes.
Q. Is there any other landmark you used to draw your X?
A. The relationship to where this is where I believe the oceanfront would be on 10, Sunderland-10, would be at about this location. So between those two, that's kind of how I would figure that's where we were at that time (indicating.)
Q. Thank you. And you've helped us by drawing your X and identifying the location, and I don't want to belabor the point or have you do anything that you are not able to do, but just for informational purposes, would you be able to draw an X on Sunderland-2 using those same landmarks or any other method where you could be reasonably sure you are giving us the location? And if you are not able to do that, no problem.
A. No.
Q. Okay. So Sunderland-10 is the location of the incident?
A. Yes.
Q. Okay. Now what I would like to do is

direct your attention to Sunderland-1. That's the video of the site visit from February 5, 2016, and you had a chance to look at that before we started today?
A. I did.
Q. And we might not even have to play it. Let me just ask you, approximately two minutes into that video, is there some images of the view of the beach and waves and then the camera turns about 180 degrees and looks at the land?
A. Yes.
Q. And at about that point in the footage there's some words that come up that identify three towers as being equidistant, roughly?
A. Yeah, I saw that.
Q. And then after that does the footage show the camera panning to the left and to the right?
A. I believe so, yes.
Q. And in panning, it shows landmarks that exist to the left of that location and to the right?
A. Okay.
Q. Okay. Having looked at that video,

does that footage starting at about two minutes where it looks at the sand and the ocean and then it turns 180 degrees and looks at the three towers, is that approximately where the incident occurred?

A. I wouldn't be able to tell because I don't recognize those landmarks.

Q. Are there any landmarks that you recognized by looking at that footage on Sunderland-1?

A. Not -- not really.

Q. So in other words, when the camera panned to the left and there were some buildings off in the distance, I think they're condos, but I'm not sure, they're buildings, did you recognize any of those?

A. Not really, no.

Q. Okay. And similarly, when the camera panned to the right, it focused in on a rock wall. Do you remember that?

A. Yes.

Q. Is that a landmark that you recognize?

A. I recognize the pathway on top of the rock wall, but as far as where I was when we went in and trying to compare that, I would

have no idea.

Q. Okay. So if I understand you correctly -- well, let me back up. On the day of the incident, you went in the water; thankfully you got out, right?

A. Yes.

Q. And I assume you were present at the scene when initial rescue efforts were under way?

A. Yes.

Q. I assume at some point that day you left the beach?

A. Yes.

Q. When is the next time you came back?

A. The next day.

Q. Okay. And did you come back to the location of the incident?

A. To the location, yes.

Q. And when you went back the next day to the location of the incident, how did you figure out where to go?

A. You could kind of -- I just kind of, again, looking to where the oceanfront was and there was kind of almost an abrupt -- I don't want to say abrupt, but like -- kind of like

how the roadway is on 2.

Q. Sunderland-2?

A. How the road turns around there, it kind of almost looked like that --

Q. Okay.

A. -- at the beach at that area. It wasn't, you know, walking down there I could kind of tell where the approximation was where I went in.

Q. Correct me if I'm wrong. The appearance of the actual beach and the sand would change based on the height of the tide?

A. Oh, absolutely, absolutely.

MR. BARKER: On the what? I didn't hear you. Height of the?

MR. HUNKINS: Tide.

BY MR. HUNKINS:

Q. And I imagine over time sand is going to move somewhat so that would change the appearance?

A. Yes.

Q. So what you were doing, if I understand you correctly, is you noticed that the curve of the road which you pointed out on Sunderland -- actually, Sunderland-10 and

Sunderland-2, was roughly adjacent to the location of the incident?

A. No, that's not what I meant. I meant the curve of the road was kind of how the beach shape was.

Q. Okay.

A. So I didn't use that as a, you know, a landmark to get to that area. It was more where the oceanfront -- I call it where the oceanfront and the inlet basically meet.

Q. Okay. And that's what you marked on Sunderland-10?

A. Correct.

Q. All right.

A. Correct.

Q. After -- so you told me about the day after the incident you went back to the location of the incident?

A. Yes.

Q. How many times since then have you gone back to the location of the incident?

A. I went that -- actually, actually, I went the night of after it happened. I took Brad's older children down and his brother and we were calling for Brad.

Q. So the evening of the incident and then the day after?
A. **The day after I went down myself.**
Q. After that, how many times did you go back?
A. **I probably went, I believe, the next day after that, and then it was -- it might have been two or three times during that week. I'm not a hundred percent sure. But then the next time it was when I -- when I met the investigator.**
Q. Okay. Mr. DiJoseph?
A. **Yes.**
Q. All right. And when you took Mr. DiJoseph down, you made your -- you located the scene of the incident?
A. **Yes.**
Q. And you did that how?
A. **Again, by the oceanfront and the rock wall and the distance between the two. I mean that's the generalization. That's where I, you know, I guesstimated where it would be.**
Q. And when you say the distance between the two, do you mean in your mind's eye, you know, in your memory the distance?

A. **Yes.**
Q. You don't mean that feet or yards?
A. **No, no, just in my mind, yes.**
Q. All right. On the day of the incident -- and by the way, I've read Sunderland-3 and also the version with your edits, but basically from what I understand, on the day of the incident you and the group you were with walked from the guarded beach almost up to a rock wall and turned around and came back?
A. **Yes.**
Q. And it was on the return trip that the incident occurred?
A. **Yes.**
Q. And can you tell us how far you got on the way back when the incident occurred? Were you, for example, halfway back to the starting point when the incident occurred, or are you able to estimate it in that way?
A. **I would say we were -- I mean a guesstimate, we were --**
Q. It can't be a guess, but if it's an estimate...
A. **An estimate, I would say we got -- we**

got pretty close to the rock wall. We didn't get all the way down towards it. So I would guess that I was --

MR. D'AMATO: He doesn't want you to guess. You can approximate. You can estimate.

MR. HUNKINS: And let me stop you there. Your answer so far already suggests to me maybe there's some confusion.

BY MR. HUNKINS:
Q. I understand from the report that I read that you didn't walk all the way up to the rock wall?
A. **No, we did not.**
Q. Is that because the beach sort of ran out and it was just water and you couldn't get to the wall?
A. **I have no idea why.**
Q. Okay. For whatever reason, you didn't walk all the way to the rock wall, so I'll just ask you approximately how close did you get to the rock wall?
A. **I really don't know. I'd say maybe a hundred feet. I don't know. Maybe two hundred feet.**

Q. Okay. And it was at that point that you turned around and walked back?
A. **Yes.**
Q. All right. So my question was, from that point where you turned around and walked back, did you get halfway back to your starting point when this happened or some other estimate?
A. **Well, we started all the way out to where we were originally seated, where we went down to the beach. So I would say we got, I don't know, maybe three-eighths of the way, not quite half.**
Q. Okay. So when the incident occurred, you were an estimated three-eighths of the way back to your starting point on the beach from where you turned around?
A. **Possibly less than that. Possibly less than that.**
Q. In any event, putting aside that estimate, the X that you wrote on Sunderland-10 is your --
A. **Yes.**
Q. -- indication where this occurred?
A. **Yes.**

MR. HUNKINS: Okay. That's all I have. The other attorney will have some questions for you. I might have some more later. Thank you.

THE WITNESS: Okay.

* * *

EXAMINATION BY MR. BARKER:

Q. Mr. Sunderland, my name is Michael Barker. I will be asking you some questions and, again, if, at any time, I ask you a question which is not clear for any reason, please stop me and I'll be happy to go back and rephrase it, and please don't guess when responding to any questions.

A. Okay, I understand.

Q. What's your full name?

A. Scott Alan Sunderland.

Q. And how do you spell Alan?

A. A-L-A-N.

Q. And what's your date of birth?

A. 4/24/65.

Q. And where do you presently live?

A. 1383 Lake Road. That's in Feasterville.

Q. And how do you spell Feasterville?

A. F, as in Frank, E-A-S-T-E-R-V-I-L-L-E.

Q. That's in Pennsylvania?

A. Correct.

Q. And you're married?

A. Yes, I am.

Q. And to whom are you married?

A. Andrea Sunderland.

Q. And you have how many children?

A. Three.

Q. And what are the names of the children who were with you on the walk on the beach that day?

A. Ally. At the beach with me? Ally, Aidan and Jett.

Q. When you started off walking on the beach, about what time of day was it?

A. I would say it was 3, 4 o'clock. That's when we went down to the beach. I would say 3 o'clock we went down. So the walk, 4:00, 5:00.

Q. Do you remember -- you were at a lifeguarded area when you started your walk, right?

A. Yes.

Q. Do you know the name of that

lifeguarded area? Could you identify it otherwise?

A. Not really, no.

Q. And when you left the lifeguarded area, were the lifeguards still there?

A. Yes.

Q. And as you started to walk, you walked in a northerly direction?

A. Yes, I would imagine it would be north, yes. Yes, it would be north.

Q. I'm not so sure that it is north, but it's the top of the picture, right?

A. Yes.

Q. And I saw that you had referred to it in a statement as north, or at least towards the rock wall, right?

A. Yes, I was going up the coast; let's put it that way.

Q. Understood. And as you are going up the coast, do you recall that there was a point in time shortly after you left that Brad turned around and waved to his wife?

A. Can you repeat that, please?

Q. Yes. Do you recall that shortly after you left, commenced this walk, there was a

point in time that Brad turned around and waved back to his wife?

A. I don't -- I don't remember that, no.

Q. Do you remember the lifeguards going off duty?

A. I don't remember that, no.

Q. Do you have any recollection that you looked at the time or noticed the time?

A. I only know from about when we got there to when the incident approximately happened.

Q. You mean when you first got to the beach?

A. When we first got to the beach, yes.

Q. Well, let me ask you this for an estimate. Do you know, from the time you commenced this walk to the time that you went in the water, how much time had elapsed?

A. I would say a couple hours, two hours, maybe three, possibly.

Q. You were walking for two or three hours?

A. No, we didn't walk --

Q. So my question might not have been clear or you may not have understood it. So

here's the question again.
A. Okay.
Q. From the time you started the walk --
A. Oh, okay.
Q. -- until the time that you went in the water --
A. Okay.
Q. -- meaning this unfortunate accident took place, what's the elapsed time?
A. I would say under an hour.
Q. Okay. As you were walking north, when you started walking north, do you remember the position of the people, like who was where, if you remember? So you're going towards the rock wall or to the top of the photograph or, north as we say --
A. Right.
Q. -- and you're at a certain place on the surface of the earth there and there's somebody to your right, somebody to your left --
A. Right.
Q. -- and I'm trying to figure out who is where.
A. So if we were walking towards the rock

wall, we weren't necessarily all together at that point. We didn't go for a walk together. It didn't start off as that.
Q. I see.
A. The girls, Ally and Brandi, were playing in the tidal pools, and I believe that my son, Jett, was there, and Cole, in that general same area, but that was closer to where we were sitting. Brad got up and he kind of ran up to the girls to scare them, you know, just like the monster, and I was still sitting there and, you know, I told him he looked ridiculous. So I just got up and started going after him, walking, you know, behind him, and then we were there for a little while.
Q. At the pools?
A. At the -- at that pool area. And then we just, you know, started walking. Who got in front, it might have been the girls first; it might have been Brad and I first. At that point, I really don't know, but we did all end up together and kind of walked together down towards the rock wall.
Q. Up towards the rock wall?

A. Well, yes, okay, up towards the rock wall.
Q. All right. So then you got to the point where you're closer to the rock wall and someone makes the decision to turn around and go back?
A. Correct.
Q. Who made that decision to go back?
A. I have no idea.
Q. All right.
A. We have two little girls. So who knows.
Q. So the group kind of now turns around and is going back in a southerly direction?
A. Yeah, it wasn't like a, you know, purposeful walk. We were just kind of --
Q. Meandering?
A. Yeah, meandering, talking. I'm sure Brad and I are talking and the girls are just, you know, yammering on nonstop.
Q. So did you notice anything unusual as you walk up towards the rock wall, or northbound?
A. I remember seeing a -- I don't know if it was before we got walking up towards the

rock wall or if it was on the way back, but I remember seeing a fisherman.
Q. Anything else you noticed?
A. No.
Q. And the fisherman was standing off in the water?
A. He was standing off in the water.
Q. Was he to your right when you observed him?
A. So I'm not sure where I saw him, if I saw him, you know, so it would be depending if I was going north or coming back from the walk.
Q. And you don't remember that?
A. I do not remember that.
Q. So as you are walking with your little group back in a southerly direction, who is closer to the ocean side and who is closer to the land side?
A. I'm closer to the ocean side.
Q. And are you the closest to the ocean side?
A. Yes.
Q. And then who would be to your right?
A. To my right would be --

Q. Well, wait, wait, you are walking south, so --
A. Oh, are we talking towards the rock wall or walking away from the rock wall?
Q. You are walking away from the rock wall walking back to where you started, and you may refer to that photograph in front of you, if you like. You can hold it up, show it to the video camera.
A. So if we're walking from here --
MR. BARKER: Wait, can you see it, there, Tom?
THE VIDEOGRAPHER: Yes.
BY MR. BARKER:
Q. Now you can point.
A. If we are walking from here --
Q. Going south.
A. -- up to that point --
Q. Where is your position? Closer to the ocean?
A. I consider that east, to be honest, because this is the ocean. So the ocean is east. So we're going east and the ocean would be on -- so going in this direction (indicating.)

Q. Yes, sir. And where is your position and what's the position of the others?
A. I was closest to the water.
Q. Yes, sir.
A. And then it was, I believe, my daughter and then my son, Aidan.
Q. All right.
A. Brad was behind me.
Q. Oh.
A. So we were not all side by side.
Q. Okay. You're closest to the water?
A. Yes.
Q. Ally is now to your right or a little landward side?
A. Yes.
Q. And then Aidan is to the right of Ally, right?
A. Of Ally, yes.
Q. And as you are walking back in that direction east, as you say --
A. East, east, yes.
Q. -- do you notice anything unusual as you are stepping and walking, or is it just the same way as when you walked up?
A. Well, when we walked up, we were more

inland. We were more inland.
Q. And this time, as you are walking east going back --
A. We were along the coast.
Q. Right. And you're in the water at that point?
A. Yes.
Q. And how deep is the water on you just before you go in the water?
A. Calf.
Q. And what about Ally, she's right next to you, right?
A. That I'm not a hundred percent sure. I'm not sure if she was next to me or if she was on my back. I don't know if I was giving her a piggy-back or not.
Q. I see. And what about, did you happen to observe your son Aidan and where he was in the water?
A. Yeah, he was next to me but, again, I'm not sure if Ally was next to me or if I was giving her a piggy-back.
Q. And Aidan was how old at the time?
A. He was nine.
Q. And did you happen to notice anything

about the depth of the water on his lower extremity?
A. He wasn't in the water at all.
Q. He was more towards the sand?
A. Yeah, he was on the sand. He wasn't in the water.
MR. D'AMATO: At what point are these observations of his?
MR. BARKER: These observations of his as he's described them is on his walk back down east.
THE WITNESS: This is right before the incident. So this is just before the incident.
BY MR. BARKER:
Q. As you are walking in the fashion as well as you can describe it based on your memory, do you remember what happened, how you felt and what happened to you as you found yourself going in this water?
A. As I was walking, I took a step on my left leg and it just dropped.
Q. You mean your left leg went out and you went --
A. No, just like I was walking and then

it's just like I just stepped right into, like, nothing. It was like it almost slid, like it slipped, and then with that I just went over. So it was like my leg just went out from underneath me.

Q. I saw that you described to the policeman it was like you walked into a gully; is that correct?

A. Yeah.

Q. And with that, you just toppled in?

A. Toppled and went right in.

Q. If Ally was on your back, she went in with you?

A. She was on my back immediately. I know that. Because I thought she fell on top of me, and when we had spoken about it when I asked her what she remembered, she said I was giving her a piggy-back.

Q. Is this the conversation that she referred to earlier this morning as having taken place back in January?

A. Yes.

Q. Of this year?

A. Yes, yes.

Q. And she told you at that time what you

just said?

A. Yes.

Q. So she really refreshed your memory as to where she was?

A. She did. And that's not the first time, right?

Q. Right, okay. As you were now in the water, you've described how you got there, where was Aidan?

A. Aidan was on land. He never went in.

Q. Now, just before you went in, did you have the opportunity to look back --

A. No.

Q. -- and see Brad or Brandi?

A. No. I know Brad was right behind me because I think we were talking, but I never seen him -- I never saw where they were at that time. I don't know how they went in. I don't know.

Q. For clarity of the record, you cannot describe what happened to Brad and how he went in the water?

A. Correct, I cannot describe it, no.

Q. And you cannot describe what happened to Brandi and how she went in the water?

A. Right, I do not know.

Q. Excuse me, I just lost the mike.

A. I saw.

Q. Okay. What happened to you now that you're in the water? Ally is on your back?

A. Correct.

Q. Pick it up at that point and tell us what you recall happening.

A. As soon as I went in the water, I immediately, you know, tried to -- I wasn't -- how do you say it? I wasn't, like, panicked. I just thought, Oh, we just fell in the water. So at first I was kind of, you know, laughing like, Oh, wow, how did that happen, and went to, you know, feel for the bottom and didn't feel the bottom. So I just started to swim and I wasn't really paying attention. I was just swimming. And Ally was on my back, and that was probably for the first -- under a minute, maybe within the first 20 seconds, maybe 30 seconds passed. That's when I looked up from swimming with my head down that I realized that I was further from shore than when I started. And that's when it started to get real. So I started swimming harder.

And I remembered at that point that the fisherman and he -- Brad and I had kind of joked when we initially saw him that he was like Jesus. He was just standing in the middle of the ocean in a way. And I knew that he was there. That spot was there. So I knew it was shallow at that point, but it was not where I was at. So I'm in kind of recovery mode now, and I'm thinking that's my go-to. If I can't get back to the beach, that's where I need to get to.

So I then just started swimming really hard, and I wasn't necessarily looking up. I just had my daughter on my back and I knew I needed to get back to the beach where we went in. And I just -- just started plowing really hard. There was a point I was -- I'm going to say I was swimming for maybe, like, two minutes, and I just kept throwing my arms out, because I wasn't looking. I was just too concentrated on swimming, and I kept throwing my arms up like where is the sand, where is the sand, and I remember just before I hit, You're going to have to float, because I started thinking about, you know, when you

are in -- they tell you to ride with currents, ride with currents, and I'm, obviously, fighting something, but it felt like I was almost swimming through air. I couldn't get any traction. I don't know how to describe it other than that. Or like even a rope was pulling on me, like on my feet, because it felt like I was in this one spot.

And about at that point, that's when I felt on my fingertips, just these two, just felt the sand and then I just started scrambling. Aidan ran down, and as I was grabbing at the sand, I believe at that point he took Ally. I remember saying, "Grab her, grab her," and I literally climbed up and kind of on my belly. And I just kind of laid there for a minute because I was exhausted, and then that's when I turned over and that's when I saw Brad and Brandi.

Q. And what did you see when you had that observation?

A. They were separated. And I'm going to approximate they were off the beach about a hundred, 120 feet. Brandi was closer to inside the inlet, Brad was closer to the

ocean, and they were getting further apart. Brandi was staring directly at me, and Brad was on his back facing Brandi, so looking back towards the inlet. And he was just kind of almost -- almost on his back like just going with the current. And it seemed like Brandi was stuck in this -- she wasn't getting turned around in like a whirlpool. She was on this outer side of it, and then it seemed like Brad was caught in this other -- almost like a river and he was getting pulled further away from her.

He yelled for me. He said, "Scott, Brandi," and that's when I went back in the water to get her. When I got back in the water, same thing, kind of just -- kind of slide or almost kind of like -- not slide, but more of a kind of like dive, I guess, but not a dive, because there's definitely -- it goes from, I would approximate, a foot and a half to nothing or, you know, deep, over my head, because when I was out in the water, I never touched bottom not once.

I started to swim towards her and I realized at that level she was too far and I

turned around.

At that point, I climbed back up and I got up, stood up, and I just -- I started waving. I remember trying to yell. My mouth was open, but I was not making any noise, any sounds.

I believe at that point that's when I saw the State trooper in his boat and I saw him and he was moving. He was -- I'd say he was probably going, you know, 20 miles an hour, 25 miles an hour. He was driving pretty fast and he was coming out of the inlet towards where Brad was. So I yelled to Brad. I said, "You're good, buddy, you're good, just stay up. He's coming." And I was waving like this, so I was waving to where Brandi was and I was doing this to where Brad was. And he saw me; the officer saw me. We locked eyes. And when I pointed like this, he turned his head and he looked in the other direction. So he didn't look down. He looked out into the ocean, and he just went literally right by Brad by, I would say, probably about 40, 50 feet. And that's when Brandi really started to get panicked. She was swimming

very hard. She wasn't making any sounds at that time. And she was treading water. So she wasn't trying to swim back to shore. She was just treading water. But I remember seeing her, like, she was so far out of the water because she was treading water so hard. And at that point, after the boat went by, that's when she started to scream and in my mind I kept thinking, "Don't scream, don't scream, you need your energy" type. And that's when I just started waving, and I turned back towards the sea wall, because there were people down there, and I started waving and, you know, just kind of jumping. Again, I was -- you're helpless. You don't know what to do. I didn't want to leave the area because I didn't want to lose contact with where they were. I kept telling myself, You have to stay in contact with Brad and Brandi, so I would know where they were at all points, at all times. I started waving. I saw people down there towards the rock wall and there were two jet skiers, two jet skis.

Q. Towards the rock wall?

A. Down towards the rock wall. They were

in shallow water sitting. They weren't moving and they were kind of just laying back on their jet skis, and there were other people on shore that I believe that maybe they were talking to, and next thing I knew, I saw the jet skier, the first one, just -- I mean he was gunning it and he just came flying up. I would say he was probably about maybe 40 feet off the beach, and as he was coming up, I was, again, pointing to where Brandi was and Brad, and as he got closer, he kind of swerved in a little bit so he could hear me.

Q. In towards the sand?

A. In towards the sand to where I was, but still probably no more than 30 feet in. Probably not even more than 40 feet in. So he kind of swerved in but that far off the beach still.

So I yelled at him, "Little girl and my buddy," and he immediately turned and he saw Brandi, and as he was approaching her, I took my eyes off of her and I was then watching Brad, because he clearly saw her.

Q. Could you see Brad?

A. I did see Brad at that point, and he,

again, was laying on his back, and at this point he was where -- now I could see, as I was watching him, I could see the wave formations and he was in them, short, though, very small waves, small waves, but it kind of outlined -- it was out towards where this hook was where the fisherman was. So you could see like a sand bar. You didn't see it, but you could kind of see it by the waves. So they kind of were going around it and he was in that.

And as I watched him, you know, I kept glancing back and I saw the jet skier get Brandi and then I just locked on Brad. And the jet skier, I believe, kept going towards Brad, but then eventually just came to shore to bring Brandi back. He had taken off his life vest and had given it to Brandi. And he brought Brandi to the beach, and they got off the jet ski. And at that point, before that, he actually got back, that's when the last I saw of Brad. I just saw, you know, he was on his back and basically almost lying, you know, flat on his back, and a little wave came up and then that was it. But the waves, very

small, and that was it. That was the last I saw of him.

Q. When you saw the jet skier with Brandi as he's bringing her in, what do you say to him and what does he say to you?

A. Well, first I ran to Brandi and she was, you know, very stunned, very quiet, very stunned. She went up to where Aidan and Ally were (indicating.)

Q. Up to -- you're pointing in a certain direction.

A. Up on the beach. So from the water's edge to the beach but to where Aidan and Ally were. This whole time, even when I went back in the water after Brandi, they were up together playing on the beach. And I would say they were probably, from water's edge, maybe 40 feet, 50 feet up. And Aidan, I could see him drawing like trying to distract Ally from what was going on.

And I remember seeing them right before I went back in the water, because I thought I was -- I knew I was going to drown. When I went back in the water, I knew I was never going to make it to her, but I knew Brad

would do that. He would have done that for me. He would have went after my kids.

MR. HUNKINS: Why don't we take a break?

MR. D'AMATO: Yes.

THE VIDEOGRAPHER: Going off the record, 12:03.

(A short recess was taken.)

THE VIDEOGRAPHER: This is the beginning of tape No. 2. Back on the record. The time is 12:11.

BY MR. BARKER:

Q. So we got a little side-tracked before the break, and the question that I was really putting before you at that time was I can see in my mind's eye the jet skier coming in with Brandi and I've got the scene of her as you've described it and she gets on the beach, and I'm asking you: At that point in time, what's the conversation, if any, between you and the person on the jet ski?

A. I ran up to him, I hugged him, and I said, "You just saved my niece's life," and he jumped back on the jet ski and he went looking for Brad.

Q. Well, how did he know that Brad was there?
A. **I told him.**
Q. Right there in that conversation?
A. **I pointed to both of them. So as soon as he picked up Brandi, he knew Brad was out there.**
Q. I see. So he went out looking?
A. **He went out looking.**
Q. And what happened then?
A. **He went out looking. I think that's when all of the -- you could hear all the sirens, a lot of sirens, and I think at that point --**
Q. You could hear the sirens as he's going out to get Brad?
A. **As he was going out and he was searching for Brad, yeah, that's when you could hear sirens, but I mean they weren't close but you could hear them, and there was a lot of them. So I already knew he went under because I saw him go. So, you know, at that point it kind of all blends together for me as far as time. But, you know, I know I was pretty exhausted. I was kind of sitting**

there.
Q. Well, go back in your mind's eye now and tell us what you can about what you recall happening, what you did, where you went, who you saw, what was said.
A. **Well, when Brandi got up, as I said, with the jet skier, he went back out. At that point, I know a woman came up to me and she said, "Is it okay if we take your kids to find their mother?" Because there was people walking down now from the ocean side. So from where the lifeguards would have been, they're walking now north up the coast --**
Q. Towards you?
A. **-- towards me. I remember seeing my son, my older son, Jett, and that's when I told him, "It was Brad, it was Brad." And I saw my wife.**
Q. She walked up?
A. **Yeah. And she was very stunned, obviously. She didn't know what was going on. I think there was probably emergency vehicles now that were parked all over the beach. They kept asking me to, you know, "Come with me, come with me."**

Q. This is the EMS people?
A. **EMS people, yeah, "Come with me." And I said, "Well, he's out there. He's out there." So I just kept kind of walking down to the beach again.**

At that point, I saw the -- I guess an EMS person got me again, brought me up to where the ambulance was, and he was asking me all these questions, who I was, and I really couldn't even talk at that point. I really thought I was almost having a heart attack because I was so out of breath. So I just told my son Jett, "Give him all my information." So my son was telling him, you know, my name and how we all got there, the whole thing.

That's when I saw the State trooper come back with the jet skier, not the jet skier who saved Brandi, but the jet skier that he went out to rescue that was out, apparently, in the ocean, that his ski went down, ran out of gas, whatever, but he's pulling back, and that was more on the oceanfront side. And no one was going to him, which bothered me.

Q. Going to who?
A. **None of the police officers. The police officers -- it really annoyed me. I was very agitated by the fact that no one was looking for Brad except a boater and the jet skiers.**
Q. Who is the boater?
A. **There was a boat out there. There might have been several boats out there, private boats, that were now just kind of circling around the area. And they were kind of like -- whether it be EMS, whether it be police officers, whatever, they're kind of talking amongst themselves, like little chitchat, and I remember saying, "He's out there, he is out there." And that's when I saw, you know, the State trooper come up in his boat with the jet ski, and he's trying to get the jet ski onto the beach.**

About that same time, the jet skier who saved Brandi is now on the front side in the ocean, and he's trying to get his jet ski back in the water to look for Brad again, because for whatever reason, he must have got -- the current must have pushed him

up against -- you know, the waves must have pushed him up against, and I saw him trying to push out. So I ran down to help him to get back out in the water to look, and then I think in that same time frame that's when I saw the State trooper. I ran down there to where the State trooper was. He had a rope tied to the front of the jet ski that he was towing it with. The jet skier that he rescued was on the boat, I believe. He might have even been on the jet ski. But the State trooper is yelling to me to grab the rope, to pull the jet ski into the shore, and I said, "I'm not going back in there," and he's like, "Just grab the rope." But the rope wasn't on the beach; the rope was in the water. So I go back in and I start sliding down again. So I yelled at him, "I'm not going back in there again," and I said, "He's out there. What are you doing?" Like I was kind of yelling at the State cop. I don't think he had any clue that Brad was out there. I don't think he knew what was going on. I think he thought he was just rescuing this jet skier.

So I kept yelling to him, "He's

out there, he's out there, go get him, go get him," and then I think that's when I ran back up to the EMS and next thing, you know, they're checking me out and they kept asking me, "You need to go to the hospital. You swallowed water. You need to go to the hospital." I said, "We need to find Brad first. We need to find him first."

And then eventually when we were there with the EMS for maybe, I don't know, a half hour, maybe, and then they said, "You need to come to the hospital." And I said okay. So my son and I went, Jett, went in the back of the ambulance and we went to the hospital.

Q. Do you recall speaking to a police officer at the beach?

A. I spoke to -- I mean specifically, no.

Q. All right. There's a document called North Wildwood-8. The date of report is July 31, 2012, but it's recounting what happened on July 27th, 2012, and I'm going to read to you what he wrote about speaking to you.

MR. D'AMATO: Do you want to make

me copies of this?

MR. BARKER: Sure, we can do that.

MR. D'AMATO: Just go off for a minute.

THE VIDEOGRAPHER: Going off the record, 12:21.

(North Wildwood Police Department Supplemental Report was marked for purposes of identification as Exhibit Sunderland-11.)

THE VIDEOGRAPHER: We're back on the record, 12:24.

BY MR. BARKER:

Q. So let's pick up the chronology a little bit and put things in place. Here's a report from a policeman who wrote on Sunderland-11, "On July 27th, 2012 at approximately 17:36, 5:36 p.m. --

MR. D'AMATO: You can read it.

BY MR. BARKER:

Q. Are you with me, sir?

A. Yes.

Q. "I was dispatched to the Hereford Inlet regarding broken-down wave runners in the water. Upon arrival, I immediately noticed people shouting for help in the water,

and upon further notice, I could see swimmers in distress. I immediately called for water rescue over the radio and rendered assistance to parties involved." That's the background of him being there.

A. Okay.

Q. He writes then, after he talks about Sergeant Harkins arriving, "Sergeant Harkins arrived on scene and I advised him there was one male still unaccounted for in the water. I tended aid to the seven-year-old female until lifeguards arrived on scene. I then turned her over to them."

So this policeman has already spoken to someone and learned that there's a gentleman still out in the water.

A. Yeah, that would have been me. He would have spoken to me.

Q. Do you remember this policeman at all?

A. No. It's all --

Q. A blur?

A. Well, there were so many people at that point. A lot of vehicles, too. There were a lot of vehicles.

Q. But you do remember speaking to a

policeman, or maybe not?
A. I remember speaking to a policeman at the hospital.
Q. Okay. But not at the beach?
A. Not that I recall, no.
Q. This scene that's being written about here is at the beach, so let me --
A. No, I don't recall.
Q. You don't recall. Let me ask you this: He then writes in his third paragraph. "I then spoke with a Scott Sunderland who advised me that Brad Smith was still in the water and he lost sight of him."
Do you remember that conversation?
A. No.
Q. He then writes in the next sentence, "Sunderland advised me that he and his daughter, along with Smith and his seven-year-old daughter, were walking along the shoreline when they slipped into the water and were pulled out to sea by the undertow."
Do you remember saying anything like that?
A. No.
Q. The next sentence says, "Sunderland

advised me that he and his daughter were able to make it back to shore but Smith and his daughter was unsuccessful."
Do you remember saying anything like that to a policeman?
A. No, I don't remember.
Q. He next writes, "Sunderland advised that two subjects on wave runners later identified as Daniel O'Connell and Thomas Meenan saved Brad Smith's seven-year-old daughter in the water."
Do you remember saying anything like that?
A. Not to a police officer. I can't recall.
Q. And do you even remember that there was a second person on a wave runner that helped save the girl?
A. Yeah, I had said that.
Q. You said that?
A. I said that earlier in the deposition.
Q. I don't recall that. I only remember you talking about one person on a wave runner.
A. No, there were two jet skiers on two separate jet skis when I waved. They both

came up, but Daniel -- I believe it was Daniel -- he came up first. He was before the other guy.
Q. Daniel was the first to speak to you? You think it was Daniel?
A. Yeah, Daniel was the one who rescued Brandi.
Q. Brandi?
A. Yeah. I mean I'm pretty sure, yeah.
Q. Is Daniel the one -- is Daniel in this photograph?
A. I believe so, yes.
Q. I'm holding up photograph No. Sunderland-8. There's a subject with his hands on a wave runner or a jet ski. Can you identify that subject, that person?
A. Yes, I believe that to be Dan. In other words, I'm not --
Q. Positive?
A. I know that's the person that saved her but, again, name to the person, I'm not exactly sure. It's not like I was hanging out with him and I know his name.
Q. So you identify that person in this photograph as the person who saved Brandi?

A. Yes.
Q. And this is a scene with you in it also, correct?
A. Correct.
Q. And is this a picture taken -- is this a picture taken to demonstrate where you were pointing out the event occurred?
A. That's a picture that was taken when I was down with the investigator.
Q. Lou?
A. With Lou, and that is when I was pointing to the approximation, at that time, to where the jet skier was when -- how far out he was in the water.
Q. When he saved Brandi or when?
A. Yes, but it turned out that that was the person I was pointing to. So in other words, the same person that I was pointing to the investigator and as I was saying, he was out about that far, the jet skier was sitting still, it turned out to be the very jet skier that saved Brandi's life. So he throws his arms up and I'm looking at him like, "I cannot believe what's going on here."
Q. All right. So let me see if I got it

right. Here's a picture of you pointing?
A. Correct.
Q. That's called Sunderland-9, right?
A. Yes.
Q. And that's a photograph taken of you pointing and you're trying to say to the investigator, Lou DiJoseph at that point, the guy on the jet ski was out there; is that right?
A. I believe what I'm pointing to there is the approximate location of where Brad was, about that far from me.
Q. What were you pointing to?
A. I was pointing to this boat.
Q. Oh.
A. There's a boat there. So I was using the boat as distance and I was saying that he was, you know, not that far off from me, from my position.
Q. At what point in time?
A. At one point, yes. He was a little bit closer to me.
Q. That's what I'm asking you. Is that when you first saw him in the water?
A. No, that's the last I saw him. It

would have started here and then it would have went out.
Q. "Started here" meaning further north?
A. Further west.
Q. Further west and moved further east?
A. Moved further east. We're getting it now.
Q. And here's another picture of you pointing called Sunderland-6. Tell us what you were demonstrating there.
A. I don't know.
Q. Well, does Sunderland-7, which I show you, does that help you with Sunderland-6, give you any frame of reference?
A. I have no idea. I don't know what I'm doing here.
Q. Okay. And now I have Sunderland-8, a photograph which was provided to us taken at the same time. This is when you and Mr. DiJoseph were out there, right?
A. Yes.
Q. And does that help you refresh your recollection in any way about what you were pointing to in the other two photographs?
A. No, not really. I know what this

picture is about.
Q. Tell us.
A. Well, that's when we realized, both myself and the jet skier that's in this picture, that it's kind of crazy; we're both on the beach at the same time and I said to Lou, "That's the kid that saved my niece's life," and I walked down and we hugged and I said, "What are you doing here?" He says, "This is the first time I've been back." He said, "What are you doing here?" I said, "First time really I have been back here since that week."
MR. BARKER: We're going to take a break now.
THE VIDEOGRAPHER: We're going off the record, 12:32.
(A lunch recess was taken.)
(Report prepared by North Wildwood Investigator Richard Schmidt was marked for purposes of identification as Exhibit Sunderland-12.)
THE VIDEOGRAPHER: We're back on the record and the time is 1:17.
BY MR. BARKER:

Q. Mr. Sunderland, we're going to continue now, having had our lunch break, and I'm going to be asking you some questions based on a report that was prepared by an Investigator Richard Schmidt, S-C-H-M-I-D-T, badge No. 228. It's a supplemental report. It's North Wildwood Exhibit 16 and 17 and in particular, your part of it, appears on 17. And it's been marked as Sunderland-12, and you have had the opportunity to look at that, right, sir?
A. Yes, yes.
Q. So I'm just going to, by way of background, mention to you that on 16 it leads in as follows, Schmidt writes, "I then advised Mrs. Smith that I was going to talk to Scott Sunderland who was being treated at the hospital. He was the other adult that fell into the water. I advised her that I would stop back and speak with her."
So now on Sunderland-12, he writes, "I then met with Scott Sunderland and asked him what had happened on the beach."
So that's the investigator that you -- remember before you said I spoke to

somebody at the hospital?
A. Yeah, at the hospital, I remember.
Q. So this must be the man that you spoke to, right?
A. Yeah.
Q. And he wrote, "He stated that he was walking along the beach with his son Aidan, daughter Ally, Brad Smith, and his daughter Brandi." All that's correct?
A. Correct.
Q. "He stated that they went for a walk on the beach along Hereford Inlet." That's correct?
A. Correct.
Q. "As they were walking back, they were all walking in knee-deep water along the surf." Is that correct, sir?
A. Yeah, it was a little bit less than that, but yeah.
Q. He then writes, "All of a sudden, Sunderland explained that the ground went out from under them and they fell into the water." Is that correct, sir?
A. Yes.
Q. He continued, "He did explain" --

talking about you. "He did explain that his son Aidan didn't fall in the water." That's correct also?
A. Correct.
Q. He reports about you, "He stated that they walked into a deep gully in the water." Is that correct, sir?
A. Yeah.
Q. "He stated," talking about you, "He stated that when he fell in he was unsure if he was carrying his daughter at the time, but when they were in the water, she was hanging onto him around his neck." That's correct?
A. Correct.
Q. "He stated that while in the water he could feel a strong current pulling him." Is that correct?
A. Yes.
Q. "He stated that he doesn't know how but he was able to dig his hands into the sand and pull him and his daughter onto the beach." Is that correct?
A. Correct.
Q. "Once on the beach, he stated that he looked out into the water and saw Brad and

Brandi being swept out by the current." Is that correct?
A. Yes.
Q. "He said that at this point Brad was hugging and holding onto Brandi." Is that correct?
A. Yeah, that I don't remember.
Q. All right. "He stated" -- strike that. He wrote, "He then stated that while watching the two, they separated and Brandi was treading water and the current continued to carry Brad out further." Was that correct?
A. All but the part -- I don't remember them being together. I don't know if I said that, to be honest.
Q. In the next paragraph, the investigator continues -- and he's reporting things that you said to him. You understand that?
A. I do understand that, yeah. I remember talking to him.
Q. He then reports, "Sunderland stated that Brad was yelling to him and to Brandi and at this point he stated that he entered the water in an attempt to get out to Brandi." Is

that correct?
A. Yes.
Q. "He stated that when he entered the water, again the current was too strong and he exited the water." Was that correct?
A. Yes.
Q. "Sunderland stated that when he exited the water, he was trying to keep eye contact on both Brad and Brandi." Was that correct?
A. Correct.
Q. "As he was watching them, he stated that he was trying to yell and wave down boats that were in the inlet." Was that correct?
A. Correct.
Q. "None of these boats acknowledged him at this time." Was that correct?
A. Correct.
Q. "He then stated that he saw a police boat traveling in the inlet." Was that correct?
A. Correct.
Q. "At this time, he thought that the police boat was going to see Brad and Brandi in the water." Was that correct?
A. Correct.

Q. "He said," talking about you, "He said that the police boat went passed them and continued out into the ocean." Was that correct?
A. **Correct.**
Q. "Sunderland stated that he found out that the police boat was heading out to assist some jet skiers and probably never saw Brad and Brandi in the water." Was that correct?
A. **Correct.**
Q. Next paragraph, "Sunderland stated that he then ran down to a couple of people that had jet skis on the beach and told them what was going on." Is that correct?
A. **No.**
Q. And the correct statement would be?
A. **They saw me waving.**
Q. And then they just left and went off to do the rescue?
A. **They came towards me. I never left the area.**
Q. He wrote next, "He," talking about you, "He pointed them out and these two individuals launched the jet skis into the water." Is that correct?

A. **They were already in the water and, yes, I did point them out and they went to assist them.**
Q. "He stated that one of the jet skis approached Brandi." Was that correct?
A. **Yes.**
Q. "The driver of this jet ski jumped into the water, placed his life jacket on Brandi and put her onto the jet ski." Correct?
A. **I believe so. I don't remember him jumping in the water, but yes, everything else is correct.**
Q. "Sunderland stated that the jet skier, along with Brandi, searched the water for a few minutes. Then Brandi was brought back to shore to be checked by rescue personnel." Correct?
A. **Yes.**
Q. "I asked Sunderland if he was still able to see Brad at that time. He stated that he was watching as Brandi was being picked up and lost sight of Brad." Correct or not?
A. **Yes, correct. I mean, yeah, I saw him after he picked up Brandi, and that's when I**

saw Brad go under. So right after he -- those two come together. I didn't see him actually pick her up out of the water because I was watching Brad at that point.
Q. Talking about you, "He stated that the last time he saw Brad in the water he was being carried out towards the breakers which he thought was a sand bar." Correct?
A. **Yes.**
Q. "After Brandi was brought to shore, Sunderland stated that they were checked by rescue personnel and then transported to the hospital."
A. **Correct.**
Q. And that was the end of his interview with you?
A. **Yes.**
Q. Did you ever get interviewed by that officer again?
A. **I would have no idea. I don't think so.**
Q. Were you ever interviewed by any other law enforcement officials?
A. **Interviewed, no, I don't think so.**
Q. Did you speak to any other law

enforcement people?
A. **They would come to the house and kind of say what was going on, what would happen, what their previous experience was for people who were lost, how they, you know, tried to find them.**
Q. And do you know who you were speaking to?
A. **I don't.**
Q. Do you know what agency they were from?
A. **Not a hundred percent sure, no.**
Q. You were interviewed by Mr. DiJoseph at some point, right?
A. **Yes.**
Q. We have a report of interview by Mr. DiJoseph, a report of interview, August 16th, 2012. Does that sound like the correct date to you?
A. **I believe that was the day we were on the beach together.**
Q. Same one that coincides with the photographs we went through before lunch?
A. **Yes.**
Q. And you had the opportunity before

this deposition began to look over this report of interview, correct?
A. Yes.
Q. In going over the report of interview you marked it up and made corrections?
MR. D'AMATO: Is that Sunderland-5?
MR. BARKER: Yes, it is, and we can place that in front of the witness if you don't mind.
MR. D'AMATO: No.
BY MR. BARKER:
Q. On Sunderland-5, I want you to explain to us, if you will just look at every change you made and tell us "I made that change because" and tell us whatever the reason was.
A. The first change was -- it says, "The Sunderland and Smith families established a position on the beach in the area of Surf Avenue which was protected beach in North Wildwood. Sunderland and Smith and their two daughters decided to take a walk on the beach in the north direction."
The only reason I circled that is because our daughters were out playing and, as

I said before, Brad ran after them to scare them and then I followed him. It's not like we all just decided, "Hey, let's go for a walk."
The next one, it says -- correction says, "Sunderland stated that he and his daughter were walking behind Smith and his daughter," and we were -- I mean at the time of the actual accident when we went in the water, I was in front of Brad.
The next correction was, "Suddenly Smith and his daughter fell into the water simultaneously. Sunderland and his daughter also fell into the water."
Q. You struck through that?
A. I just struck through it and said, "Ally and I fell into the water." I presume that they fell into the water because they were in the water, but I didn't see them fall into the water when I went in.
The next one was "Sunderland's daughter immediately jumped onto his back." She fell onto my back or else I was carrying her prior to falling into the water, but she was on my back when I was in the water. She

didn't climb on my back.
Q. Down at the bottom of the page there's two or three points of change. Take us through them one at a time.
A. Let's see, "Suddenly a jet ski was launched from the beach's north end and the operator came up to Brandi and pulled her from the water. While the jet ski was pulling Brandi from the water, Sunderland spotted a" -- yeah, the New Jersey -- the Marine Unit.
Yeah, I don't -- that was -- it's just timeline as far as what happened. I saw -- the marine boat was before the jet skier came. So the officer was coming down the inlet before the jet skier saw me wave. So he came down and then he passed by them. And then that's when I started waving, kind of frantically. That's when the jet skier saw me. That's when they came up, and then that's when the rescue happened, took place.
Q. So in this case --
A. It's just the timeline.
Q. -- the interviewer has it reversed?
A. Correct, correct.
Q. And there's a change at the bottom,

"Sunderland then told the" --
A. Yeah, I never told them. I just pointed. I mean it's not like I went down to the water's edge and had a conversation with them. You know, I yelled and he went there. That's why I was saying he was out, say, 50 feet or 60 feet out in the water and then he kind of came in a little bit so he could kind of hear me, looking at me, but he never, like, came to the beach, stopped, talked and then went out and rescued Brandi. It was all one motion.
Q. Okay. We're now on page 6 of this report, and at the top of the page you struck some words and you put in some words?
A. Yeah, as far as the trooper was on the boat when he came back with the jet skier that he rescued. We didn't really have a conversation about Brad at all because he had no idea. And when I say that he had no idea, he wasn't talking about Brad at all. He was just talking about the jet skier right here, "Can you, please, take the rope and pull the jet ski up on the beach to help the jet skier right there?" I don't think he had any clue

of Brad whatsoever.
Q. I'm looking at page 7. There's a photograph there where the investigator wrote, "Photograph No. 6 illustrates jet ski rescuer, Rob O'Donnell, and Scott Sunderland standing at the approximate location of the Smith drowning."
So is that where you went in, or is that where you're saying that Brad was offshore and went under when you last saw him?
A. **Well, this picture, I think it's more of not -- I mean we were in the general area because I was telling him what happened. This is more of the surprise that the same jet skier is there now and I was kind of saying to Lou, "This is crazy. This is the same guy." So I think it was that surprise.**
Q. So this photograph doesn't help you demonstrate where you went in the water?
A. **No, not necessarily, no.**
Q. Let's turn to the next page. This is an aerial view. It looks like it's -- I don't know if this is an enlargement of another photograph that we have, but it's on page 8 of this report, and it's referred to as

"Photograph No. 7 illustrates an aerial view of the North Wildwood beach area known as Hereford Inlet and the approximate location of the Smith drowning."
There's an X on there with an SAS on it, right?
A. **Yes.**
Q. And you put that there this morning?
A. **I did that.**
Q. And you did that when you were meeting with Mr. D'Amato?
A. **Yes.**
Q. Before the deposition?
A. **Before, yes.**
Q. Okay. What conversation did you have with Mr. D'Amato about where and how to put this X?
A. **He just asked me, "Do you think the arrow is, you know, pretty accurate?" And I said, "Fairly accurate, from what I remember." And he said, "Can you put an X where you think it happened?" So I put an X.**
Q. Did you ever go back to the scene and point out to any other investigator where you went in the water?

A. **Just Lou. That was it.**
Q. Just on August 12, 2012, that one and only time?
A. **And I think that was the last time I have been there.**
Q. And when you went with Mr. Lou DiJoseph at the scene on August 12, 2012, did you see Mr. DiJoseph turn around and make observation of any landmarks to help mark the spot that you were telling him where you went in the water?
A. **Not that I recall.**
Q. Did you turn around and look at any landmarks up or down the coast or more inland to help you mark the spot where you say you went in the water?
A. **Not that I can recall.**
Q. Okay. So if I can get back to the photograph that you marked when Mr. Hunkins was talking to you, I have a follow-up question about that.
So just go off the record one minute while we get that exhibit.
THE VIDEOGRAPHER: Going off the record and the time is 1:38.

(Discussion off the record.)
THE VIDEOGRAPHER: We're back on the record, 1:39.
BY MR. BARKER:
Q. Remember when you put the circle around on Exhibit 10 there?
A. **Right.**
Q. And that was to kind of show the area of the rock wall and --
A. **The parking lot.**
Q. -- and the parking lot, right?
A. **Um-hum.**
Q. And you referred to the X and you said the X was like halfway between where the ocean was and the inlet was; is that right?
A. **No. I think I was saying as far as our walk goes, I would say that the X -- it's closer to the ocean side, I would say, a little bit more than halfway.**
Q. Back towards where --
A. **Towards east, towards the front.**
Q. Where you had started on your walk?
A. **Yeah, we started more south. We started south, walked north, turned west and then came back along the coast towards the**

east, and then we would eventually head back south again. So we were still traveling east.

Q. All right. The only thing I was trying to clarify in my mind is when you said about where the ocean was. Does that photograph No. 10 show you what you perceive to be the ocean versus the inlet?

MR. D'AMATO: On the day of the accident?

MR. BARKER: Well, even in that photograph, because isn't that a photograph taken -- well, let me just rephrase my question.

BY MR. BARKER:

Q. I'm showing you this Exhibit 10, because I thought the X was in some way put there because you were estimating based on where the inlet was, where the ocean was, and I know that you got the red circle about where the parking lot was and the rock wall, but does that thing show you where the ocean is?

A. Well, I guess this part, that's what I remember being the ocean end. So if you continued it this way, it would just keep going straight down (indicating.)

Q. Can you point an arrow, put a Y, no, some kind of mark on there as to what you are demonstrating to us as the ocean, what you are describing as the ocean?

A. So I mean can I keep coming down?

Q. Sure.

A. So this part, that's --

Q. With the red line straight down?

A. When I look at this, when I look at this picture, I see this being the inlet. This -- correct? This is the parking lot. So I know in reference to the bay is back here. This is the inlet. The rock wall is all along here. And then this is the stretch, and then this is the ocean. So when we originally sat down, we would be up here somewhere (indicating.)

Q. Down there somewhere?

A. At or down there at the guarded beach.

Q. Right. So the beginning of the red line straight down is more or less where you're saying --

A. Oceanfront.

Q. The oceanfront.

A. Yeah, that's the oceanfront. So when

I say the State trooper boat, it would have -- from what I can see in this picture, I would guess it would be in that area where he came, like along this area. So this is where the emergency vehicles would have been, from my recollection. That's what it looks like to me (indicating.)

Q. So the area of where the State trooper came from or --

A. Yeah, he would have been out here to rescue the jet skier. Because the breakers were way out here.

Q. Okay.

A. And then he would have came in, you know -- I didn't see him come in. I see him come up to the shore at approximately this point, but, again, it's --

Q. At the top of the red line?

A. Yeah, in that approximate area, so when you -- I guess looking at it, if there was a big picture, I would say this whole area out here would all be ocean. This would all be ocean out here (indicating.)

Q. Okay. Let's look at this other photograph that's larger.

MR. D'AMATO: Just for the record, the photograph that you were just asking him questions about was taken from Google Earth and just incorporated in the report. So you never really saw this photo before.

MR. BARKER: Who didn't?

MR. D'AMATO: You didn't.

MR. BARKER: Oh, it's different than the March 14th, 2012 one?

MR. D'AMATO: Yes. And I don't have a date on it, but I will get a date as to that particular photograph.

MR. BARKER: Thank you.

BY MR. BARKER:

Q. What's that exhibit number, Mr. Sunderland, the bigger photograph there?

A. 2B.

Q. On that one, does that demonstrate to you where you set up on the beach? Can you tell?

A. No, no, it looks different. I mean I can see the parking lot.

Q. Right. So if you can't tell where you set up on the beach and you can just see the parking lot, any other landmark you can

recognize there?
A. I can see landmarks here, but the beach looks -- it looks different to me.
Q. Than in the --
A. Than in this picture (indicating.)
Q. The number of that is?
A. Number Sunderland-10. Yeah, okay, I'm looking up at the initials, yeah, Sunderland-10.
Q. In looking at this 2B photograph, does it demonstrate to you -- can you see from that where you think you went in the water?
A. On this, 2B?
MR. D'AMATO: In all fairness, isn't 2B exactly the same as Sunderland-2?
MR. BARKER: Yes, 2B is Sunderland-2 --
THE WITNESS: It's just blown up. It's just bigger.
MR. BARKER: -- but it's just an enlargement.
MR. D'AMATO: Okay.
THE WITNESS: Yeah, on 2B it just looks like it's different -- it's kind of like a different shape. It's similar, but I feel

more comfortable with this picture, and I don't know if it's because it's closer, but when I look at this, it doesn't --
BY MR. BARKER:
Q. 2B?
A. Yes, sorry. No, on Sunderland-10. When I look at Sunderland-10, it looks to me more where it was. I don't know if it's the size of the picture. I don't know what it is, the difference, but there I can kind of see how, you know, in a --
Q. "There" meaning on 10?
A. Sunderland-10, you know, I can see the distance, I guess, the scale of it, by the way the buildings are, the size of the cars, about where the accident happened. On 2B, it really doesn't look the same at all, but it just could be, you know, because it's further back, it's showing more of the coast.
Q. So for whatever reason, 2B does not help demonstrate your testimony?
A. No.
Q. Correct?
A. Right, correct.
MR. BARKER: Let's go off the

record a minute.
THE VIDEOGRAPHER: Going off the record, 1:48.
(Discussion off the record.)
THE VIDEOGRAPHER: Back on the record, 1:50.
BY MR. BARKER:
Q. Am I correct, Mr. Sunderland, that you and your family had never been to this particular beach before?
A. Correct, no, we hadn't.
Q. But you and the Smith family had vacationed for years together?
A. Oh, all the time.
Q. Had you ever been to any North Wildwood beaches before?
A. No.
Q. Do you recall the address of the house that you rented or stayed at that year, 2012?
A. No. I know where it is. I probably would be able to point it out, but I don't know the address.
Q. Was it inland but near where you set up on the --
A. It was further down the inlet in the

marina, in the marina.
Q. Oh. Do you recall what the surf conditions were at the time that you started off on this little walk?
A. Out in the ocean where we were, it was really -- I don't know if it was rough, but there was a real bad -- the bigger boys would go out into the water and boogie board and then they would come out, like, really far down the beach because the current was going sideways, I guess, and it was really strong.
Q. From which direction?
A. I think they would have been going south. So they would drift south and they would ride the waves in, because we --
Q. Is south the same as east?
A. No, east is east. South is down the coast, right? That's how I look at it. So south is down the coast. East is straight out to the ocean.
Q. Got you, okay, I'm following you. And who are the bigger boys?
A. Bigger boys would be my son, Jett, and Cole, Sandy and Brad's son.
Q. So you saw them go in the water to

boogie board and then they would --
A. Yeah, they would get, you know, pulled down south along the beach, along the beach, because they were riding waves in. That was at, you know, whatever avenue it was where the lifeguard stands were. But as far as where we were, there was nothing. It was perfectly flat.
Q. When you were walking up?
A. When we were walking. The sun was kind of glistening on the water. It was beautiful.
Q. So walking up towards the rock wall and walking back were the conditions the same?
A. Walking back, walking back. Again, we kind of walked inland, I would say. We walked, you know, in the westerly direction toward the rock wall and we walked along the coast on the way back, so that's really --
Q. What I'm asking is when you are walking on the way back, are you describing those conditions as very slight?
A. Very flat, very slight, yeah.
Q. And did you observe any conditions of current at that time?

A. No, none.
Q. And on the walk back, none?
A. None.
Q. And on the walk up to the rock wall?
A. Again, not that I recall, because I think we were inside, you know, or more on the sand. I guess you would say the upper beach, the upper part of the beach, more towards where the tidal pools form, because the girls were playing in the tidal pools.
Q. Do you remember what the street location was where you set up and you said the lifeguard was there and the boogie boarding was going on?
A. I really -- I don't. I'm bad with directions like that; my wife will be the first one to tell you.
Q. As a result of going in the water, did you suffer any injuries?
A. No.
Q. As a result of going in the water, did your daughter suffer any injuries?
A. No.
Q. Do you recall who from the media you spoke to about this event?

A. I remember we spoke to -- what's the name of the program? I'm not sure. I'm not sure. If I had a picture, I could tell you.
Q. Somebody from the media you remember speaking to?
A. Yes, yes.
Q. Did you speak to more than one person from the media or just one person?
A. No, it was a few people.
Q. At different times, I take it, or not?
A. No, it was pretty much all at the same time and we just recounted what happened.
Q. Was the person's name Sam Wood?
A. Doesn't ring a bell.
Q. Doesn't ring a bell?
A. No.
Q. Did you speak to any female reporter?
A. I remember a female reporter, yes.
Q. Do you know who the female reporter was reporting for?
A. I don't.
Q. Do you know who the gentleman reporter was reporting for?
A. Not off the top of my head, I don't, no. Oh, it was Chasing New Jersey.

Q. Pardon?
A. Chasing New Jersey. I think that was the program.
Q. Is that a newspaper or --
A. I don't know. I'm not really sure.
Q. You don't know. Here's an article that appeared, and on the second page of the article it refers to you giving an account. Let's see if this refreshes your recollection.
MR. D'AMATO: Off the record.
THE VIDEOGRAPHER: Off the record, 1:57.
(Newspaper Article was marked for purposes of identification as Exhibit Sunderland-13.)
THE VIDEOGRAPHER: We are back on the record. The time is 2:02.
BY MR. BARKER:
Q. Mr. Sunderland, I put in front of you an exhibit which we marked as Sunderland-13. It's a media report on an interview with you, and I'm only going to ask you about the things that they recount which you said --
A. Okay.
Q. -- which appears on page 2, it starts.

You'll see in the bottom third of the page it starts, "Scott Sunderland, Smith's best friend, recounted the event. 'The signs said no swimming and we weren't. We were just walking,' Sunderland said." Did you say that to a reporter?
A. Yes.
Q. "I took a step and dropped. All of a sudden there was nothing under my feet." That's in quote marks. Did you say that?
A. Yes.
Q. The next part is not in quotes. It says, "Sunderland's daughter landed on his back and wrapped her arms tightly around his neck." Did you say that?
A. Like I recounted before, either, again, when we were walking, she was on my back, and when I was in the water, she was on my back. As soon as I was in the water, she was on my back.
Q. Next the reporter gives this recount of you making this statement. "'I just started swimming,' Sunderland said. 'It was 30 seconds before I realized how far from the shore I was.'" Did you say that?

A. Yes. I don't remember this conversation, but I mean.
Q. Oh, well, if you don't remember, then --
A. Well, I mean I remember giving the interview, but it was a bunch of people. So I don't remember talking specifically to this person.
Q. Oh, so there's more than one reporter there?
A. Yes.
Q. Oh, and you're just telling me now that what they have reported in this account is something that you would have said; you don't necessarily remember saying it?
A. Exactly, yes, yes, yes.
Q. Okay. The last thing I think we've got here from you, "With his daughter hanging on, Sunderland struggled against a vicious undertow. When he finally touched sand, he fought the rip current to gain his footing. 'It was almost like I was climbing to get onto the beach.'"
A. Again, I don't remember saying those exact words to this exact person, but...

MR. D'AMATO: But what?
THE WITNESS: I mean that's basically what happened. Okay?
BY MR. BARKER:
Q. Okay. That's all I have on that. Just a second.
Did you have any conversations with any lifeguards of North Wildwood or, really, did you have any conversations with any lifeguards about this event?
A. No.
Q. Not from the date of the event until now?
A. I don't think ever. I don't think I ever -- unless, you know -- no, not knowingly.
Q. The only person that you have spoken to that you can remember, let's see, it would be the policeman that we talked about, Schmidt, right?
A. In the hospital.
Q. Right. And then the one policeman before that, you spoke to him, but you don't remember what you said?
A. Right, correct.
Q. And then after that you spoke to Lou

DiJoseph on August 12th?
A. Right.
Q. And then after that you spoke to Mr. D'Amato earlier today, correct?
A. Correct.
Q. Anybody else?
A. Well, I've told a lot of people this story. Everybody I see and I meet I tell this story to. So if I spoke to anybody else, I did not know who they were, other than, you know, casual acquaintance or whatever. So just to be clear.
Q. Apart from the one time that you spoke to the media and we see this article appearing, was there any other time when you spoke to the media like a press conference or people coming by to interview you?
A. We did a press conference here, I guess, which is that time.
Q. Meaning this article?
A. Yes, I think that was all of it, here.
Q. When you say "here," you mean in Mr. D'Amato's office?
A. Yes, yes.
Q. Right in this conference room?

A. I believe, yes.
Q. Was that recorded?
A. I'm sure it was.
Q. Why do you say that?
A. Well, because there was cameras here and, you know, reporters here. That's why I said when you say that reporter, I don't know if it was that reporter, but chances are it probably was because I think there were probably five -- five, six reporters.
Q. Was that press conference something that you arranged?
A. No, no.
Q. Who arranged it?
A. I don't know if it was Mr. D'Amato and Sandy, I believe. Sandy asked me if I would come, so I came with her daughter.
Q. Sandy Smith?
A. Sandy Smith. Sorry.
Q. Other than the -- well, let me ask you this: To your knowledge, have you spoken to any North Wildwood personnel about the happening of this event?
A. Only right after when we were still staying at the house.

Q. And who was that?
A. Again, I'm not sure who it was, but it was -- I believe it was an officer, police officer, and there were two of them, and they would come a couple of times. I don't know if they were the same gentlemen. But they would ask or, you know, we would ask -- would be asking them, what can we expect -- it's mostly on the recovery of Brad and the rescue of Brad. We were asking, you know, what -- how do you investigate it as far as how they find him. You know, they put the strobe in the water; they were explaining all of that. And they had said that other people have been lost here. And we were asking about that as far as how -- were they lost, like, drowned lost, were the bodies recovered, and they told us about, you know, when somebody is lost at sea, not just in this position, but when people drown, how the bodies come up, sometimes they do show up, sometimes they don't show up. It all depends.
Q. Anything else you can remember about the conversations with those two?
A. No, that was mostly it, you know.

They just said that other people have -- it's happened to other people here.
Q. Here where?
A. Here at that location where we went in.
Q. And these people that told you that, you think they were from North Wildwood?
A. Yeah, I'm pretty sure, because they were in the investigation of finding him.
Q. Was any one of them the same that spoke to you on the beach that day?
A. I don't think so. I don't know. I can't say.
Q. Was any one of them the same as the person who spoke to you in the hospital?
A. I can't say with any certainty. It's possible, but I'm not sure.
Q. Do you know what position either one of them held?
A. No, I don't.
Q. That would mean like rank or responsibility. No idea?
A. No, I don't. I know they were in charge of the investigation, so I would think they would be, you know, in that capacity if

they are doing the investigation of finding him.
Q. So they're on the recovery side?
A. I believe so, yeah. But it was really about the whole incident. You know what I mean? So they were speaking to us more of what to expect. They were sounding moreso we could ask the questions and they were responding with this is how we -- this is how the -- whether it's that office that does the recovery or not, but they were explaining how the process works. This is how the rescue effort goes or the recovery effort happens. They put out a beacon. The beacon floats in the water and they, you know, that determines where the water is going to move. So chances are if the water is moving that way, that's where Brad will move. So -- and then we would ask, like I said, "Well, what is the recovery rate?" Because I mean he's out at sea. So is it more likely that he will wash up, or is it more likely that we'll never know and he'll just -- because that was one of Sandy's things. She wanted to know that he was at least recovered.

Q. Had you ever spoken to any personnel from the Coast Guard?
A. **No.**
Q. And I'm asking about this incident.
A. **No, no, no. I've had them on the boat, but that's all good.**
Q. Not about this incident?
A. **No.**
Q. Okay. Have you spoken to any New Jersey State Police officials about this incident?
A. **No.**
Q. Have you spoken to any New Jersey officials about this incident?
A. **No.**
Q. Have you spoken with any witnesses to the incident?
A. **We -- I did speak -- where we were staying, there was a family who owned one of the townhomes, and Brad and I had become friendly with them while we were staying there because they were boaters and they had the jet skis, and we would go down there and talk to them, and after it happened, they, of course, came up and offered anything that they could**

do to help, and the woman had mentioned that -- she said to me just the other night or just the other late afternoon, a group of women were walking along the beach and they fell in.
Q. And who was this person who told you this?
A. **This was the -- I don't know her name, but it was the owner of the townhome that was, you know, maybe four, five doors down from where our rental was.**
Q. And was that person interviewed by anyone, that you know of?
A. **I have no idea.**
Q. You don't think maybe Mr. DiJoseph interviewed her, do you?
A. **I have no idea. I haven't spoken to her since that time.**
Q. Okay. Have you ever spoken to anyone about closing the inlet beach?
A. **As far as an authority or -- the only person I spoke to was the Mayor right -- and it might have been the day after, or, you know, two, after the incident, and I asked him if he would --**

Q. That's what I was going to ask you. What did you say to him and what did he say to you?
A. **Well, when I spoke to him, he -- first thing he said was, "Well, you shouldn't have been swimming." And that got me -- my hair stood up a little bit, because I felt like I needed to defend ourselves a little bit, and that's when I said, "We weren't swimming, we were walking." And, you know, there was silence. And then he was just defensive and it got me defensive.**

So I said, "Well, you need to do something here. You need to put rocks down there. You need to do something to deter people from walking along here." Because it's probably the most beautiful place that I have seen since I have been here, and being down there the next day, there's little kids walking right where we were.

And he said, "We can't close the beach. We can't put rocks there because they will be gone the next year." And I said, "Well, isn't that better than somebody's husband, somebody's daughter, somebody's

five-year-old?" I said, "Because if my son would have fell in that water, it would have been all of us." There was absolutely no question about that, because I never would have left my son. And I swam as soon as I hit the water knowing that my daughter was on my back. I didn't gather her. I didn't take time in doing that. I swam from the very second I hit the water.

MR. BARKER: I have nothing further. Thank you.

MR. HUNKINS: I have a few questions.

* * *

FURTHER EXAMINATION BY MR. HUNKINS:
Q. You have been real patient. Do you need to take a break at all?
A. **No. I'm okay.**
Q. I don't think I'll be too long, and I'll try to be as efficient as I can.
A. **Okay.**
Q. I start with an apology. You mentioned that you are a boater, correct?
A. **Correct.**
Q. But I don't think we've asked you much

about your boating experience; is that correct?
A. No.
Q. What kind of boat did you own back when this incident occurred?
A. The one I still have today. It's a 25-foot center console. It's a Sea Hunt.
Q. Okay. And when you were down in North Wildwood for this vacation when this incident occurred, did you have your boat with you?
A. Correct.
Q. And I think you might have said this. It was at a marina at the time?
A. The marina right where we stayed, the boat was directly in the backyard, behind the house where we stayed.
Q. So looking at the overview picture, Sunderland-2, the marina would have been south of what's shown in that image?
A. Sunderland-2, the marina would have been up here (indicating.)
Q. Okay. It would have been northwest --
MR. D'AMATO: Just twist the photograph.
THE WITNESS: Sorry.

BY MR. HUNKINS:
Q. The marina would have been northwest of what's shown on Sunderland-2?
A. It would have been back here somewhere (indicating.)
Q. Okay. And I may not be using the right term, but to me the inlet is more or less in the northwest of that image, so would the marina have been -- was it located in the inlet?
A. Yes, adjacent to, you know -- I guess an offshoot of the inlet.
Q. Okay. And in the days that you were in North Wildwood before the incident occurred, had you had your boat out?
A. Oh, yes.
Q. Okay. And had you taken your boat through the inlet?
A. We did.
Q. Okay. As a -- how many years had you been boating prior to this?
A. At that time, me, probably -- with my boat, probably two years. Brad had, you know, boats, too, and I had boats a long time ago.
Q. All right. From your knowledge -- you

had known Brad for how long?
A. Oh, since probably '84.
Q. And you were both boaters?
A. Yeah. I mean it was my boat. We were actually going to buy a boat together and then I just ended up buying mine.
Q. Would you say that your knowledge and experience with boating was roughly the same as Brad's?
A. I would say so. I probably had a little bit more because I was captain, I guess.
Q. I assume as a boater you were familiar basically with what an ocean is and what an inlet is?
A. A hundred percent.
Q. You were aware at the time of the incident that an inlet is a body of water where the water comes in and out with the tide?
A. Yes.
Q. Have you boated in any other inlets other than Hereford Inlet?
A. Yes.
Q. Just give me an example of where.

A. Point Pleasant, Belmar, Barnegat.
Q. Okay. Were you familiar from your experience with other inlets at the time of this incident that, generally speaking, inlets involve strong currents?
A. Yes, yeah.
Q. As a boater, are you familiar with the fact that at times it's even difficult to navigate your boat in and out through an inlet depending upon which way the current is going?
A. Well, as soon as we got to the house, we went to the marina and I bought a chart, and I asked the owner of the marina to show us the best way out of the inlet, and he actually drew a line on how to get out. And, you know, I said I just need to know how to get out, because on my boat it has a machine that shows like the bread crumb trail. So once I get out, then I can easily get in and it's just for being shallow, because he said it was shallow.
Q. This conversation you are having and the map that you got, was that before the incident in this case --
A. Yes.

Q. -- or after?
A. **That was before.**
Q. Okay. And do you have that map?
A. **Yes, I do.**
Q. Have you ever given it to anybody, for example, Mr. D'Amato?
A. **No.**
Q. Okay. Is that something you could provide to Mr. D'Amato so he could give us a copy?
A. **Sure.**
Q. What kind of map do you call this?
A. **It's a chart -- it's a chart of the Hereford Inlet.**
Q. And by the time you took your walk on the beach and this incident occurred, you had had this conversation with this person at the marina?
A. **At the marina, yes.**
Q. And you were familiar generally with the fact that the inlet was very shallow?
A. **Yeah. He basically just said, "You want to go out" -- I mean the conversation was, "You basically want to go out this side." And it was the opposite side of where this is.**

This was on the north side.
Q. Okay.
A. **North side.**
Q. Obviously, this is for purposes of getting the boat through without grounding the boat?
A. **We were going fishing in the ocean.**
Q. So if I follow you, the channel or path that he showed you on the map was not along the beach where you were walking?
A. **No, no, it was the opposite side.**
Q. Okay. From looking at that chart, if you had chosen to do so, could you have found the depth of the water along the beach where you ended up walking on the day of the incident?
A. **But at a certain time of day or a certain -- you know, it will have numbers on it that basically tells you depth or whatever.**
Q. And I'm not an ocean person at all, but from what I gather, the depth of water along the beach is going to vary depending on whether the tide is in or out?
A. **Yes.**
Q. And that's the kind of information you

could get from this chart?
A. **Somewhat, somewhat.**
Q. As a boater, by the time the incident occurred, were you just generally already familiar with the fact that the slope of the bottom of an inlet or an ocean or the depth of the water, either one, can vary?
A. **Yeah, yes, yes. I mean this is a little different than what a normal inlet, I would call it -- a normal inlet would be like Belmar or Point Pleasant. It's -- it's a true inlet; it's protected and it's dredged. It's rocks on either side. So there's only one way to get out. There's no swimming. There's no bathing. There's no sand. It's rock.**
Q. But before the incident occurred in this case, were you generally familiar with, whether you're in an inlet or an ocean or a bay, that the contour of the bottom can change as you pass over?
A. **Sure.**
Q. And in other words, the depth of the water can change?
A. **Sure, the depth of the water changes, yes.**

Q. And were you aware, as a boater, that the depth of the water can be affected by the action of current?
A. **Sure.**
Q. Based on your knowledge and experience as a boater as of the time this happened and/or conversations you may have had with other people after this happened, is it your understanding that this drop-off that you and your group stepped into was created by current running along the beach?
A. **I really don't have any idea how. It just seemed to me it was more like an instability or where it just dropped out.**
Q. You have no idea one way or the other?
A. **Oh, I have no -- I really don't have any idea on how. I would imagine it --**
Q. No, I don't want you to guess.
A. **Okay, okay.**
Q. As you were walking along the beach before the incident occurred, were you looking where you were going?
A. **When we were walking down the beach?**
Q. Yes.
A. **Sure.**

Q. Okay. Did you notice anything unusual about the sand or the water?
A. **No.**
Q. Is it fair to say that there was nothing unusual -- withdraw.
I'm going to ask you a question about the sand that's visible above the water line. Do you follow me?
A. **Okay.**
Q. Did you see anything unusual about the sand above the water line before the incident occurred?
A. **No.**
Q. Did you see anything unusual about the sand above the water line after the incident occurred?
A. **No.**
Q. As you were walking along, I think you said roughly calf-deep water?
A. **Um-hum.**
Q. Is that a yes?
A. **Yes, I would say top of my calf.**
Q. This might be a silly question, but were there waves coming in and out at the time?

A. **No, it was very calm.**
Q. Was the tide coming in, going out, or something else?
A. **I don't know if it was -- well, I would know if it was -- because it carried Brad out, so the tide was going out.**
Q. But your answer to me a second ago was that as you were walking there were no waves?
A. **No, no. Waves out further.**
Q. Okay.
A. **But not at the beach, you know, the water side, beach side.**
Q. As you were walking along, I assume, correct me if I'm wrong, that you were not making an attempt to draw a direct beeline from point A to point B?
A. **No, we were just kind of --**
MR. D'AMATO: Objection. What's point A? What's point B?
BY MR. HUNKINS:
Q. Were you making any attempt to walk in an absolute straight path, or were you just ambling along and you fell?
A. **We were just walking along the water.**
Q. Because here's my question. Since you

were not making an attempt to walk in an absolute straight line, is it possible that as you approached the location of the incident you were stepping a little bit to the right here and a little bit to the left there?
A. **Yeah, I mean we could have, but we were never deeper than the top of calf.**
Q. I understand that.
A. **And that would have been me. Because, like I said, my daughter either -- I'm not sure, again, if she was on my back or next to me, but my son was not in the water at all.**
Q. I understand that.
A. **Right.**
Q. And I think you've answered it.
As you remember walking along, it was very likely that with each step you took you might have stepped a little bit to the right with one step and a little bit to the left with another step?
A. **Sure, sure.**
Q. Okay. When you went into the water when the incident occurred, I understand that, again, you started swimming and ultimately you got back onto dry land?

A. **Right.**
Q. When you got out, what was the distance, approximately, between where you got out on dry land and the point where you went into the water?
A. **So I understand the question correctly, is it how far off the beach was I before I could get back?**
Q. No. I'm trying to -- I would like to draw in my mind two points on the beach. One point would be where you went into the water and the other point would be where you crawled out.
A. **I would say roughly in the same 30-foot section.**
Q. Okay, just so I can understand that. My impression is that the current -- and you might have said this, the current was running out of the inlet or generally southeast; is that fair to say?
A. **There was two.**
Q. Okay.
A. **So in other words, what we fell into pulled us out -- pulled us north. So it pulled us into the inlet. So it pulled us**

away from the beach, away from the inlet beach. What Brad got caught in took him out to the ocean. So it was like two different currents, I guess.

Q. Okay. So I'll get back to what I was starting to ask you, the point A and point B, when you went in and got out. I was just imagining that you went in and then the tide took you southeast and you got out at a point 30 feet southeast. Is that not correct?

A. I would not have any idea if it was in either direction. I'm just saying I went in this area and I came back in this general same area I went into.

Q. Okay.

A. It just took me further -- it just took me off the beach and I had to swim back to the beach.

Q. Okay. In the process of being taken off the beach and swimming back to the beach, do you have any impression that you were being taken one way or the other along the beach?

A. I was being pulled out into the inlet. So 90 degrees off the beach. So 90 degrees off of where I went in the water, it was

pulling us -- it kind of, you know -- it could have moved us either way, but in that same direction, that's where I got back.

Q. After the incident happened, for example, later that evening or the next day, when you went back to the location of the incident, did you go into the water?

A. No.

Q. In your boating experience or your experience as a beach-goer before this incident, had you ever seen any other locations anywhere where there was any type of drop-off in the bottom?

A. Nothing like this.

Q. Have you ever seen instances where there was a drop-off but not as drastic?

A. Not -- not like this.

Q. I know that, but have you ever seen a drop-off before?

A. I have seen drop-offs, yes.

Q. Can you describe the type of drop-offs you have experienced in the past?

A. I guess when you walk out into the water and it drops off, you know, as -- it gets deeper fast.

Q. And where had you seen that before the incident in this case?

A. I'm not really sure where it was, to be honest.

Q. Is it fair to say that you had seen that more than once?

A. I probably have, yes.

Q. Okay. And I'm saying "seen that," but I guess what I'm asking you --

A. Feel that.

Q. Yes, you felt that?

A. Feel that.

Q. You have been in the water before and you had the experience of feeling and not as drastic as this incident was --

A. I'm getting deeper in water.

Q. -- but an incident where the bottom drops off suddenly?

A. It all depends on what you say "suddenly" is.

Q. I guess it could be steep or not so steep, but --

A. Well --

Q. Just wait for my question.

A. Okay.

Q. Is it fair to say that before the incident in this case occurred you had experience yourself of walking along in the ocean or at the beach where the bottom dropped off?

A. Again, it depends on what you say "drop-off" means.

Q. Is that a yes but not as drastic?

A. Not as drastic. Yes, but not as drastic.

MR. HUNKINS: Okay. That's all I have. Thanks.

THE VIDEOGRAPHER: This is the end of tape No. 2. Off the record. The time is 2:32.

(Discussion off the record.)

(Twelve Photographs were marked for purposes of identification as Exhibits Sunderland-14 through Sunderland 25.)

THE VIDEOGRAPHER: This is the beginning of tape No. 3. Back on the record. The time is 2:46.

* * *

EXAMINATION BY MR. D'AMATO:

Q. Scott, I'm going to show you a series

of photographs, and they have been marked for identification and I'm going to show them to my colleagues before I hand them to you.

The first one is Sunderland-14. This photograph was taken on June 20, 2014 of what they call the Moore's Inlet or Moore's Beach. Have you heard that phrase?

A. I've heard it, yes.

Q. Okay. Now, let me hand it to you.

In looking at that photograph, can you identify generally the area where you and Brad turned around to walk back to your wives?

A. I would say it was probably around that area, I would imagine (indicating.)

Q. All right. Why don't you get a red marker and make a nice large circle to give us the general area of where that was?

A. (Complies.)

Q. Could you hold that up there? There we go, all right.

Now, you can put that down but keep the photograph in front of you.

A. Okay.

Q. As you walked towards Moore's Beach, did you see people in chairs sunbathing in

that area?

A. Yes.

Q. Did you see children playing in the water of the inlet when you were approaching that area?

A. Yes.

Q. And you also said you saw people that were fishing?

A. Yes.

Q. And were they -- were they standing on the beach or standing in the water when you saw them fishing?

A. A little bit in the water.

Q. Now, I'm going to show you another photograph marked for identification as Sunderland-15. I'm going to hold it up for my colleagues here. Again, this was taken June 20, 2014. And let me hand it to you and can you see the rock wall there on the left-hand side of the photograph?

A. Yes.

Q. And right where your left hand is you can see the steps that people would take to get from the parking lot onto the beach?

A. I don't see the steps.

Q. You know what, you're right, it's the next photograph. Sorry. I apologize.

But in any event, let me hand this to you. As you're about to turn around, you and Brad and the children, does that photograph accurately depict the number of people and bathers that you saw on the beach area?

A. I would say it was probably a little bit less. It wasn't as crowded as this, but I mean I remember seeing a lot of umbrellas.

Q. You can leave it there.

Now let me show you what's been marked for identification as Sunderland-16. This was taken on July 2, 2013, almost a year after Brad's passing. When we have been referring to the rock wall all morning and this afternoon, is this the rock wall that you were referring to?

A. Yes, it seems to be, yes. Part of it anyway.

Q. All right. Now, as you -- you can put that down. As you and Brad are walking with your children, you're just about to turn around, did you see any jet skis like the one

that we see in Sunderland-17?

A. I mean I don't recall, like, when we turned around and all that, but that's kind of how it was when I flagged down the jet skier. It's kind of where they were. I mean as far as the distance from the ocean, it was right -- very shallow water. They were just kind of sitting on them. They were kind of hanging out talking to people on the beach, but as far as walking down, I don't remember seeing any jet skiers, no.

Q. You can put that down.

This was the very first time that you and your family and Brad and his family had come to North Wildwood to vacation?

A. For vacation, yes.

Q. Do you remember what day of the week it is when Brad drowned?

A. Friday.

Q. It was a Friday?

A. Friday, yes.

Q. And you had arrived how many days before that?

A. I think we got there the Saturday before, I believe.

Q. Now, how many times had you gone to the beach before the day that Brad drowned? The beach meaning, excuse me, to be precise, North Wildwood.

A. Right. Maybe two times. I'm not really sure, to be honest.

Q. And the two times that you went to the beach, that's you, your wife, your children, Brad, Sandy and their children --

A. Um-hum.

Q. -- did you always go to a protected beach, meaning there was a lifeguard there?

A. Yes.

Q. And on the day you went to the beach before you decided to take the walk, that was a protected beach, correct?

A. Yes.

Q. And there was a lifeguard there?

A. Yes.

Q. Now, you were shown an interview where it's referenced that you saw a "no swimming" sign. In fact, I put it in front of you. It's right there. It's Sunderland-13. Do you see that there? And if you look at the bottom of the second page, it says almost about a

third down, "The sign said 'no swimming' and we weren't. We were just walking."

Now, here's my question to you: Your children are playing in the tidal water, the tidal pools, correct?

A. Um-hum.

Q. Before you decided to take a walk with your family towards the Moore's Inlet beach, had you seen any signs saying "no swimming"?

A. No, not that I can recall, no.

Q. Did you learn after Brad's drowning that there were some signs up closer to the area where you access the beach that said "no swimming"?

A. Yes.

Q. But before you took the walk and before you fell into the hole, you had not seen any signs that said "no swimming," correct?

A. Yeah, no, I did not see any.

Q. Before Brad drowned, had you ever heard of there being a whirlpool or vortex in the Hereford Inlet at certain points in time during the daytime?

A. No.

Q. When the two police officers came to the residence where you were staying, did they ever talk about any dangers associated with the beach area where you and Brad and your family had been walking?

A. They had said people had fallen in there.

Q. You referenced a telephone conversation with the Mayor of Wildwood, correct?

A. Yes.

Q. And that you said was the second or third day after Brad was missing?

A. Yes.

Q. Did he say anything else about the area where this event took place when you said to him, "We were not swimming, we were walking"?

A. I think he made mention of another incident, I think, where there were two women and they were swimming and, again, that's when I said, "We weren't swimming, we were walking."

Q. Now, you had mentioned when Mr. Barker was asking you questions about Sunderland-12,

specifically, there's a reference in this report from Police Officer Richard Schmidt that says, "He then stated that he saw a police boat traveling in the inlet." I want to ask you about that.

Let me show you Sunderland-20, which is a photograph that was taken on June 20, 2014. Okay? Does this boat that you see in the photograph look like the boat that you are referring to?

A. Yeah. He was actually -- I think that boat was kept in the marina.

Q. Okay.

A. The boat that I saw that day that came out, I had seen the boat previously in the marina before the incident.

Q. You used the term "police boat travelling in the inlet" in Sunderland-12. Here's my question: When you said police boat, can you tell me if you knew it was a North Wildwood police boat or New Jersey State Police Marine police boat?

A. No, I'm not a hundred percent sure.

Q. Okay. Now, I'm going to show you what's been marked for identification as

Sunderland-21. Now, I want to take you back in time on the date of this event. You now just turned around. And you told my colleagues that as you are walking back you're closer to the water this time.

A. Um-hum.

Q. Now, from the time you turned around until the time you fell into the hole, were there times that you were walking on just the beach and not in the water as shown in Sunderland-21 --

A. Yes.

Q. -- where those people are?

A. Yeah.

Q. Okay. After you turned around and you're walking back to the point where you fell in, were there times that all of you were walking in ankle-deep water?

A. Can you repeat that?

Q. Yes. You've now turned around, you Brad and the kids.

A. Heading back.

Q. You are heading back. And were there times as you are walking back before you fell into the hole that all of you or some of you

were walking in ankle-deep water as opposed to mid-calf water?

A. Yes.

Q. Okay. Now, from the time you started walking from the protected beach onto that area that was unprotected -- well, let's go back a little bit.

Going back to the day of the accident, before you decided to take the walk, as you have described many times today, towards Moore's Beach or Moore's Inlet, did you know that the area that you are walking -- about to walk on was unprotected in the sense that there were no lifeguards down there?

A. No, we didn't.

Q. On the day of Brad's drowning, was that the first time that you and Brad had ever walked from the protected beach down towards Moore's Inlet or Moore's Beach?

A. Yes, that was the first time we walked down there.

Q. As you were walking from the protected beach towards Moore's Beach, did you see signs on poles like what is shown in Sunderland-22?

A. No.

Q. Okay. As you are walking from the protected beach to Moore's Beach, did you see any signs like what is shown in Sunderland-23 which says "High risk rip current area"?

A. No.

Q. As you are walking from the protected beach towards Moore's Beach, did you see any signs like Sunderland-24 that say "Danger, unprotected beach"?

A. No.

Q. As you are walking from the protected beach to Moore's Beach, are you seeing any signs like whatever this thing is in Sunderland-25 in the middle of the photograph?

A. No.

Q. As you're walking -- strike that.

Now, as you're walking from the protected beach towards Moore's Beach and after you turned around to walk back to your wives, did you ever see little children like the ones that are shown in Sunderland-18?

A. I mean not that I can recall. I mean I saw people, families.

Q. In the statement that was marked for identification as Sunderland-13, you were

quoted as saying, "It was 30 seconds before I realized how far from the shore I was." Now, my colleagues touched on it a little bit, but I want to get more specific, if you can.

A. Sure.

Q. How far out in the inlet did you go after you had fallen into the hole? Can you estimate for us?

A. Yeah, I would say probably about 30 -- 30 feet.

Q. And that was involuntary, correct? It had pulled you out there?

A. Oh, yes, it had pulled me out, yes.

Q. And during that period of time, is your daughter still on your back?

A. The whole time, yes.

Q. And describe for us the forces in the water that you're experiencing as you're trying to get back on land. What was it like?

A. Well, so the whole time as soon as I go in, I'm swimming, like I said. So it's taking me out as I'm swimming. So as I said at first, I'm just swimming. I'm, you know -- I'm swimming right away, and then after about 30 seconds I look up and I see that I'm

further from shore than I was when I first went in. So now I'm 30 feet from shore and I've been swimming the whole time. So that's when I really start, as I say, digging in. I'm going to get to shore. So I started swimming the hardest I could at that point.

Q. On this day when you lost your friend Brad, how old were you?

A. I guess I was 47.

Q. How would you characterize your ability as a swimmer on that day?

A. I'm an excellent swimmer. I have a pool in my backyard.

Q. And had you ever experienced forces in the water, any body of water, as you did on this day as you are trying to get back to land?

A. No. Not just the current, but the way the water -- it felt like you were swimming through air.

Q. Listen, you have been very patient and we appreciate the amount of time. You are an eyewitness to what happened, so I have to ask you this. What do you mean it was like swimming in air?

A. It just felt like I couldn't get traction. Like, there was nothing to swim against. It felt like it was a rope holding me back or pulling me out, and it just didn't feel like you're in a pool swimming. It felt like there was, like I said, air or something in there that you couldn't, you know, dig against.

Q. Okay. Now, I want to take some time and talk about your friend Brad. You said you met -- was it 1988?

A. I said probably '84, '85. I graduated high school in '84. So I would say about '85.

Q. How did the two of you meet?

A. I bought a car, a '70 GTO, and my dad was desperately trying to talk me out of buying it, so he had me take it to Brad, which he told Brad, "Look at this car that my son bought. Please tell him to take it back." That's how I met Brad.

Q. From the time you first met him, how many years went by before you considered him to be your best friend?

A. It was probably -- probably another six years or so, maybe seven years, and then

he moved his shop and I ended up renting the space off of him. That's when we really became very close.

Q. Did you have any involvement, or your wife, in Brad meeting his wife Sandy?

A. Yes.

Q. Share that with us.

A. I had rented, like I said, space from him for my company, and we were growing and I wanted someone to answer the phones. And Sandy I knew, because it was one of my wife's best friends, and she had worked with her at another job. And Sandy was looking for work and Brad always answered the phones all the time. So I said, "Why don't we hire her? You pay her half, I'll pay her half." And he answered -- she answered the phones for them and answered the phones for me.

Q. Sadly, Brad is not here to tell us about his life before he passed. So let me ask you, what kind of guy was he?

MR. HUNKINS: Objection to form.

MR. D'AMATO: To what kind of guy was he?

MR. HUNKINS: Just the preface to

the question. That's all.

MR. D'AMATO: Okay.

BY MR. D'AMATO:

Q. You can go ahead.

A. What kind of guy he was?

Q. Yes.

A. I mean a great guy, a guy, you know -- I looked up to him. He was a friend of my brother's first. That's what kept him as a family friend. He was just a -- he was a great guy. Everybody looked up to him. He had a loyal customer base, and I think they went to get their cars fixed more because of him than his, you know, mechanical skills. But a great father, great father, with his older kids, great husband. And just a great friend. He was everyone's best friend. He really was. Everybody loved him.

Q. You were close enough to him and Sandy, his wife, to know what kind of relationship they had?

A. Oh, yeah, absolutely.

Q. So tell us about that relationship.

A. It was a great relationship. They were both kind of independent people that they

just -- they just kind of hit it off, and they were very close. I mean we -- my wife and I and them, we were all extremely close. They just joked around with each other all the time. Like you would never get the two on the volleyball court at the same time because they were just competitors to the end. But, no, great couple, great couple.

Q. You had told me about, just briefly, his relationship with his older children. What was Sandy's relationship to Brad's children from the first marriage?

A. Great. Very -- I mean being a step, I can imagine that it can be very difficult, but, no, they loved her then and they love her now. Sandy is very hard to not like. They both are. But Sandy definitely. She's very outgoing and always would, you know, help Kyle and Nicole in whatever they needed. Never really -- it always amazed me that even when she had Cole, Brad and Sandy's first son, that there was never any, "Well, he's my son." She always incorporated the family, meaning his first -- from his first wife, his daughter Nicole, and Kyle.

Q. And what was Brad's relationship with his children that he had with Sandy?

A. Oh, excellent, excellent.

Q. What was Brad's health like on the day of this horrible event?

A. Great. I mean, you know, we were getting older and a lot of softball, a lot of golf, a lot of skiing. We had -- we would have our aches and pains, but no, he was in good health.

Q. How would you characterize Brad's ability to swim?

A. Oh, good swimmer. Pool in his backyard. We got pools together.

Q. When you fell into the hole as you described so many times before, did you ever try to hit bottom so to push yourself up?

A. Yeah.

Q. And were you able to?

A. No. I never felt bottom whatsoever, never.

Q. You were asked questions about the chart that you had received. From the time you arrived in North Wildwood until the day of Brad's drowning, did you have any information,

from whatever source, as to the type of currents that were running through the inlet itself along the beach where you were walking?

A. No.

Q. Now, early today you were asked -- no, I shouldn't say you were asked questions. You told us about this fisherman that you see before you fall. Now, I want to go over that.

You and Brad and the children are walking toward this hole, not knowing that there's a hole there.

A. Right.

Q. And before you fall into the hole you said you saw a fisherman where?

A. I'm not sure when I saw him. When we fell in, it wasn't then because he wasn't there. So it was either on the way down or when we were closer to the rock wall.

Q. On the way back or on the way towards Moore's Beach?

A. I'm not really sure if I saw him on the way towards the rock wall or the way away from the rock wall. I'm not really sure when, you know. I remember seeing him because I mentioned to Brad, "Look at that guy, he looks

like he's walking on water. He's Jesus."

MR. HUNKINS: Just note my objection real quick. Counsel has been using the word "hole" which is really fine with me.

MR. D'AMATO: What would you like me to call it? I'll use your word.

MR. HUNKINS: I just don't know that the witness ever said that. I think the witness has said gully, that kind of thing, but having said that, just let that be a continuing objection to the form.

MR. D'AMATO: No, no, let's see if we can cure this objection.

THE WITNESS: Okay.

MR. D'AMATO: All right?

BY MR. D'AMATO:

Q. None of us were there. What do you call what you fell into?

A. Well, if I call it a gully, then it means it's high on one side, low in the middle and high on another side. Right? I'm a contractor. I can't help it. I would just call it a drop-off.

Q. A drop-off, okay. So now let me try this. Let's say within a couple of seconds

before you fall into the drop-off, can you tell us where this fisherman was standing, whether you saw him before you turned around or on the way back?

A. It was on the way back. I know exactly where he was standing when we went in because that's when I said, Well, that's where it is, out there where he was standing. He wasn't there then.

Q. I understand.

A. Right.

Q. But how far was that -- let me withdraw that question.

Right before you fall into the drop-off, where you had seen the fisherman before, how far was that from that point?

A. I would say it was probably maybe a hundred feet, maybe.

Q. And if you're looking straight ahead, all right, and your eyes are looking at 12 o'clock, 12:00 on a clock, where was he on the clock?

A. If 12 o'clock, he would be out, say, 10:00, 11:00, 10:00, 11:00. Probably 11:00, I would imagine. And I would say probably a

hundred, a hundred and fifty feet ahead of me.

MR. D'AMATO: I want to go off the record for a second.

THE VIDEOGRAPHER: Sure. Going off the record. The time is 3:14.

(Discussion off the record.)

THE VIDEOGRAPHER: We're back on the record, 3:17.

* * *

FURTHER EXAMINATION BY MR. BARKER:

Q. Mr. D'Amato asked you the question after you went in the water whether you ever felt the bottom. Do you remember that?

A. Yes, yes.

Q. He might have asked you whether you tried to do something to feel the bottom. I don't remember. But that's really my question. Like while you're there and you're swimming, swimming, swimming and you got your daughter on your back, what did you do, if you did anything, to try to feel the bottom?

A. Well, we have the pool and I brought my kids and taught them how to swim, and what we would always do is if you ever get in trouble you try to bounce yourself off the

bottom. And during that time I didn't necessarily stop and try to bounce myself off the bottom but I was trying to kick off the bottom. So in other words, you're swimming and you're trying to push off the bottom, too. That's what I was trying to do, and there never was a bottom. I never felt any bottom.

Q. With that motion you could not feel a bottom?

A. No.

Q. Other than that, did you do anything to test to see if there was a bottom that you could feel?

A. No, never.

MR. BARKER: Okay. Thank you.

THE VIDEOGRAPHER: This concludes the videotape deposition. Off the record, 3:18.

* * *

(The deposition concluded at 3:18 p.m.)

CERTIFICATE

I, LISA REAGAN, a Certified Court Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination,

SCOTT SUNDERLAND

was duly sworn by me to testify to the truth, the whole truth and nothing but the truth. I do further certify that the foregoing is a true and accurate transcript of the stenographic notes of testimony taken by me at the time, place and on the date hereinbefore set forth. 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 this action.

Lisa Reagan, CCR

LISA REAGAN, CCR
Certificate No. XI01671
Date: April 1, 2016

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Exhibit 2A

NORTH WILDWOOD
901 Atlantic Ave.
NORTH WILDWOOD, NJ 08260
Phone: (609) 522-2411 Fax: (609) 522-2531

Case Mgmt# : CM-12-000090 Case # : 12-00019472

at the hospital. He was the other adult that fell into the water. I advised her that I would stop back and speak with her.

I then met with Scott Sunderland and I asked him what had happened on the beach. He stated that he was walking along the beach with his son (Alden), daughter (Ally), Brad Smith and his daughter (Brandy). He stated that they went for a walk on the beach along Hereford Inlet. As they were walking back, they all were walking in knee deep water along the surf. All of the sudden, Sunderland explained that the ground went out from under them an they fell into the water. He did explain that his son, Aidan didn't fall into the water. He stated that they walked into a deep gully in the water. He stated that when he fell in, he was unsure if he was carrying his daughter at the time, but when they were in the water she was hanging onto him around his neck. He stated that while in the water, he could feel a strong current pulling him. He stated that he doesn't know how, but he was able to dig his hands into the sand and pull him and his daughter onto the beach. Once on the beach, he stated that he looked out into the water and saw Brad and Brandy being swept out by the current. He said that at this point, Brad was hugging and holding onto Brandy. He then stated that while watching the two, they separated and Brandy was treading water and the current continued to carry Brad out further.

Sunderland stated that Brad was yelling to him and to Brandy and at this point he stated he entered the water in an attempt to get out to Brandy. He stated that when he entered the water, again the current was to strong and he exited the water. Sunderland stated that when he exited the water, he was trying to keep eye contact on both Brad and Brandy. As he was watching them, he stated that he was trying to yell and wave down boats that were in the inlet. None of these boats acknowledge him at this time. He then stated that he saw a police boat traveling in the inlet. At this time he thought that the police boat was going to see Brad and Brandy in the water. He said that the police boat went past them and continued out into the ocean. Sunderland stated that he found out that the police boat was heading out to assist some jet skiers and probably never saw Brad and Brandy in the water.

Sunderland stated that he then ran down to a couple of people that had jet skis on the beach and told them what was going on. He pointed them out and these two individuals lauched the jet skis into the water. He stated that one of the jet skis approached Brandy. The driver of this jet ski jumped into the water, placed his life jacket on Brandy and put her onto the jet ski. Sunderland stated that the jet skier, along with Brandy searched the water for a few minutes, then Brandy was brought back to shore to be checked by Rescue personnel. I asked Sunderland if he was still able to see Brad at that time. He stated that he was watching as Brandy was being picked up and lost sight of Brad. He stated that the last time he saw Brad in the water, he was being carried out towards the breakers, which he thought was a sand bar. After Brandy was brought to shore, Sunderland stated that they were checked by Rescue personnel and then transported to the hospital.

After speaking with Sunderland, I went back and spoke with Mrs. Smith. I advised her that at this time the search for her husband would continue and that I would keep her informed of any information that I received.

I then cleared the hospital and returned to North Wildwood to continue the investigation.

EXHIBIT 40
Sunderland 12
3/22/16 (LC)

Investigator : SCHMIDT,RICHARD-228 Case Report Date : 08/01/2012

Exhibit 2B

North Wildwood Police Department

901 Atlantic Avenue, North Wildwood, NJ 08260
Phone: 609-522-2411 Fax: 609-522-0412 Mun. Code: 0507

Supplemental Report

Incident Details:		Incident Location:	Incident Type:
Case Number	Date of Report	Call Location	Call FBI Code
12-0019472	07/31/12 04:13	1 Herefordav, North Wildwood, Nj	Assist Medical Res

Narrative: Officer Breland, Scott

Supplemental Investigative Report

On 7/27/2012 at approximately 1736 I was dispatched to the Hereford Inlet regarding broken down wave runners in the water. Upon arrival I immediately noticed people shouting for help in the water and upon further notice I could see swimmers in distress. I immediately called for water rescue over the radio and rendered assistance to parties involved.

Sergeant Harkins arrived on scene and I advised him there was one male still unaccounted for in the water. I tended aid to the seven-year old female until lifeguards arrived on scene. I then turned her over to them.

I then spoke with a Scott Sunderland who advised me that Brad Smith was still in the water and that he lost sight of him. Sunderland advised me that he and his daughter along with Smith and his seven-year old daughter were walking along the shoreline when they slipped into the water and were pulled out to sea by the undertow. Sunderland advised that he and his daughter were able to make it back to shore but Smith and his daughter were unsuccessful. Sunderland advised that two subjects on wave runners later identified as Daniel O'Connell and Thomas Meenan saved Brad Smith's seven-year old girl in the water.

I spoke with O'Connell and Meenan who advised me that when they recovered the seven-year old girl they turned back but were unable to locate Smith anymore. They continuously checked the area even after lifeguards and North Wildwood Fire boats were on scene searching the area.

I remained on scene for crowd control keeping persons not involved with the search out of the area. After search teams cleared the area I kept a close watch on the shore line searching for Smith until the end of my shift.

EXHIBIT
Sunderland-11
3/22/16 (CC)

Exhibit 2C

August 16, 2012

On this date Investigator DiJoseph traveled to the Smith drowning scene and met with witness, Scott Sunderland, (215-669-4391). Sunderland was walking along the surf with George Smith and their daughters at the time of the July 27, 2012 drowning. The meeting with Sunderland was coordinated with low tide at 1:50pm which represented a similar tidal condition that existed on the date of the date of the Smith drowning. Scott Sunderland provided the following information regarding his observations that occurred on the day of the Smith drowning:

- Sunderland stated that he and Smith have been friends for several years. Sunderland introduced Smith to his wife and every summer for the past ten years Sunderland and Smith along with their family's vacation together. The families usually vacation in Ocean City, NJ but this year they decided to rent a beach front condominium in North Wildwood, NJ.

- Earlier in the day of July 27, 2012 Sunderland and Smith had been out fishing in Sunderland's boat. Sunderland advised that he docked his boat at the condominium complex marina for the week. After the fishing trip, Sunderland and Smith returned to their condominium in the afternoon then decided to walk to the beach.

- The Sunderland and Smith families established a position on the beach in the area of Surf Avenue which is a protected beach in North Wildwood. Sunderland, Smith and their two daughters decided to take a walk on the beach in a north direction toward the condominiums while the rest of the family members remained at Surf Avenue beach.

EXHIBIT J 9
Sunderland-5
3/22/16 (R)
PENGAD 800-631-6989

- Sunderland stated the four walked almost to the end of the beach where a rock wall meets the Hereford Inlet and turned around proceeded back toward the Surf Avenue beach.

- Sunderland stated that he and his daughter were walking behind Smith and his daughter side by side in ankle deep water. Approximately 100 feet in front of them was a man fishing. The fisherman was standing in knee deep water approximately 25 feet from shore.

- Suddenly ~~Smith and his daughter fell into the water. Simultaneously Sunderland and his daughter also fell into the water~~. Sunderland stated that the current was very strong and quickly pulled all four subjects out further into the ~~ocean from~~ the beach.

- Sunderland's daughter ~~immediately jumped on his back and~~ he was eventually able to swim to shore, but couldn't get back up on the beach due to an extreme drop off between the beach and the collapsed sand. Sunderland eventually reached the beach and began looking for Smith and his daughter.

- Sunderland stated that he observed Brandi (Smith's daughter) swimming so hard in the current that he could see her entire bathing suit top was out of the water. Sunderland also observed Smith swimming approximately 50 yards in front of Brandi.

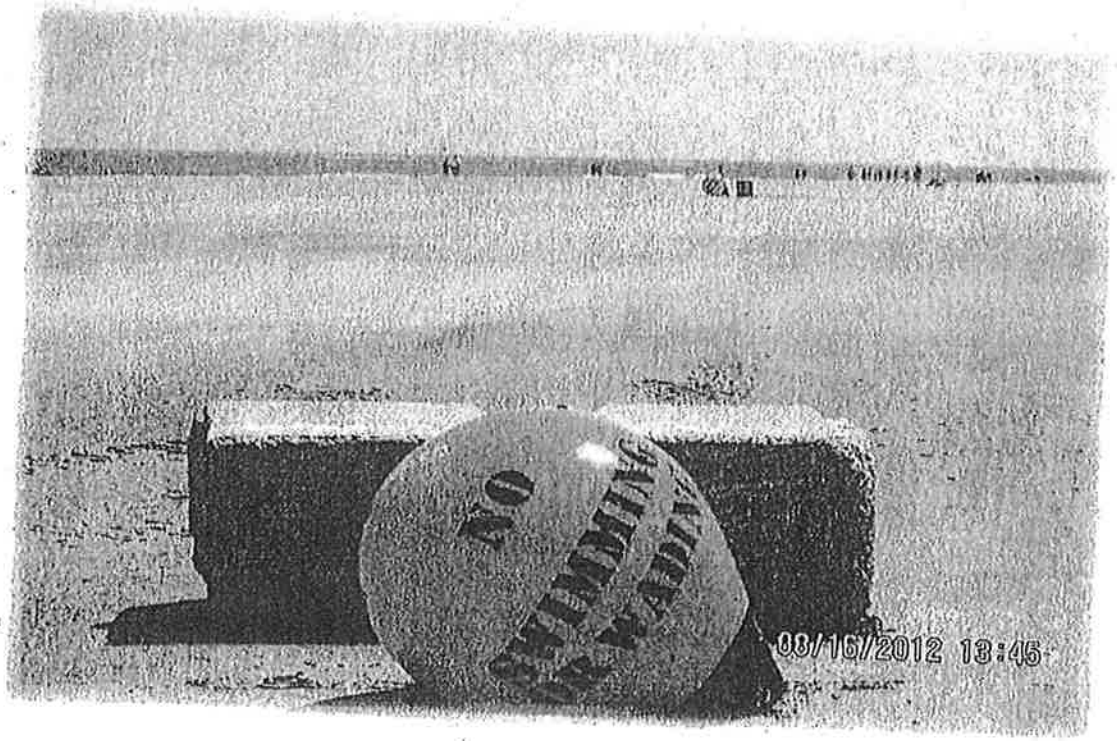
- Sunderland stated he was extremely tired from swimming for approximately five minutes with his daughter on his back. Sunderland began to ~~yell~~ and wave for help but there weren't many people in the immediate area. Suddenly a jet ski was launched from the beach's north end and the operator came up to Brandi and pulled her from the water. While the Jet Ski was pulling Brandi from the water, Sunderland spotted a NJSP Marine Unit boat headed in his direction. Sunderland began yelling and pointing in the area of George Smith to the Trooper. Sunderland thought that the Trooper saw Smith and was going to rescue him. Unbeknown to Sunderland, the NJSP Trooper allegedly received a Jet Ski rescue call in the same vicinity and passed by the area where Smith was swimming. Sunderland then ~~told~~ the Jet Ski operator to go rescue Smith. The Jet Ski operator raced out the area where Smith was last seen but was unable to locate Smith.

- Moments later rescue personnel arrived at the drowning scene and began administering first aid to the two girls and Sunderland. The NJSP Marine Unit boat came back to beach towing a jet ski that apparently was involved in an incident where the operator was separated from his ski in the breakers of Hereford Inlet. The NJSP Trooper told Sunderland ~~he had no idea George Smith was still in the water when he passed by traveling to the Jet Ski rescue assignment.~~ To help him with the Jet Ski,

- Sunderland and Smith's family members arrived on the scene and they began yelling into the water for George Smith. On July 30 at 1:13 AM the body of George Smith was observed in the surf at 21st Street in North Wildwood. George Smith was pronounced dead at the scene.

During the Sunderland interview Investigator DiJoseph noticed that since the City of North Wildwood O.P.R.A. request was filed on August 10, 2012 six (6) large concrete barriers were placed in the area of the Smith drowning. Each concrete barrier had a three foot round red floating mooring ball attached to it with the words "No Swimming or Wading" emblazoned on each side of the ball in bold black letters. The barriers were placed in the water's edge and on the beach.

***Photograph # 5** illustrates the concrete mooring ball with 'No Swimming or Wading' warning.*



While interviewing Sunderland at the proximate area of the Smith drowning, the jet skier that rescued Smith's daughter, Brandi Smith observed Sunderland standing on the beach and stopped to converse. The Jet Ski operator identified himself as Rob O'Donnell a student at Stockton College, Galloway, NJ.

<u>Photograph # 6</u> illustrates Jet Ski rescuer Rob O'Donnell and Scott Sunderland standing at the approximate location of the Smith drowning.



Exhibit 2D

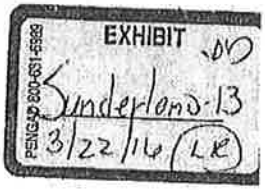
News (Http://Www.Philly.Com/News)
— New Jersey (http://www.philly.com/philly/news/new_jersey)

Family of drowned man wants Shore beach closed

Updated: JULY 24, 2014 — 3:26 PM EDT



Brad Smith, of Horsham, with his daughter.



by **Sam Wood**, Philly.com @SamWoodiii (http://twitter.com/SamWoodiii)

The drowning of a man who was swept out to sea from a beach at the Jersey Shore could have been prevented, his family said, if only the town had posted adequate warnings and prohibited access to the beach.

The family of George Bradley Smith filed suit today, alleging that negligence caused the Montgomery County man's death two years ago. The suit, filed in New Jersey Superior Court, names as defendants North Wildwood, Cape May County, and the state of New Jersey.

The suit, which claims the unprotected beach had a well-known "steep and unobservable drop-off at the area of the accident," asks the court to order the immediate closing of the beach and seeks unspecified damages.

Smith, 54, of Horsham, his young daughter, and another father-daughter pair were strolling along the shoreline in ankle-deep water near Hereford Inlet in North Wildwood about 5:30 p.m. on July 27, 2012. The beach was "unprotected," meaning it was not monitored by lifeguards.

As they walked in the surf near 2nd Street and Ocean Avenue, the sand gave way.

Scott Sunderland, Smith's best friend, recounted the event.

"The signs said 'No Swimming,' and we weren't, we were just walking," Sunderland said. "I took a step and dropped. All of a sudden, there was nothing under my feet."

Sunderland's daughter landed on his back and wrapped her arms tightly around his neck.

"I just started swimming," Sunderland said. "It was 30 seconds before I realized how far from the shore I was."

With his daughter hanging on, Sunderland struggled against a vicious undertow. When he finally touched sand, he fought the rip current to gain his footing. "It was almost like I was climbing to get onto the beach."

Meanwhile, Smith and his daughter had been swept by the current into the inlet. A strong swimmer, Smith reached his daughter and kept her head above water. A boy on a Jet Ski spotted them, pulled the girl onto his personal watercraft, and returned her to dry land.

Minutes later, Smith slipped under the surface and disappeared. His body would not be found for three days.

The unprotected inlet beach long had a reputation for being dangerous, according to the Smith family's attorney, Paul D'Amato of Egg Harbor.

Seven people had drowned there over a nine year period, according to D'Amato.

In a recorded interview, D'Amato said, a lieutenant on the North Wildwood Beach Patrol said the Hereford Inlet beach was "anything but safe to swim" and predicted drownings would happen again.

According to D'Amato, the lieutenant said that "closure, not simply posting warning signs, was necessary, but would not happen due to concerns about the economic impact on local commercial businesses, primarily oceanfront bars."

In a statement, North Wildwood Mayor Patrick T. Rosenello said he could not comment on the specifics of the lawsuit. "The City of North Wildwood takes its beach protection responsibilities quite seriously," Rosenello said. "In fact, there has never been a drowning incident at a protected beach in the City of North Wildwood in its 100+ years of existence."

D'Amato said his efforts to discover if there had been any drownings at the inlet beach since Smith's had been stonewalled by local authorities.

At a morning press conference in Egg Harbor Township, Smith's widow said she had been shocked to learn of the beach's dangerous reputation, which according to local law enforcement officials she spoke to, was well known by the local population.

"Why weren't we - or others - warned before we went to North Wildwood on a family vacation for the first time?" she said. "Why did we have to read news accounts, quoting local authorities, talking about unsafe conditions all after Brad's death."

She said that while her husband was missing, police would come by the house on the marina where they were staying every day and tell them of others who had been saved from drowning in the same area.

"We don't want this to happen to another family," she said, "and we wish that someone that knew of this dangerous area would have done what was right so that we would have never lost Brad in the first place."

Contact Sam Wood at 215-854-2796 or samwood@phillynews.com (mailto:samwood@phillynews.com). Follow @samwoodiii (http://twitter.com/samwoodiii) on Twitter.

Contact the Breaking News Desk at 215-854-2443; BreakingNewsDesk@philly.com (mailto:breakingnewsdesk@philly.com). Follow @phillynews (http://twitter.com/phillynews) on Twitter.

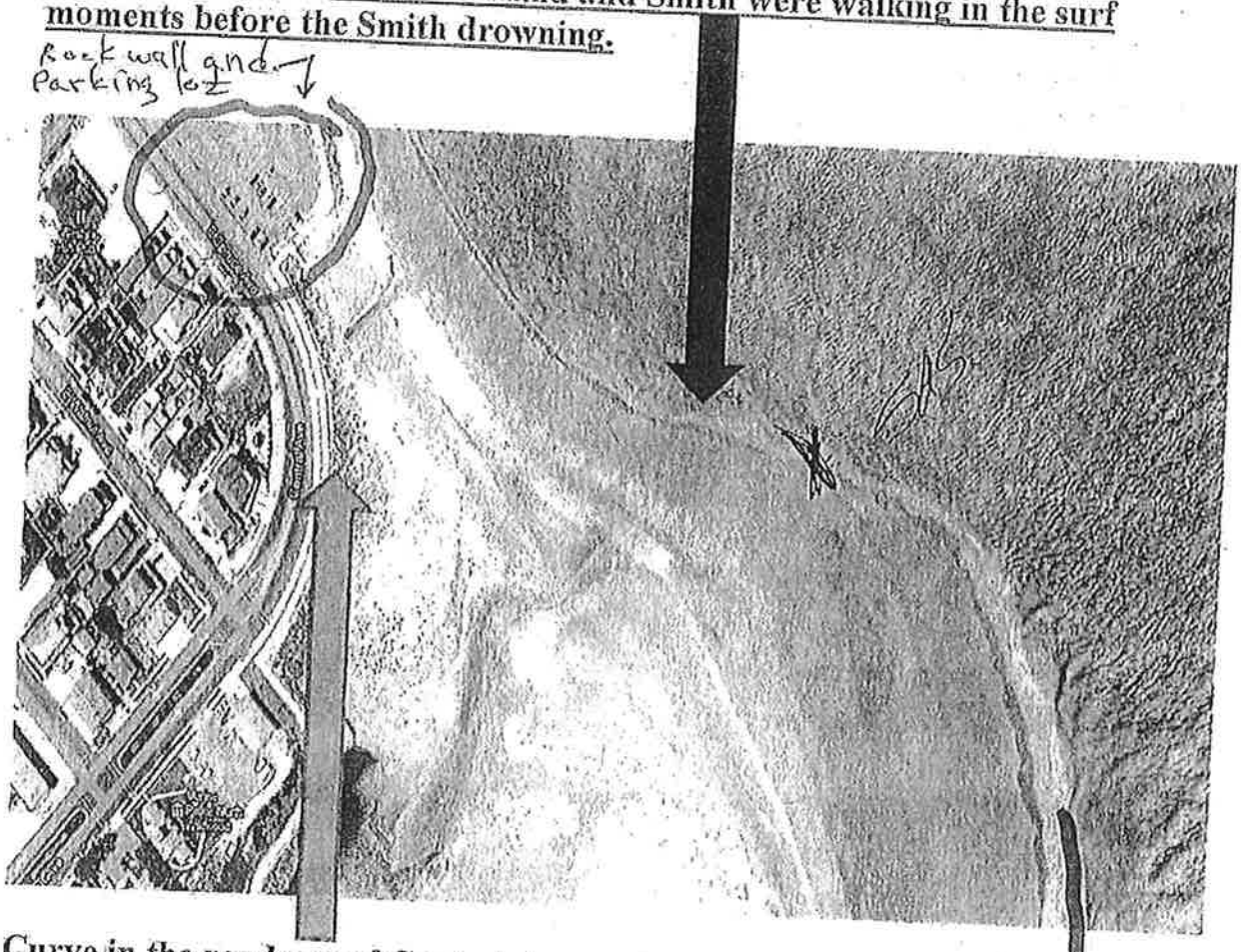
Published: July 24, 2014 — 4:29 PM EDT

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Exhibit 2E

Photograph # 7 illustrates an Aerial View of the North Wildwood NJ beach area known as Hereford Inlet and the approximate location of the Smith drowning.

Estimated area where Sunderland and Smith were walking in the surf moments before the Smith drowning.



Curve in the roadway of Central Avenue between E. Spruce Avenue and E. Walnut Avenue, North Wildwood, Cape May County NJ.

R. Kirvay

C. Atkinson

L. DiJoseph

A & K Investigations of New Jersey

EXHIBIT P-17
Sunderland-10
3/22/16 (LB)

Exhibit 3

COPY

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CAPE MAY COUNTY

* * *

SANDRA SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND, GEORGE BRADLEY SMITH,	:	
Plaintiff	:	DOCKET NO. CPM-L-331-14
vs.	:	
CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE, MARY DOES, ABC PARTNERSHIPS, and XYZ CORPORATIONS,	:	
Defendants	:	
BRANDY SMITH, by her guardian ad litem, SANDRA SMITH,	:	DOCKET NO. CPM-L-324-16
Plaintiff	:	
vs.	:	
CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE (1-5) fictitious names, MARY DOE (1-5) fictitious names, ABC PARTNERSHIPS (1-5) fictitious names, and XYZ CORPORATION (1-5) fictitious names,	:	
Defendants		

AIDEN SUNDERLAND

Oral deposition of AIDEN SUNDERLAND, taken at the D'AMATO LAW FIRM, 2900 Fire Road, Suite 200, Egg Harbor Township, NJ, 08234, on Wednesday, August 31, 2016, beginning at approximately 12:35 p.m., before Michele Matteo, RPR, CCR, License Number 30X100171200.

* * *

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(215) 731-9847

1134 Parliament Way
West Deptford, NJ 08086
(856) 848-4978

APPEARANCES:

PAUL R. D'AMATO, ESQUIRE
D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, NJ 08234
Paul@damatolawfirm.com
-- Representing the Plaintiff, Sandra Smith

JOSEPH C. GRASSI, ESQUIRE
OLIVER T. BARRY, ESQUIRE
BARRY, CORRADO & GRASSI, P.C.
2700 Pacific Avenue
Wildwood, NJ 08260
Jgrassi@capelegal.com
-- Representing the Plaintiff, Brandy Smith

A. MICHAEL BARKER, ESQUIRE
BARKER, GELFAND & JAMES, P.C.
Linwood Greene - Suite 12
210 New Road
Linwood, New Jersey 08221
Ambarker@barkerlawfirm.net
-- Representing the Defendant, City of North Wildwood

THOMAS P. LIHAN, ESQUIRE
STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
R.J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625
-- Representing the Defendant, State of New Jersey

ALSO PRESENT:
Lou DiJoseph
Scott Sunderland

* * *

(It is hereby stipulated by and among counsel for the respective parties that signing, sealing, certification and filing are waived, and that all objections, except as to the form of the question, are reserved until the time of trial.)

* * *

AIDEN SUNDERLAND, after having been first duly sworn or affirmed, was examined and testified as follows:

* * *

EXAMINATION

* * *

BY MR. BARKER:

Q. May I call you Aiden?

A. Yes.

Q. I'm Mike Barker. I'm going to ask you questions today. If at any time I ask you a question which is not clear for any reason, just stop me and let me know that you have a problem with the question.

Here's the main thing. Try not to answer the question until I ask it and try to let me get the whole question out before you start to answer it, even if you think you know what I'm going to say. Just wait. We try to only have one person speaking at a time so that the court reporter gets it down and doesn't have any trouble with two people speaking at the same time. It makes it an easier transcript to read if we can have one person speaking at a time. And I use the word "transcript", because when this is all done, it gets written up into a little booklet. That's what's called a transcript. And that transcript is used in the court to examine and cross-examine other witnesses and you, too, if you ever go to court on this. So it's very important that everything you say be truthful, accurate and complete. If you don't know an answer, just say "I don't know." If you can't remember, just say, "I can't remember." We don't want you to guess about anything. What we're here for is to get facts. That's the evidence that we can have. Those are facts.

If it's just a guess or an assumption, that's not a fact.

Now, if you don't know something but you know somebody else who does know it or you know it's written down somewhere, you can tell us that. That's fine. Say I don't know, but I know my dad knows, or I know someone else might know, just as an example.

Do you understand everything I've said so far?

A. Yes.

Q. Now, when you do answer questions, try to be clear about your answers, speak loudly enough so that we can all hear you. And if the question calls for an answer that's yes or no, just please answer it yes or no. In other words, don't use those common things that we all depend on, like shaking your head or nodding or some gesture like that. The reason we ask you not do that is because the court reporter doesn't want to interpret what you did, said. They want to hear it. So we got that one down, that's easy, right?

A. Yes.

Q. Good. Did I say anything that was confusing?

A. No.

Q. Okay. Do you want to ask me any questions before we get started?

A. No.

Q. What's your full name, Aiden?

A. Aiden John Sunderland.

Q. What was the middle name?

A. John.

Q. J-O-H-N?

A. Uh-huh. Yes.

Q. So instead of saying uh-huh, when it's a yes, say yes, and when it's an uh-uh, that would be a no. Okay?

A. Yes.

Q. Good?

A. Yes.

Q. Thank you. How old are you now?

A. 13.

Q. What is your birthday?

A. July 1st, 2003.

Q. So you just turned 13. Congratulations.

A. Thanks.

Q. You're welcome. Now, the event we're here to talk about is what happened at the beach. It was several years ago now. Do you happen to know what day it was?

A. No. I don't remember.

Q. Well, the date that we have for it is July 27, 2012. So that's about four years ago now. Do you understand that?

A. Yes.

Q. Okay. So at that time you were about nine years old, right?

A. Yeah.

Q. True?

A. Yes.

Q. Actually I suppose you had just turned nine, because it's in July. So July 27, 2012, you went to the beach. Who did you go with?

A. I went with my mom, my dad, my sister, my brother, and then Sandy, Brad, Kole and Brandy.

Q. Okay. Your mom's name is Andrea?

A. Yes.

Q. Did I pronounce it correctly?

A. Yeah.

Q. Okay. And your dad is Scott, right?

A. Yes.

Q. And you went, Aiden. And your sister?

A. Ally.

Q. A-L-L?

A. Y.

Q. Anyone else from your family?

A. Yet, my brother.

Q. What is his name?

A. Jett, J-E-T-T.

Q. So that took care of your whole family, right?

A. Yes.

Q. And then the other people were Brad Smith?

A. Yes.

Q. And Sandy Smith?

A. Yes.

Q. And Brandy Smith?

A. Yes.

Q. And did Brandy's brother go that

day? Did she have a younger brother that went that day?
A. Yeah, she had an older brother, Kole.
Q. Kole was older than her, right, okay, got it. Kole. Was he about your age?
A. No.
Q. How old was he?
A. At that time 13 or 12.
Q. Now, I understand that the day this happened was not the first day that you were at the beach; is that correct?
A. Correct.
Q. You got there the day before?
A. I'm pretty sure, yeah.
Q. Okay. So do you remember where you were staying?
A. No.
Q. Did you stay in the same place as the Smith family? Were you in the same building?
A. Yes.
Q. Yes?
A. Yeah.

Q. Okay. On the day of this event that we're here to talk about, do you remember what time you went to the beach?
A. No.
Q. What grade were you in then?
A. I don't remember.
Q. Nine years old, maybe you'll think about it and you'll let me know later. So do you know what grade you went into after this summer vacation that we're talking about now?
A. I don't remember.
Q. Okay. Do you remember where you went to the beach, what location on the beach you were located in a particular place? Do you remember that?
A. No.
Q. Do you remember whether you had been at the beach for a long time or a short time before this happened?
A. A little bit of time.
Q. A little bit would be how much?
A. Like a half hour, an hour.
Q. Okay. What did you do in that half an hour to an hour that you were at the beach

before this event?
A. I was with my sister and Brandy. We were playing in the sand in the tidal pools.
Q. Okay. You, Ally and Brandy were playing in the tidal pools?
A. Uh-huh. Yes.
Q. And you had been doing that for maybe a half an hour or an hour?
A. Yes.
Q. And then what happened?
A. And then my dad and Brad came down, and we started walking down the beach.
Q. Okay. Do you remember what you were walking toward, if anything?
A. No.
Q. You don't. Just walking?
A. Uh-huh. Yes.
Q. Did you walk a long distance or a short distance?
A. Short.
Q. And how long did you walk for?
A. Only like a few minutes.
Q. And after you had walked a few minutes, did you stop? What happened?

A. We started going into the ocean in this little water.
Q. Started going into the ocean in a little what?
A. It was very shallow water, like foot deep, not even.
Q. Okay. So you mean you continued walking in the water?
A. Yes.
Q. Were you walking in the same direction that you had been walking?
A. No.
Q. Were you walking in some other direction?
A. We just started walking towards the ocean.
Q. Oh, towards the ocean, okay. So what happened after you walked out into the ocean for a little?
A. We just continued walking, and then my dad, my sister, Brad and Brandy fell into the ocean. It dropped down.
Q. Do you know how that happened?
A. No.

Q. Were you walking with them when this happened?
A. Yes.
Q. Okay. Now, were you lined up in a single row or across? How would you describe it as you were walking?
A. I only remember being next to my dad. That's all I remember.
Q. Which side of your dad were you?
A. The left.
Q. Okay. So you were on your dad's left, correct?
A. Yes.
Q. And you and your dad were facing the same direction; is that correct?
A. Yes.
Q. And were you facing toward the ocean or back towards the beach, or how would you describe it?
A. Towards the ocean.
Q. Towards the ocean. And were you the two in front or were other people --
A. I don't remember.
Q. -- behind you? Do you know?

A. I don't remember.
Q. Or in front of you?
A. I think there might be -- Brad would be -- yeah, and Brandy would be behind us.
Q. Brad and Brandy you think were behind you; is that correct?
A. Yes.
Q. Okay. So were there only the four of you walking towards the ocean, then?
A. Yes.
Q. And as the four of you were walking towards the ocean, you could not see Brad and Brandy, could you, they were behind you?
A. I think so.
Q. You think so?
A. Yes.
Q. Were they right behind you, or like a short distance behind you, or far behind you?
A. Right behind us.
Q. So you are basically a group walking towards the ocean?
A. Yeah.
Q. Now, as you're doing that, did something happen?

A. Yes, we were walking in the shallow water, and then it just dropped down into the deep water.
Q. Did you and your dad -- if you were in the front, and Brandy and Brad were behind you, did you and your dad go in the water first?
A. I didn't go in the water. My dad and my sister went in the water and Brad and Brandy did.
Q. Oh. So your sister -- where was she located? Was she on the right side of your dad?
A. I don't remember.
Q. Okay. So who went in the water that you saw?
A. My dad and my sister and then Brandy went in.
Q. So to -- just for accuracy for the record, when your dad went in the water your sister -- whose name is?
A. Ally.
Q. She went in the same time?
A. Yes.

Q. And did you see Brad and Brandy go in the water, also?
A. No, but I know they did go in -- I saw them afterwards.
Q. After they went in?
A. Yes.
Q. Okay. And do you know why you didn't go in?
A. No, I don't remember.
Q. What do you remember happening after you saw them go in the water?
A. My dad get -- my dad and my sister got out of the water, and I took my sister back to the beach, and then we started drawing in the sand.
Q. How did your dad and your sister get out of the water?
A. My dad had my sister on his back, and then he swam -- he tried to swim to the beach -- or to the sand.
Q. Did you see him doing that?
A. Yes.
Q. And did he make it to the sand?
A. Yes.

Q. And then what did he do?
A. He started to try to get help for Brandy and Brad.
Q. What did he do to get out of the water is what I was asking.
A. He climbed out -- he just climbed up -- there was a drop, a wall, and he tried to climb up, and when he did he gave me my sister, and I took her back to the beach.
Q. How big was she?
A. Not that very tall. She was -- I don't remember.
Q. When you say gave her to you, I'm picturing -- what does that mean, like he picked her up and gave her to you?
A. Yeah, and I carried her.
Q. You carried her out to a more sandy place?
A. Yeah.
Q. More like land; is that right?
A. Yes.
Q. And that's where you all sat down and started playing in the sand?
A. Yes.

Q. Did anybody else come over and play with you and your sister at that point?
A. No.
Q. You just waited there and played?
A. Yes.
Q. Do you remember anything else happening there?
A. No.
Q. Okay. Do you remember anything else happening that day?
A. Just my dad trying to get help for Brandy and Brad, because they were going out into the ocean.
Q. And how did you see him try to get help?
A. He was just waving and trying to get someone's attention.
Q. Did he get someone's attention?
A. I don't remember.
Q. Did you see anyone else around there?
A. I don't remember.
Q. Okay. Did you see Brad and Brandy again?

A. No.
Q. So the last time you remember seeing them is when they went into the water?
A. Yeah.
Q. When they had been walking behind you?
A. Yes.
Q. And then whatever happened to you after you were playing on the sand with your sister, what happened next?
A. I don't remember.
Q. Do you remember you got off the beach that day, where you went, who took you or anything along those lines?
A. I remember my mom and Sandy coming to us.
Q. Walking up to you?
A. Yes.
Q. What do you remember them doing or saying when they walked up?
A. I don't remember.
Q. Do you remember where you went from there?
A. No.

Q. Do you remember anything that happened that day but later in the day or the night?
A. We went to the hospital to check to make sure Brandy was okay and my dad and my sister.
Q. Oh, okay. Well, did you see a doctor or anybody at the hospital?
A. No.
Q. Did your dad?
A. Yes.
Q. And did you learn whether your dad was okay or not?
A. Yes.
Q. What did you learn?
A. It was -- I just learned that he was okay, because they were just checking if he swallowed any salt water.
Q. But he was okay?
A. Yes.
Q. And what about your sister?
A. She was also okay.
Q. Okay. And did you see Brandy at the hospital?

A. Yes, I think so.
Q. You think or you --
A. I don't remember.
Q. Okay. Who else do you remember seeing at the hospital?
A. I don't remember.
Q. Okay. Just a minute, please.
After the hospital, after you were at the hospital and you found out that your dad was okay, your sister was okay, you were there with your mother, your father --
A. My brother and my sister.
Q. And your brother. That would be Jett?
A. Yes.
Q. When you went for the walk on the beach, where was Jett?
A. He was with Kole, my mom, and Brandy (sic).
Q. He was with Kole, your mom, and who?
A. Oh, and Sandy.
Q. And Sandy.
Q. Where did you go after the hospital?
A. I don't remember.

Q. Did you go home the next day or that night?
A. I don't remember.
Q. I'm going to show you a photograph. It's been marked before, and it's got on the top of it the words March 14, 2012. Don't worry about that. That's because it's an aerial photograph, and it happened to be taken at that time.
A. Okay.
Q. It doesn't mean that this is exactly the way the place might have looked when you were at the beach. Do you understand?
A. Yes.
Q. But I'm just going to show you this -- Mr. D'Amato will hand it to you -- but the idea is if that refreshes your recollection at all about where you were on the beach or where this happened, if it's helpful at all, you can tell us and maybe point something out, and if it's not helpful, you can tell us that, too. All right?
A. Yes.
MR. D'AMATO: At what point?

MR. BARKER: When they went walking down the beach. Let's start with that. If that helps.
MR. D'AMATO: Mr. Barker is asking you if in looking at this, would you be able to point somewhere on that aerial photograph, I guess, where you were when you first started walking, and then he'll have some follow-up questions.
THE WITNESS: No, I don't recognize. I don't remember.
BY MR. BARKER:
Q. And when you were walking and people were -- or your dad went in the water, does that show up on there at all, if you can remember anything that --
MR. LIHAN: Just objection to the form.
THE WITNESS: No, I don't think so.
BY MR. BARKER:
Q. Okay. Thank you.
MR. D'AMATO: Are we going to

mark this for identification, or should we just say this is the photograph that -- aerial photograph dated March 14?
MR. BARKER: I don't mind if we mark it. You can put it on the --
MR. LIHAN: Or do you want to identify it by its name from a prior deposition?
MR. D'AMATO: What was the marking you have?
MR. LIHAN: I have it -- and I'm pretty sure that it's the same photograph -- Sunderland-2, taken 3/22/16.
MR. D'AMATO: Perfect. Thank you.
MR. BARKER: Is yours blank?
MR. LIHAN: Yes.
MR. D'AMATO: I have no questions at all.
MR. LIHAN: Not here.
MR. BARKER: I have to see if

I do.
MR. D'AMATO: All right.
* * *
(Whereupon, a discussion was held off the record.)
* * *
BY MR. BARKER:
Q. Did you see anyone come out of the water, other than your dad and your sister?
A. No.
Q. Did you ever speak to anyone and tell them what you saw before coming here today and telling us?
A. No.
Q. Did anyone ever ask you questions about what happened?
A. No.
Q. Is this the first time you are telling this information?
A. Yes.
Q. Did you ever speak to anyone else who saw or knew what happened that day?
A. No.
MR. BARKER: That's all I

have.
MR. D'AMATO: Okay. Thank you.
* * *
(Witness excused.)
* * *
(Whereupon, the deposition was concluded at approximately 1:03 p.m.)
* * *

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* * *

WITNESS: AIDEN SUNDERLAND

QUESTIONED BY: PAGE

MR. BARKER: 4

EXHIBITS
* * *

NICOLE GAETA DEPOSITION EXHIBITS

NUMBER MK'D

(None marked.)

DEPOSITION SUPPORT INDEX

* * *

DIRECTION TO WITNESS NOT TO ANSWER

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None

REQUEST FOR PRODUCTION OF DOCUMENTS

Page
None

STIPULATIONS

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QUESTIONS MARKED

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None

CERTIFICATION

I, Michele Matteo, RPR, CCR, hereby certify that the foregoing is a true and correct transcript of the proceedings held in this matter, as transcribed from the stenographic notes taken by me.

Michele Matteo, RPR, CCR
LICENSE NUMBER: 30X100171200

(This certification does not apply to any reproduction of this transcript, unless under the direct supervision of the certifying reporter.)

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Exhibit 4

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

SANDY 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

ORIGINAL

* * *

Videotaped Oral Sworn Deposition of **ALLY SUNDERLAND**, held at the D'Amato Law Offices, 2900 Fire Road, Suite 200, Egg Harbor Township, New Jersey, on Tuesday, March 22, 2016, commencing at 10:37 a.m., before Lisa Reagan, CCR in the State of New Jersey, there being present:

* * *

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FAX: (856) 384-2779
email: office@word4word.net

A P P E A R A N C E S:

D'AMATO LAW OFFICES
BY: PAUL R. D'AMATO, ESQUIRE
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
and
BARRY, CORRADO, GRASSI & GIBSON, P.C.
BY: JOSEPH C. GRASSI, ESQUIRE
2700 Pacific Avenue
Wildwood, New Jersey 08260
Attorneys for the Plaintiffs

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
BY: BRIAN HUNKINS, DAG
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
Attorneys for the Defendant
State of New Jersey

BARKER, GELFAND & JAMES
BY: A. MICHAEL BARKER, ESQUIRE
210 New Road
Linwood, New Jersey 08221
Attorneys for the Defendant
City of North Wildwood

Also Present: Tom Zanaras, Videographer
Lou DiJoseph, Investigator
Scott Sunderland

I N D E X

* * *

WITNESS: ALLY SUNDERLAND

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(DVD was marked for purposes of identification as Exhibit Sunderland-1.)

(Photograph dated 3/14/12 was marked for purposes of identification as Exhibit Sunderland-2.)

(Photograph was marked for purposes of identification as Exhibit Sunderland-2A.)

(Five-Page Statement with Photographs was marked for purposes of identification as Exhibit Sunderland-3.)

(Photograph was marked for purposes of identification as Exhibit Sunderland-4.)

(Five-Page Statement with Photographs was marked for purposes of identification as Exhibit Sunderland-5.)

(Four Photographs were marked for purposes of identification as Exhibits Sunderland-6 through Sunderland-9.)

THE VIDEOGRAPHER: Today is March 22nd, 2016. This is the videotape deposition of Ally Sunderland. We're going on the record. The time is 10:37 a.m. The appearance of counsel will be noted in the

transcript. Will the court reporter, please, swear in the witness?

ALLY SUNDERLAND, after having been first duly sworn, was examined and testified as follows:

* * *

THE VIDEOGRAPHER: Thank you. You may proceed.

EXAMINATION BY MR. BARKER:

Q. Hi, Ally, I'm Mike Barker. I'm going to ask you some questions today, but before we get started I'll give you a little idea about how we ask the questions. All right?

Just like the court reporter said a minute ago, you have to answer all the questions verbally. So when I ask you a question and you want to answer yes or no, you can't do it just shaking your head. You have to actually tell us yes or no. The reason we say that is because everything that you say here today gets written down by the court reporter, the lady to your left. She makes it into a booklet, a little book, and in there will be all the words that are said here today. So if you just shook your head, we

might miss that or somebody might misinterpret it. So we ask that you answer every question with a verbal response. That means speaking. Okay?

A. Okay.

Q. Good. Now, I'm going to ask you some questions and I'll be very short in most of the questions. They won't be long. And the idea is to keep them really plain, clear. If, for any reason, I ask you a question which is not really clear to you, you don't understand it or you're a little confused, just let me know. I'll be happy to go back and ask it another way. Okay?

A. Okay.

Q. Good, thanks.

Now, we won't be long, but if you do need to take a break at any time, we can take a break. All right?

A. Okay.

Q. Okay, good. And do you know what it means to take an oath to tell the truth?

A. Yeah.

Q. I'm sorry?

A. Yeah.

Q. Yeah, okay. So that's what you did before you started here today, right?
A. Yes.
Q. Okay. So when we do these things for reasons that a Court asks us to do them, it's very important that whatever you say be truthful, accurate and complete. All right? Do you understand all that?
A. Yes.
Q. The reason is because people will look at this one day and they'll see what you are saying and they're going to count on it.
A. Okay.
Q. And the judge may use it for reasons in a courtroom or some of the lawyers may use it to ask other people questions. So we don't -- we don't want to have anything in there that's really just a guess, right, so I'm going to ask you things that happened a good while ago, and if you don't remember something, you can tell us you don't remember. All right?
A. Okay.
Q. That's a perfectly good answer. We all understand that. If you don't know the

answer to something, you can say "I don't know." That's a perfectly good answer. We all understand that. We don't want you to guess. Don't stretch because you're trying to be helpful. Don't worry about that. Just tell us what you know, what you don't know, and don't guess. All right?

A. Okay.

Q. Okay, good. Now, what's your birthday?

A. April 26th, 2005.

Q. And did you say 26?

A. Yes.

MR. D'AMATO: Can we go off both records?

THE VIDEOGRAPHER: Going off the record, 10:42.

(Discussion off the record.)

THE VIDEOGRAPHER: We're back on the record, 10:42.

BY MR. BARKER:

Q. Ally, what's your full name?

A. Ally Amelia Sunderland.

Q. Ally Amelia Sunderland?

A. Yes.

Q. How old are you right now today?
A. Ten.
Q. The event that we're going to talk about today happened on July 27th, 2012. That's just about four years ago. So do you know what we're here to talk about today?
A. Yes.
Q. Do you remember that day a little?
A. Yes.
Q. How old were you then? Ten minus four would be?
A. Six.
Q. Right. So you were about six?
A. Yes.
Q. More or less, right?
A. Yeah.
Q. Where do you go to school now?
A. Poquessing Middle School.

MR. BARKER: How do you spell that, dad?

MR. SUNDERLAND: Really?

MR. BARKER: You don't know?

MR. SUNDERLAND: No, I'm not a great speller.

BY MR. BARKER:

Q. What grade are you in?
A. Fifth.
Q. Sorry?
A. Fifth.
Q. And when this happened about four years ago, what grade were you in, if you were in a grade?
A. First.
Q. And it happened in the summer, so had you already finished the first grade?
A. Yeah.
Q. But you were only six. Did you start school early?
A. I don't know.
Q. You don't know, okay. Just wondering.
Do you remember going to the beach with your family --
A. Yes.
Q. -- that year, right?
A. Yes.
Q. Was that the first time you had ever been to that beach?
A. Yeah.
Q. And who did you go to the beach with?
A. My mom, my dad, my brothers, and my

friend and her family.
Q. Okay. Your mom and your dad and your brothers. There's two of them?
A. Yes.
Q. What are their names?
A. Jett and Aidan.
Q. Aidan is one and Jett's the other?
A. Yes.
Q. And how old were they? How old are they now?
MR. SUNDERLAND: If you don't know, you don't know.
THE WITNESS: Jett is 16.
BY MR. BARKER:
Q. Now, how old is Aidan now?
A. I don't know.
Q. Okay. Well, when you first went to the beach that day, who did you go with? Who was in your family group going down to the beach?
A. My parents and Jett and Aidan and my friend and her parents and her brother.
Q. What was your friend's name?
A. Brandi.
Q. And her parents, right?

A. Yes.
Q. Do you know their names?
A. Sandy and Brad.
Q. And Brad, right. And did your friend have a brother with her that day?
A. Yeah.
Q. Who was that?
A. Cole.
Q. Cole. So did all those people that you just mentioned, your mom, your dad, Aidan, Jett, Brad and -- what's his wife's name?
A. Sandy.
Q. -- Sandy and their two children, Cole and Brandi, right?
A. Yes.
Q. That was the whole group?
A. Yes.
Q. And where did you go on the beach? Do you know?
A. No.
Q. Did you come to the beach in the afternoon or the evening? Do you know?
A. I don't remember.
Q. And did you set up on the beach someplace like with towels and --

A. Yeah.
Q. -- chairs and things like that?
A. Yes.
Q. Yes?
A. Yes.
Q. And did you play on the beach for a while?
A. Yes.
Q. And did you go in the water?
A. Yeah.
Q. And were you near a lifeguard?
A. I don't remember.
Q. And about how long were you there playing?
A. Maybe like three hours.
Q. Okay. And then what happened after about three hours?
A. I don't know.
Q. You don't remember?
A. No.
Q. Did there come a time when everyone was going to leave the beach?
A. Yeah.
Q. Did you leave the beach?
A. Yeah.

Q. Who did you leave with?
A. My mom and Aidan and Jett.
Q. Okay. Before you left the beach with your mom, Aidan and Jett, did anybody go for a walk that day?
A. Yes.
Q. Who went for a walk?
A. Me, Brandi and Brad.
Q. What about your dad?
A. Yeah.
Q. He went, too?
A. Yes.
Q. Okay. So there were four people walking?
A. Yes.
Q. And do you know why you were going for a walk that day?
A. No.
Q. Were you going with your dad?
A. Yeah.
Q. And when you left to go, were you all walking together?
A. Yes.
Q. Were you walking straight across or one behind the other?

A. We were walking straight across.
Q. So one person was closer to the ocean and one person was closer to the land?
A. Yeah.
Q. And as you were walking down the beach -- you were walking down the beach, I guess, right?
A. Yes.
Q. Were you near the water?
A. Yes.
Q. Were you in the water?
A. Yeah.
Q. Who was next to you?
A. Brandi.
Q. Okay. So who is on which side?
A. My dad was on my left side and Brandi was on my right side.
Q. Okay. So who is closer to the ocean?
A. Brandi.
Q. And then you and then your dad?
A. Um-hum.
Q. And then who is on the other side of your dad?
A. Brad.
Q. And is that the way the four of you

just kept walking?
A. Yeah.
Q. Straight across like that?
A. Yes.
Q. And were you talking to anybody while you were walking?
A. No.
Q. And was anybody talking to you?
A. No.
Q. And what were you doing as you were walking? Anything special?
A. No.
Q. Just walking?
A. Yes.
Q. Okay. And did you walk a good distance, like a far way?
A. Yeah.
Q. And then did there come a time when you stopped walking and walked back?
A. Yeah.
Q. Do you know where you walked to before you turned around to come back?
A. We went to the place where the drop-off was.
Q. And then you turned around and walked

back? Do I have it right?
A. I don't really remember.
Q. Okay. So you remember walking on the beach, though, right?
A. Yes.
Q. And you don't really remember whether you got to a point and turned around and came back or not? You don't remember that?
A. Yeah.
Q. So as far as your memory goes, as far as what you can remember, was everybody walking in the same kind of positions, like you said, Brandi, then you, then your dad and then Brad?
A. Yeah.
Q. And were you in those positions when you got to the point where you said there was a drop-off?
A. Yes.
Q. Okay. Now, as you are walking up to the place where you said there was a drop-off, how far in the water were you? That means how deep is the water as you're walking?
A. Not very deep at all.
Q. Do you remember?

A. No.
Q. Do you know how deep the water was for Brandi?
A. No.
Q. Okay. Do you know how deep the water was for your dad?
A. No.
Q. And do you know how deep the water was for Brad?
A. No.
Q. But you say you came to a point where you called it a drop-off, right?
A. Yeah.
Q. Had you ever heard the word drop-off before?
A. No.
Q. Is that your word?
A. Yeah.
Q. So as you are walking, how did you know that there was a drop-off?
A. Well, we just fell in.
Q. You just walked into it?
MR. D'AMATO: She said fell in.
BY MR. BARKER:
Q. Did you fall in?

A. Yes.
Q. So you are walking, right, and then what happens? Do you just like step?
A. Yeah.
Q. And then you were in the water?
A. Yeah.
Q. Okay. As you walked and stepped and walked into the water, did anybody else do that?
A. Yeah, Brandi and Brad did, and I was on my dad's back.
Q. Okay. So everybody kind of walked into the water at once?
A. Yeah.
Q. As far as you remember, everybody goes in at the same time?
A. Yeah.
Q. And as everybody goes in at the same time, you find your dad and get on his back?
A. Yeah.
Q. What else do you remember about being in the water?
A. I don't remember.
Q. Nothing else?
A. No.

Q. Do you know how you got out of the water?
A. Well, my dad was swimming and he got to the land.
Q. Okay. So you're on your dad's back, he swims some and he gets back to where you can get up on the sand again?
A. Yes.
Q. Okay. Do you remember seeing anything else?
A. No.
Q. Were you hurt when you went in the water?
A. No.
Q. When you came out of the water -- and your dad was out of the water, too, right?
A. Yeah.
Q. Okay. So what do you remember doing yourself after you got out of the water?
A. I was playing in the sand.
Q. Playing in the sand?
A. Yes.
Q. And what was your dad doing after you got out of the water?
A. I don't know.

Q. And did you see anybody else do anything after you and your dad were out of the water?
A. Well, Brandi got saved by a jet ski.
Q. Okay. Did you see that happen?
A. Yeah.
Q. Or did you just see the end of it?
A. I saw the end of it.
Q. What did you see?
A. I saw her getting lifted onto the jet ski.
Q. Did you say that you saw her getting lifted onto the jet ski?
A. Yeah.
Q. And who lifted her onto the jet ski?
A. The person who was riding the jet ski.
Q. Do you know who that person was?
A. No.
Q. Did you ever speak to that person again?
A. No.
Q. Well, actually, you never spoke to that person ever, right? Correct?
A. Yes.
Q. Let me show you a picture marked

Sunderland-8. Do you know anybody in that picture?

A. I know my dad.

Q. Which one is your dad?

A. This one (indicating.)

Q. The one with the red shirt?

A. Yeah.

Q. Who is the other person?

A. I guess the person that was riding the jet ski.

Q. But that's a guess. So I'm just asking you if you know if that's the same person or not.

A. No.

Q. You don't know, okay. That's it for that picture.

Did you ever talk to anybody else about this event, this happening?

A. No.

Q. Did you ever talk to your dad about it?

A. Yeah.

Q. When did you talk to dad about it?

A. A little bit ago.

Q. Just this morning, you mean? You can

tell me.
A. Maybe January.
Q. January of this year?
A. Yeah.
Q. So a couple months ago?
A. Yes.
Q. Okay. And what did you tell your dad about it?
A. I told him that I was on his back when it happened.
Q. Anything else?
A. No.
Q. And did your dad ask you anything else?
A. No.
Q. So the whole conversation was -- well, how did it start?
A. He asked me if I remembered if I was on his back.
Q. And you answered him?
A. Yes.
Q. And that was the whole talk?
A. Yeah.
Q. So other than that, have you had any talks with anybody else about what we have

been talking about today?
A. No.
Q. Did anybody else talk to you about what we have been talking about today?
A. No.
Q. Here's a question for you. This might test your memory. It will, but I'll ask it so that I know whether you have a memory of it or not.

Just before it came to the point where you took the step and you walked and went in the water, just before that, how deep was the water on you?
A. Like up to my ankles.
Q. And do you know how deep the water was on Brandi at that time?
A. A little bit higher I think it was.
Q. How do you know that?
A. Because she's taller than me and we were in the same position.
Q. And do you know how deep the water was on your dad?
A. No.
Q. And do you know how deep the water was on Brad?

A. No.
Q. Did any police people come around after this happened?
A. Yeah.
Q. Did you talk to any of them?
A. No.
Q. Did any people come that were rescue people?
A. Yeah.
Q. Did you talk to any of them?
A. No.
Q. No?
A. No.
Q. Just playing in the sand?
A. Yeah.
Q. We have a big photograph that generally shows the beach where we have been told you were walking. It's a large area. And I'm just going to ask you if, when I show you this photograph, if you can show us where you were when you say you went into the water. And if you can, tell us. If you can't, we understand. Okay? So here's the picture.
MR. D'AMATO: When you say "went into the water," you mean where she said she

fell in?

MR. BARKER: No, I mean where she went into the water. That's my question.

MR. D'AMATO: Okay.

THE WITNESS: I don't know.

BY MR. BARKER:

Q. You don't know?

A. No.

MR. BARKER: Thank you. I don't have anything further.

MR. HUNKINS: I think I have one real quick question.

* * *

EXAMINATION BY MR. HUNKINS:

Q. When you all suddenly went into the water, did you hear or see anything that we didn't already talk about today?

A. No.

MR. HUNKINS: Okay. That's all I have. Thanks.

THE VIDEOGRAPHER: This concludes the videotape deposition. Off the record. The time is 11:00 a.m.

(Deposition concluded.)

C E R T I F I C A T E

I, LISA REAGAN, a Certified Court Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination,

ALLY SUNDERLAND

was duly sworn by me to testify to the truth, the whole truth and nothing but the truth. I do further certify that the foregoing is a true and accurate transcript of the stenographic notes of testimony taken by me at the time, place and on the date hereinbefore set forth. 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 this action.

Lisa Reagan, CCR

LISA REAGAN, CCR

Certificate No. XI01671

Date: March 31, 2016

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Exhibit 5

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

SANDY SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND GEORGE BRADLEY SMITH,	:	CIVIL ACTION
Plaintiff,	:	DEPOSITION TESTIMONY OF: BRANDY SMITH
vs.	:	
CITY OF NORTH WILDWOOD, STATE OF NEW JERSEY, JOHN DOE, MARY DOE, ABC PARTNERSHIPS and XYZ CORPORATIONS,	:	
Defendants.	:	

TAKEN BEFORE: LYNN SMITH, a Certified Court Reporter of the State of New Jersey, License No. XI01520, at the D'Amato Law Firm, 2900 Fire Road, Suite 200, Egg Harbor Township, New Jersey 08234, on Tuesday, March 1, 2016, commencing at 10:05 a.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

APPEARANCES:

D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
BY: PAUL R. D'AMATO, ESQUIRE
For the Plaintiffs

BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
BY: A. MICHAEL BARKER, ESQUIRE
For the Defendant, North Wildwood

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
(609) 777-4872
BY: BRIAN HUNKINS, DAG
For the State of New Jersey

Also present: Sandra Smith

Videographer: Tom Zanaras

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EXHIBITS

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Brandy-1	Photograph	13

(Exhibit attached)

VIDEOGRAPHER: Today is March the 1st, 2016. This is the videotaped deposition of Brandy Smith. We are going on the record, the time is 10:05 a.m. The appearance of counsel will be noted in the transcript.

Would the court reporter please swear in the witness.

BRANDY SMITH,

having been first duly sworn, testified as follows:

EXAMINATION BY MR. BARKER:

Q. Hi, Brandy. I'm Mike Barker. I'm going to be asking you some questions today. But before we get started, I'm going to give you some guidelines about how this proceeding will take place, this time with you here, and me asking you questions.

One of the first things we keep in mind is that when I ask you a question, and you're going to answer it, we need you to do that verbally. We need you, for instance, if it's a question that says, Is it daylight today? You would answer yes or no. You wouldn't just shake your head.

A. Okay.

Q. Understand?

A. Um-hum.

Q. The reason we do that is because this lady

sitting to your right is writing down everything that's being said, and, of course, if we just nod our head the way people do, that could be interpreted one of two ways. So, we don't want that to happen. So, we always ask for the answers to be verbal. That means spoken. All right?

A. Um-hum. Okay.

Q. Good. You're catching on right away.

A. Yeah.

Q. Now, you were given what's called an oath before we began today. That's where you raised your hand. Do you remember that just a moment ago?

A. Yes.

Q. Okay. That's very important. That means that everything you're going to say today must be the truth. You understand that?

A. Yes.

Q. Okay. So, I know you wouldn't intentionally tell me something that's not true. But here's the thing: Sometimes people, when the questions are being asked, they try to be helpful, and they search their memory, and they say things that maybe would just be a guess. Well, we can't do that. In this, that we do today, it's all about what you know. And when you don't know something, it's perfectly fine to

say, I don't know.

A. Okay.

Q. All right?

A. Um-hum.

Q. It's also perfectly fine to say, I don't remember. Those are perfectly good answers. We don't want you to guess, we don't want you to give us something out of a dream. We only want to know what you really know.

My objective here today is to get whatever facts you have about this event that occurred back in the year 2012.

Now, we're already up to 2016. So, that means it happened four years ago. So, that's a good long time ago. And you may not remember everything, and that's very understandable. And I may be asking some questions that call you on for areas of information that you -- that is, call on you to tell us about things that you never really even saw, or never really even heard. Because I don't know what you saw or what you heard, I'll be asking the question. And it's up to you to tell me, You know what, I don't know. I didn't see it, I don't know. I didn't see hear it, I don't know. So, that's okay. And then we just move on. Okay?

A. Um-hum.

Q. Now, Mr. D'Amato is here, and he represents your mom, family, and sometimes he might have an objection. If he does, or if any lawyer says the word objection, you just stop talking for a minute, and let the lawyers have a little discussion about whether you should or shouldn't answer the question. And then Mr. D'Amato will tell you, You can go ahead and answer it, I just wanted to put an objection on, or he may tell you, No, you can't answer it. All right?

A. Okay.

Q. But he'll be the one that speaks about that, if there's an objection, and you're looking to know, Well, what do I do now, he objected? Oh, my God. So, what do I do? Well, you wait. Just wait a minute, and then it will get straight. Okay?

A. Okay.

Q. Now, we may be a little while. So, if at any time you need to take a break for any reason, whatsoever, just say, I need to take a break, and we will. All right?

A. Okay.

Q. Okay. Now, since it happened four years ago, it was in July of 2012, that's the month and year

that we're going to be talking about today. And the day was July 27, 2012. That was the date on the calendar.

Do you understand that?

A. Um-hum.

Q. All right. Good. Now, at that time, you were how old?

A. I -- wasn't I -- I think seven.

Q. I think you were seven.

A. Yeah.

Q. Right? And what's your birthday, Brandy?

A. September 20th, 2004.

Q. And I'm going to ask you a question that might be hard. Do you know how tall you were on July 27, 2012, four years ago?

A. I'm not sure. I don't think I know.

Q. Right. And do you know how much you might have weighed when you were seven years old?

A. No, I don't know.

Q. No. Okay. Do you see a doctor called a pediatrician, a doctor for children? Do you see that kind of doctor?

THE WITNESS: Do I?

A. Yes.

Q. Yes. Do you know that doctor's name?

A. I don't know.
Q. Do you know whether you go to that kind of doctor once a year, or more?
A. Yeah, I think so.
Q. All right. And where is the doctor located; do you know?
A. Uht-uht. No.
Q. You don't know. Okay.
Now, I'm going to try to ask you some questions about that summer, first of all. I don't know, so you tell me. Were you staying at the shore that summer?
A. Yes.
Q. Okay. Had you done that in summers before that summer?
A. No.
Q. That was the first summer that you were spending the summer there?
A. Yes.
Q. Okay. And do you know where you stayed when you stayed there at the shore that summer?
A. Where I stayed?
Q. Yes.
A. Can --
Q. The house, the street.

A. No, I don't remember that.
Q. Okay. And you came with your parents to the shore for the summer?
A. Yeah. And some other family friends.
Q. Okay. That -- that July of 2012, were you there for the whole month?
A. I don't think so. I think -- I think we were only there for a couple, like, days, or maybe a week.
Q. Before this happened?
A. Oh, before it happened? I think it was a couple days into it. But I'm not sure.
Q. Okay. Now, before this happened, on that day, about what time did you get to the beach?
A. I don't know.
Q. Were you there in the morning?
A. I -- I don't -- I don't really know what -- like, if it was in the morning or the afternoon.
Q. Do you know if it was before lunch or after lunch that you first came to the beach that day?
A. I think after lunch. Maybe -- yeah, that's what I'm guessing. But I'm not sure either.
Q. Do you remember going down to the beach that day, when you first got there that day, going to the beach, do you remember who you went with?
A. No.

Q. Well, would I be correct in saying that you went to the beach with your mom that day?
A. Well, yeah. I went with my -- I think I went with my mom and her friend. That's what I think. Because my friend was there, too. So, that's all that I remember much, like, who being there.
Q. All right. Who was your mom's friend?
A. Andrea Sunderland.
Q. She's a grownup?
A. Yes.
Q. And she had some children with her that day?
A. Yes.
Q. And her husband, too?
A. Um-hum. Yes.
Q. And you were with your mom?
A. Yes.
Q. And your dad?
A. Yes.
Q. And your brother?
A. Yes.
Q. And anybody else?
A. No.
Q. All right. Did you all go to the beach together when you first got to the beach on that day? Were you all arriving at the same time and place?

A. Yes.
Q. Do you remember where you set up on the beach? That is, was there a place where you put down chairs and towels and that type of thing?
A. Yeah, there was -- it was close to, like, these little -- little, pool thing. Like, they were -- there was sand, and, like, there was little water in it. And then, like, not really big, but it was just little. It was near that.
Q. Well, I'm going to show you a picture. And you tell me if this picture helps you tell me where you and your family and friends went and set up on the beach.
A. Okay.
Q. Can you do that?
A. Yes.
Q. All right. I'm going to ask that the court reporter put a mark on this first. We're going to call it Brandy-1. All right? With today's date.
A. Okay.
SANDRA SMITH: I don't know if she understands what you're asking her, though. She's talking about where they went.
MR. BARKER: Well, we'll find out.
SANDRA SMITH: Okay.

MR. BARKER: Thank you.

(Photograph, received and marked for identification as Exhibit Brandy-1.)

Q. Now, Mr. D'Amato was good enough to give us this picture. It's got a date on it that says March 14, 2012. And it's taken by a satellite, and it's looking down. And that's the date that the satellite took the picture. So, it doesn't begin to -- it doesn't pretend to say that this is what it looked like that day, when you went to the beach in the summer. All right? But it's just generally something that might help us get an idea as to where you were when you're telling me about things that happened.

A. Okay.

Q. Now, the first question I was asking you was where did you go and put your things with your family and friends. And if this helps you remember where everything was put down, that's towels, or a cooler, or a chair, whatever, then, you know, you can mark it on there. And we have different colors, and you can pick any color you want, put an X where it was. If it helps you. I'm not trying to say it will help you. I don't know. All right?

A. Okay.

Q. And here's one more thing. Because your mom said something a minute ago that she didn't think you understood the question that I was asking. And I want to say to you, if you don't understand me, I -- I will ask it a different way. It's -- lawyers ask questions sometimes, and they don't do a good job of asking the question. So, don't feel like you should be shy about telling me you don't understand the question. Okay?

A. Okay.

Q. Okay. Why don't you take a minute and look at this picture. And here's some colors, if we need them. And I'm going to cut this off.

MR. D'AMATO: Did you ask her to mark something?

MR. BARKER: Not yet.

MR. D'AMATO: Yeah.

Q. So, Brandy, that's okay. Do you think now that you've looked at that picture, you would be able to put a dot or a circle at the place where you and the family had set up when you first got to the beach that day?

A. Yes.

Q. Okay. Why don't you put a circle where that is, then.

A. (Witness complies.)

Q. Okay. A little red circle. Right?

A. (Witness nods.)

Q. Okay. Now, we understand that, at some point, you went with your dad for a walk along the beach. Right?

A. Yes.

Q. Okay. Did that happen once, or more than once that day?

A. Taking a walk?

Q. Yes.

A. No. Only once.

Q. One time?

A. (Witness nods.)

Q. And this day that you went to the beach with your family and friends, had you ever been to that beach before?

A. No.

Q. So, on this particular trip to the beach, this summer, this was your first day at the beach?

A. Yes.

Q. And before this visit on this beach on the date -- are you okay?

A. Yeah.

Q. Yeah. Before your visit to this beach on

this particular day, had you ever been to this beach at any time before?

A. I don't think so.

Q. Okay. Now, before you went for your walk with your dad that day, and whoever else you might have been walking with, how long had you been at the beach?

A. I don't remember.

Q. Okay. Were you playing with your friends before?

A. Yes.

Q. What were you and your friends doing before?

A. We were in the little kind of tinier area, with the, like, water in the sand, and we were in that. And we were boogie boarding.

Q. Boogie boarding?

A. Like, on your stomach, and on the --

Q. Oh, we call that body surfing. Right?

A. Yeah.

Q. Okay. You were doing that. And you and your friends had been doing that for awhile before the time came to go for a walk?

A. Yes.

Q. Okay. And who were your friends?

A. Well, yeah, my friend Ally Sunderland, and

Aidan Sunderland.
Q. Now, you had a brother or sister with you that day. Who was that?
A. Kole, Kole Smith, my brother.
Q. He's your brother. Right?
A. Yes.
Q. Did he play in the water with you, Ally, and Aidan?
A. No. He was playing with their older brother, Jett Sunderland.
Q. Jeff?
A. Jett Sunderland.
Q. Jett. Okay.
So, Kole and Jett were playing together?
A. Yes.
Q. And you, Ally, and Aidan were playing together. Right?
A. Yes.
Q. Okay. And you had been at the beach for some time, but you can't say how long?
A. Yes.
Q. And then who came up with the idea, let's take a walk?
A. My dad and Scott Sunderland.

Q. Okay. And who was going to go on the walk?
A. Aidan Sunderland, Ally Sunderland, and my dad, Scott, and me.
Q. Which way were you going to walk? Strike that. That means wait a minute, I want to ask it again.
Which way did you walk? Do you remember which direction you were going? Let me tell you, if you look at that picture, towards the top of the picture, we call that going north. And to the bottom of the picture, we call that going south.
A. We were going north.
Q. North. And did you walk to a place, and then start to turn around and come back?
A. No. We were just -- we were still walking.
Q. North?
A. Yes.
Q. When this happened?
A. Yeah.
Q. Okay. How far had you gone before it happened? And you might say that in terms of distance, or time. You might say, for instance, oh, a football field. Or you might say, five or ten minutes. Whatever number. So, I don't know if you can answer the question. But I was just asking.

A. Maybe five or ten minutes.
Q. Okay. Was there anything along the way that you noticed as you walked north? Anything that you remember, like a landmark?
A. No, I don't remember anything.
Q. Okay. As you and the others in this little group were walking north, who was closest to the shore, who was more -- if I say inland, do you know what I mean?
A. Like, closer to the sand, like, closer to the beach, or closer to the ocean?
Q. Right. One would be closer to, like, if you're looking at the photograph, where the houses are, and one would be closer to the ocean.
A. Um-hum.
Q. So, who was closer to the part where the houses are?
A. The kids. Like, me, Ally, and Aidan, were closer to the houses, over on this side. And then the -- my dad and Scott were closer to the water. We were all, like, near the water, but closer -- we were closer to the houses.
Q. Um-hum.
A. Well, not, like, close to the houses. Just, like, right here. And then -- on -- like, right

here, and then right here, on those two.
Q. You're pointing to, like, where the sand meets the water?
A. Yeah.
Q. Okay. So, everybody's walking in an area where the sand meets the water; is that it?
A. Yes.
Q. Okay. And the children were closer to the part where the sand is, and the grown-ups were closer to the part where the water is?
A. Yes.
Q. Okay. And were you with your dad, like, right next to your dad, or --
A. Yeah.
Q. Or --
A. Yes. I think I was -- yeah, I think I was close to him. And then they were in front of us, just a little bit, like, close to us, but just, like, in front of us.
Q. Who's "they"?
A. Aidan, Ally, and Scott.
Q. So, they were a little bit in front of you?
A. (Witness nods.)
Q. And you were next to your dad, and you were on the side closest to the houses?

A. **Yes.**
Q. And your dad was on the side closest to the ocean?
A. **Yes.**
Q. And were you and your dad at -- walking in the water?
A. **Yes. Like, we -- it was only, like, to our ankles, at first, yeah. It was, like, we were still, like, right here, close to the sand, so you could -- you had your feet on sand for while you were walking.**
Q. Um-hum. And there came a time when you and your dad somehow went into the water. Right?
A. **Yeah.**
Q. How did that happen?
A. **I can't remember much, but, like -- how it happened, I -- my eyes were closed, and I didn't know -- like, I couldn't see anything much. And -- and it just happened. And then we ended up somewhere in the ocean.**
Q. Do you need to take a break? We're going to take a break. Okay?
A. **Okay.**
MR. BARKER: Why don't we go off the record and take a little break.
VIDEOGRAPHER: Okay. Going off the record. The time is 10:27.
(There was a brief recess.)
VIDEOGRAPHER: We're back on the record. The time is 10:33.
BY MR. BARKER:
Q. Before, when we were talking about how you fell into the water, you had told me that you were near your dad, and you were walking along the beach. Right?
A. **Yes.**
Q. I got all that right. Right?
And you recall walking where the water was, like, around your ankles. Right?
A. **Right.**
Q. And the same for your dad. Right?
A. **Right.**
Q. But then when you fell into the water, you fell into water that was deeper than ankle depth. Right?
A. **Yes.**
Q. Okay. So, before you fell into the water, had you and your dad walked more towards the ocean side, like, where it got up to your knees, or --
A. **No.**
Q. -- higher than the ankles?

A. **No.**
Q. It was always just at your ankles, that's all you remember?
A. **Yeah.**
Q. Did you, before you fell into the water, feel like you had stepped into a hole, or a what -- like, a dip, something lower? Did you ever feel that?
A. **I don't remember.**
Q. Okay. After you fell into the water, were you near your dad?
A. **Yes.**
Q. All right. So, you and your dad were in the water, and it was deep enough that you felt like you were, like, in a pool of water?
A. **Yes.**
Q. Okay. Could you feel the bottom?
A. **No.**
Q. All right. And were you close enough to hang on to your dad?
A. **No.**
Q. But then did there come a point in time when you and your dad got closer together?
A. **Yes.**
Q. Okay. Did you ever talk to anybody else, like Ally or Aidan, about whether they went into the water, and what happened to them?
A. **No. But I did talk to my mom before about it, and she said that Scott told her that he did fall into the water, but he grabbed onto the -- like, he held there, and Ally was on his back. Aidan got out. And then they got out. But we were -- but we were still in there.**
Q. You and your dad?
A. **Yes.**
Q. Okay. Did you ever talk to anybody else about what happened?
A. **No.**
Q. Okay. Before coming here today and talking to me, and the other people that are here today about what happened, did you ever tell anybody else what happened?
A. **Yes.**
Q. Who was that?
A. **Her name -- she -- like, her name was Dr. Debbie, I think.**
Q. Dr. Debbie? Where is she from?
A. **She's -- she -- I don't remember -- I don't know where she's from, but she's close to Horsham, in Pennsylvania where I live. I'm not sure where it was.**

Q. Do you remember what you told her?
A. **I told her, like, how I felt, like, what happened, too. And what my dad was telling me when we were in there.**
Q. What I was going to ask you, though, is did you tell her how it happened?
A. **I don't remember how it happened, so I didn't tell her, because I don't remember.**
Q. Okay. So, you're telling me now that you don't remember how it happened?
A. **Yeah. It was all just a -- like, a blur when it happened. But then, like, out of nowhere, I just ended up in the ocean.**
Q. Okay. I understand. Now, this Dr. Debbie, did you see her a long time ago, or just recently?
A. **Last year. But now we stopped going to her.**
Q. Okay. Do you go to anybody else like her?
A. **No. Not anymore.**
Q. Okay. Did you -- because you fell in the water, I know that you -- I know, because I saw it written down, that you swallowed some water. Right?
A. **Yes.**
Q. Yeah. Did that make you sick?
A. **No, not right away. But then -- yeah, not right away.**

Q. Okay. Well, after you were in the water, do you remember how you got out of the water?
A. **Yes. A Jet Ski guy, he came and he got me. And then they were looking for my dad.**
Q. Two Jet Ski guys were looking?
A. **Yes.**
Q. Right. But one, in particular, got you out of the water. Right?
A. **Yes.**
Q. Okay. And did you get hurt when you fell in the water?
A. **No.**
Q. Okay. Other than the fact that you had gotten some water in your mouth, and maybe swallowed some water, did you have any other kind of injury that happened?
A. **No, not that I remember.**
Q. Not that you what, sorry?
A. **Remember.**
Q. Okay. Did you go to the hospital and get checked out?
A. **Yes.**
Q. And did you just get checked out, and you were okay, and then left?
A. **Yes.**

Q. Okay. Did you ever see any kind of doctor after that, other than this Dr. Debbie?
A. **No.**
MR. BARKER: Okay. I'm going to take a break for a minute, please.
VIDEOGRAPHER: Okay. Going off the record, 10:40.
(There was a brief recess.)
VIDEOGRAPHER: We're back on the record, 10:46.
BY MR. BARKER:
Q. So, as you were telling me about walking north on the beach, with this little group, and you were near your dad --
A. **(Witness nods.)**
Q. -- were you looking down at the ground at any time? I call it ground, but it's the sand.
Did you look down at that at any point?
A. **I don't think so.**
Q. Okay. Now, just before you fell in the water, you said something to me along the line of, we were looking, and then I just -- we were in the water. Something like that.
So, I wanted to ask you, when you started to tell me, we were looking, where were you

looking before -- just before this happened, that you fell in the water, where were you looking? What were you seeing?
A. **I think we were -- we were mostly looking at each other, mostly, and then the ocean sometimes, and I think over near the houses.**
Q. Um-hum. And just before you fell in the water, I'm going to test your memory on this one, just before you fell in the water, do you remember what you were looking at?
A. **No. I -- it was just all, like, ocean, the whole time. Like, I think my -- my eyes were closed, and I couldn't see anything.**
Q. When you were walking?
A. **Oh, when we were walking, what were we looking at?**
Q. Yes.
A. **I don't remember.**
Q. All right. You just generally remember that as you were walking, before this happened, you were looking at each other, looking at the houses, looking at the ocean?
A. **Yes.**
Q. Do I have it right?
A. **Yes.**

Q. Okay. And just before you fell in the water, was there any reason that you were looking down at where you were going?
A. **No. I don't think so.**
Q. And just before you fell in the water, did you hear anybody say anything?
A. **No.**
MR. BARKER: And that's all I have for right now. Someone else might have some questions.
THE WITNESS: Okay.
MR. HUNKINS: No questions. Thanks.
MR. D'AMATO: Brandy, I have some questions.
THE WITNESS: Okay.
EXAMINATION BY MR. D'AMATO:
Q. And I -- I spoke to mom, and she told me it was okay to ask you these questions. Okay?
A. **Okay.**
Q. All right. After you fell into the water, okay, do you remember seeing your dad at any time, after you fell into the water?
A. **Yes.**
Q. And do you -- and where was he? How far was he from you?
A. **He was pretty close. Just, like, a little**

bit far away from me, not that far.
Q. Okay. Was he saying anything to you?
A. **Yes. He was saying my name a lot. And then I don't remember much about -- all I remember was him saying my name.**
Q. Okay. And you remember the fellow on the Jet Ski picking you up?
A. **Yes.**
Q. All right. When the fellow on the Jet Ski picked you up, where was your daddy at that point in time?
A. **I didn't see him anymore. I don't know -- I didn't know where he was.**
Q. All right. When you last saw daddy, what was he doing?
A. **Laying on his back.**
Q. Okay. Do you see how long this conference room is here?
A. **Yes.**
Q. Was he as far away from you as the length of this room, or more, or closer?
A. **Closer.**
Q. Okay. And what's the very last words you remember hearing daddy say?
A. **Brandy.**

Q. Okay.
MR. D'AMATO: I have nothing else.
MR. BARKER: Can I talk to you for a minute before we --
MR. D'AMATO: Yeah.
VIDEOGRAPHER: Going off the record, 10:51.
(There was a brief recess.)
VIDEOGRAPHER: We're back on the record. The time is 11:03.
EXAMINATION BY MR. BARKER:
Q. Brandy, during the break, Mr. D'Amato gave me a paper that was written by Dr. Debbie. And I'm going to ask you some questions to just make sure that I have it right about some things that happened, and when they happened.
Remember we said that the date of this event was July 27, 2012. Remember that?
A. **Yes.**
Q. Okay. And Dr. Debbie says that the first time she saw you was two years after that, approximately. Does that sound right to you?
A. **Yes.**
Q. And Dr. Debbie says that from the time of the accident up and time -- up until the time that you

first saw her, you had not spoken to anyone about what you saw and experienced on the date that you and your dad fell in the water. Is that true?
A. **Yes.**
Q. So, the first person you spoke to about your memories of this was when you spoke to Dr. Debbie about it two years after it happened. Is that true?
A. **Yes.**
Q. And after you had this experience on the date of July 27, 2012, which was in the summer, did you go back to school that year?
A. **Yes.**
Q. Okay. So, you would have been still seven, but almost eight when you went back to school. Right?
A. **Yes.**
Q. And what grade did you go into?
A. **I think second. I think -- I was going in -- I was either in third grade, and then I was turning eight -- oh, wait, no. I think I was in second. Yeah.**
Q. But when you went to school after this event at the beach, what grade did you go to?
A. **Second.**
Q. Second grade. Okay. And when you went to

second grade, did you finish second grade okay?
A. **Yes.**
Q. Did you do okay with the school courses?
A. **Yes.**
Q. Did you play at recess?
A. **Yes.**
Q. Did you do the things that the other children do in second grade?
A. **Yes.**
Q. Okay. And in third grade, did you do okay in school in third grade?
A. **Yes.**
Q. Okay. And did you do the things that the other children do in school?
A. **Yes.**
Q. And did you play at recess?
A. **Yes.**
Q. Okay. What grade are you in now?
A. **Fifth.**
Q. Okay. So, in fourth grade, did you go to fourth grade without any problems, moved up okay?
A. **Yes.**
Q. And when you went into fourth grade, did you do okay with your school subjects?
A. **Yes.**

Q. And did you do okay with your friends?
A. **Yes.**
Q. And did you play at recess?
A. **Yes.**
Q. And you did all the things that the other children do?
A. **Yes.**
Q. Okay. That was fourth grade.
Now, you're in fifth grade?
A. **Yes.**
Q. How are you doing in school?
A. **Good.**
Q. Okay. You have friends?
A. **Yes.**
Q. Okay. Do you do well in your school courses?
A. **Yes.**
Q. Okay. And did you do well in your school courses in those other years, like, second, third, and fourth grade?
A. **Yes.**
Q. So, are you a pretty good student?
A. **Yes.**
Q. Oh, that's nice. That's good.
Do you play any sports?
A. **Yes. Gymnastics, basketball, and dance.**

Q. That's a lot.
A. **Yeah.**
Q. Have you done that every year?
A. **Yes.**
Q. So, you did it in the second grade?
A. **Not gymnastics. But dance, and I think basketball, too.**
Q. Um-hum. What about in third grade, what did you do?
A. **I did dance and basketball.**
Q. And what did you do in the fourth grade?
A. **Dance and basketball.**
Q. And now, you're doing three things?
A. **Yes.**
Q. Dance, basketball, and what was --
A. **Gymnastics.**
Q. Gymnastics. That's kind of hard; isn't it?
A. **It's pretty easy now.**
Q. Is it?
A. **Yeah.**
Q. Is it scary?
A. **Sometimes.**
Q. I would think it's scary. Okay. How long have you done that?
A. **I just started gymnastics in the beginning of**

-- well, yeah, the beginning of 2016, and, like, near the end of 2015. And dance, I've been doing, like, for a lot of years. And basketball, I've -- I did that for, like, three years.
Q. I -- I don't know, but it seems to me you might be on the tall side.
A. **Yes, I am.**
Q. Is that true?
A. **Yes.**
Q. Oh, that's an advantage.
What about this: Before this fall, before this accident happened in July of 2012, you would have been in the first grade. Right?
A. **Yes.**
Q. What did you do in the first grade?
A. **I don't think I did much activities at school. But, like, at school, I did regular stuff. But I don't think I did after school activities much. I think I might have been doing dance at the Y.M.C.A., and, like, going to there, and doing camps, and just doing dance there.**
Q. How did you do in school in the first grade?
A. **I did good.**
Q. You did good?
A. **Yeah.**

Q. You've always done good in school?
A. **Yes.**
Q. And you still are doing good?
A. **Yes.**
Q. Very nice. Do you remember when you spoke to Dr. Debbie, if she would write things down when you spoke to her?
A. **Yes. She did write things down.**
Q. Did Dr. Debbie do anything for you, other than talk to you, and listen to you?
A. **No.**
Q. Did Dr. Debbie help you in any way? Did she do anything that helped you?
A. **Yes. She helped me get over, like, worrying, like, of everything, and feel better about myself.**
Q. And is that why you stopped going to see her, because she had made you feel better?
A. **Yeah.**
Q. All right. How far did you have to go to see Dr. Debbie at --
A. **She's pretty -- she was pretty close to us. We just had -- it was only, like, five minutes to get there after school.**
Q. Okay. So, now that you don't see Dr. Debbie, you have more time for your after school activities?

A. **Yes.**
Q. Okay. Do you think now that you have any reason to go back and see Dr. Debbie again?
A. **No, not really. Because I'm -- I don't worry anymore, and I'm way better than I was before.**

MR. BARKER: Thank you.

MR. D'AMATO: I have no follow-up questions.

MR. HUNKINS: I have no questions. Thanks.

MR. BARKER: That's all for today.

VIDEOGRAPHER: This concludes the videotaped deposition. Off the record. The time is 11:12.

(Deposition concludes at 11:12 a.m.)

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, BRANDY SMITH 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.

Lynn Smith, CCR

Certified Court Reporter
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Exhibit 6

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

SANDY 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.	:	CIVIL ACTION DEPOSITION TESTIMONY OF: JEFFREY COLE, SR.

TAKEN BEFORE: LYNN SMITH, a Certified Court Reporter of the State of New Jersey, License No. XI01520, at the North Wildwood City Hall, 901 Atlantic Avenue, North Wildwood, New Jersey, on Thursday, February 25, 2016, commencing at 12:09 p.m.

WORD FOR WORD REPORTING, LLC
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6 NORTH BROAD STREET, SUITE 202
WOODBURY, NEW JERSEY 08096
Ph. (856) 384-2770 Fax. (856) 384-2779

APPEARANCES:

D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
BY: PAUL R. D'AMATO, ESQUIRE
For the Plaintiffs

BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
BY: A. MICHAEL BARKER, ESQUIRE
For the Defendant, North Wildwood

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
(609) 777-4872
BY: BRIAN HUNKINS, DAG
For the State of New Jersey

Also present: Lou DiJoseph

Videographer: Tom Zanaras

INDEX

WITNESS	PAGE
JEFFREY COLE, SR.	
Examination By Mr. D'Amato	4

EXHIBITS

NUMBER	DESCRIPTION	Id.
P-61	Aerial Photograph	7

(Exhibit retained)

VIDEOGRAPHER: Today is February 25th, 2016. This is the videotaped deposition of Fire Chief Jeffrey Cole. Going on the record. The time is 12:09 p.m. The appearance of counsel will be noted in the transcript.

Would the court reporter please swear in the witness.

JEFFREY COLE, SR.,

having been first duly sworn, testified as follows:

EXAMINATION BY MR. D'AMATO:

Q. Chief, thanks for coming here today. The process that we're going through is called a deposition.

Have you ever undergone a deposition?

A. Yes, I've been involved.

Q. All right. When was the last time you had gone through this process?

A. Years, years.

Q. All right. As I told you, and counsel, this is not going to be a very long deposition. When I say that, maybe, hopefully, I can get it done in a half hour.

A. Okay.

Q. If I ask you a question that is not clear, just tell me, say, Paul, I don't understand -- the

question is not clear to me.
A. **Okay.**
Q. All right? Mike and I don't want you answering any questions that you truly don't understand.
Sometimes people are embarrassed to say I don't understand the question for fear that, you know, we're going to think that you're a dumb dumb. I got to tell you, we've heard the most accomplished attorneys ask questions that are just totally incomprehensible, and it's just that they have a lot on their mind.
A. **Right.**
Q. So, I hope you walk out of here thinking, Paul didn't ask me any tricky questions. These were, you know, just the facts.
A. **Okay.**
Q. Okay?
A. **Understood.**
Q. All right. Now, when did you start working for the City of North Wildwood; what year?
A. **I began actually getting a paycheck from the City of North Wildwood, I believe it was 1981, where I started as a part-time position, part-time paid firefighter.**

Q. Okay. And when did you become a full-time firefighter?
A. **For the City of North Wildwood, I became full-time in September of 1988.**
Q. And you're also a lifeguard, too?
A. **No. I had spent five years in the '90s in the Wildwood beach patrol as an EMT on the beach.**
Q. Oh, okay. As of today, your position is chief of the fire department?
A. **Yes, sir.**
Q. All right. Are you an EMT, too?
A. **Yes, sir.**
Q. All right. And do you function as an EMT for the City of North Wildwood?
A. **Yes, sir. When -- when needed. In my command position now, it's a lesser role. But as-needed, yes, sir.**
Q. Okay. Chief, when did you become chief of the fire department?
A. **I took over -- the chief was leaving in May of 2010, at which time I took over operations as deputy chief. And then I was appointed chief in September of 2010.**
Q. Okay. And if you had to explain to a bunch of first graders what your duties and

responsibilities are as chief of the North Wildwood Police Department, what would be your answer?
A. **Fire department.**
Q. Fire department, I'm sorry, excuse me.
A. **Basically, that I oversee the -- the operation of the fire department, the -- the areas of responsibility, I assign duties to subordinates. There's policy making. I oversee the budget. I oversee -- we're a combination department, paid and volunteer, so I oversee the entire part of the department. So, it's -- it's operations and administration.**
(Aerial Photograph is received and marked for identification as Exhibit P-61.)
Q. Okay. We're going to focus on a part of the North Wildwood beaches. And for all of the witnesses so far, the Chief Cavalier, the chief of the police department, I took an aerial photograph that we obtained from the Cape May County Engineer's Office.
A. **Okay.**
Q. For you, I've marked it as Exhibit 61. And I've kind of just very loosely circulated the area that I'm talking about.
A. **Okay.**
Q. Now, terminology is important. Doing the

research and investigation for this case, we have seen the area that's in red here -- okay?
A. **Okay.**
Q. -- referred to as Moore's Beach, Moore's Inlet Beach, and The Inlet Beach, and candidly, the police chief just added a new term that he uses, which is the Second Avenue Beach.
Now, with respect -- and everybody's a little bit different, but somewhat consistent.
What I just circled. All right?
A. **Um-hum.**
Q. If you could take the green marker, and where would you circle is Moore's Beach?
A. **Okay. Well, Moore's was -- was traditionally referred to as Moore's Beach, because there was an establishment there named Moore's Inlet. And that was -- that's kind of right off between Spruce Avenue and down towards the Central Avenue curve, which stops in the area of the lighthouse, so.**
Q. Okay. Could you then use that green marker.
A. **Yeah, I'll do my best. Because I can't see what streets are which. But I assume -- I'm going to say -- okay. I think I'm good here.**
I'm going to say that this is the curve here. So, I would say in --

Q. Okay.
A. **In that area.**
Q. Fine.
A. **Is what I determine to be Moore's Beach.**
Q. All right. Now, you can put the cap back on. All right?
What do you refer to the rest of the beach area that's in the red circle that I put on that Exhibit 61?
A. **There's the -- what I refer to it personally?**
Q. Yes.
A. **Lighthouse -- the lighthouse area beach, which is directly behind the lighthouse. And then beyond that is -- we normally call it like the First Avenue Beach, Surf Avenue beach. It's --**
Q. Okay. Here's what I want you to do.
A. **Okay.**
Q. Take the red marker, and, if you can mark for us what you call the Lighthouse Beach.
MR. BARKER: Excuse me. You already have a red marker on there.
MR. D'AMATO: Oh, I'm sorry. Excuse me.
MR. BARKER: Could you pick a different color?

A. **Blue?**
Q. Use the blue, yeah, thank you.
A. **No problem.**
Q. Thank you.
A. **Okay. Your question was, again, where I considered the Lighthouse Beach?**
Q. Lighthouse Beach, yeah.
A. **It's -- it's adjacent to the Moore's Beach. It's -- it's -- it's a smaller area.**
Q. Okay. You circled that in blue.
A. **Yes, sir.**
Q. All right. Now, then you, with respect to the remaining part of the beach on Exhibit 61, you used two street references. Correct?
A. **Yeah.**
Q. Okay. So, now, the next beach would be what?
A. **It's -- it's either the First Avenue Beach, or the Surf Avenue Beach. First, Second, or Surf. I mean, really, that's the designation. I --**
Q. All right. Just, if you could, circle that in black.
A. **Okay. I'd say the rest of this is pretty much --**
Q. Okay. Let me see that. All right.
All right. Now, with respect to

Exhibit 61, I -- I'm the one responsible for the red marking on here.
A. **Okay.**
Q. You did the green, the blue, and the black?
A. **Correct, sir.**
Q. Now, south of the black circle that you put on Exhibit 61, what do you call that beach area?
A. **That is the -- that's -- that's the Second Avenue Beach, The Inlet Beach.**
Q. Okay.
A. **It's kind of what we refer to it as.**
Q. Okay.
A. **It's sectorized, but each person kind of has their own --**
Q. Yeah. We've learned that. Okay?
A. **Yeah, yeah, yeah.**
Q. That's all right.
Now, let's take you to a specific time period.
A. **Okay.**
Q. 1981 up until Brad Smith's drowning in July of 2012.
A. **Okay.**
Q. '81 to 2012.
A. **Okay.**

Q. All right. Now, with respect to your employment in North Wildwood Fire Department, can you slowly give me a list of any and all activities that the North Wildwood Fire Department would have with respect to the beach area that has been circled in red by myself on Exhibit 61.
A. **We did not get involved in ocean/beach response for a long time in my initial career. Probably didn't happen until maybe 2010 or so. So, there was not -- not -- I can't recall, you know, a whole lot back through the years.**
Q. Maybe -- okay. You've narrowed it for me. And that's good.
So, now that you've narrowed it, let's just real quickly go over 1981 to 2010.
A. **Okay.**
Q. All right? If there was a drowning during that time period, what involvement, if any, would the North Wildwood Fire Department have in rendering services?
A. **Up -- up until that point, our -- we began EMS in 1995. So, our ambulance would have responded for patient care. Other than that, the actual fire department operation would have been, for instance, if it was at nighttime, to provide lighting. I do**

recall -- I don't remember what year it was, an instance in which I was working nighttime, a vehicle drove off the beach on Second Street. It was during September, during firemen's convention. And we provided a vehicle with lighting to assist in the operation.

Other than, you know, dune fires and things like that, that was pretty much it.

Q. Okay. During this time period, 1981 to 2010, was -- were EMS services part of the North Wildwood Fire Department?

A. From 1995. Prior to that, there was a separate volunteer rescue squad.

Q. Okay. And were the records that were maintained by the EMS in this -- you said private rescue squad?

A. Yes, sir.

Q. Was it a volunteer rescue squad?

A. Yes, sir.

Q. All right. If we wanted to look at those records relative to services rendered by EMS before 1995, do they exist?

A. I don't believe so. We have no records for them.

Q. All right. All right. I just want to stick

up to 2010.

A. Okay.

Q. We read something about a boat or boats that the fire -- that the fire department has that patrols the inlet area. Is that correct?

A. The volunteer fire department has two boats -- three boats, actually, I'm sorry. There's two separate companies, two separate stations of volunteer fire companies in the City of North Wildwood. And they both are -- though, they're under my direction, they're the responders with the boat. There is a boat assigned to Anglesea Fire Company, in which, periodically, there is -- they're out on the water.

Q. Okay. And where is the other boat? You said there's two boats.

A. The -- I said, actually, three. The boats are -- one of them's normally kept at the -- the -- they're out of water, obviously, in the wintertime. Anglesea's boat, the one I just mentioned, is kept in the fire station, it's trailered. It has a configuration, where it has wheels on it, so it can go over land; and then the wheels are retracted, so it can go in the water. The other two boats belonging to the 15th Street Fire Company are kept at

the North Wildwood Marina on Fifth and -- and New York Avenue, which is the bay.

Q. Now, let's narrow this. And I'm talking about before 2010. Okay?

A. Um-hum.

Q. These boats that -- they're owned by the City of North Wildwood, or the volunteer squad?

A. They were owned and -- or they're purchased by the volunteer fire companies. And I'd say that probably around -- it was before I was chief, but not that much more that they were purchased, I'm going to say the first one, maybe 2008, 2009, something like that.

Q. And before 2010, what involvement would you have relative to assigning duties to the operators of these boats that belong to the volunteer fire department?

A. None.

Q. Okay. How about now?

A. Let's -- the volunteers actually operate the boats on themselves. When there's a water emergency, there's -- there's a whole process that's involved. The boats are staffed by members of each of the volunteer fire companies. And they go to a position. Anglesea would go to the station to begin trailering

their boat, the 15th Street Station would go to the marinas to get the boats ready. And upon direction, start heading to where the incident is.

Q. Okay. You're familiar with where Champagne Island is?

A. Yes, sir.

Q. Okay. It comes and goes, doesn't it?

A. It does.

Q. Right. I have read a report that Mr. Barker gave me where a North Wildwood firefighter was in a Jet Ski or some boat, I think it was a boat, along with a member of the North Wildwood Beach Patrol, and they were doing patrols in the inlet area between the beach area that we see in 61 and Champagne Island.

Does that sound familiar to you?

A. No, sir.

Q. No. Do you know of any situations before Brad Smith's drowning where there would be a joint participation between the North Wildwood Fire Department and now the volunteer fire departments with the North Wildwood Beach Patrol in providing services in the inlet area near the beaches in Exhibit 61?

A. Not to my knowledge.

Q. Okay.

A. **No, sir.**
Q. All right. What are the names of these volunteer --
A. **Organizations?**
Q. Yes.
A. **Officially, it's the North Wildwood Volunteer Fire Company No. 1.**
Q. Say that -- North Wildwood --
A. **North Wildwood Volunteer Fire Company No. 1, which is referred to as the 15th Street Station, or officially, Station 2-1, because we're District 2.**
And the other one is Anglesea Volunteer Fire Company, which is Station 2-2.
Q. Okay. Now, if we were to go to the 15th Street building.
A. **Um-hum.**
Q. Where the North Wildwood Volunteer No. 1 is located, who would be there now, if anybody?
A. **Most likely, nobody.**
Q. Okay. How about the Anglesea?
A. **Most likely, nobody.**
Q. All right. Now, how about starting, let's say, in May to the end of September, okay, if we do the same thing, if we went to those two firehouses, would there be anybody there?

A. **No. There's -- they're volunteer. They're not staffed.**
Q. Okay. So, the only -- just equipment is kept at these two places.
A. **Correct.**
Q. Okay. Now, as the fire chief, are -- do you supervise the activities of these two volunteer fire organizations?
A. **I do.**
Q. You do?
A. **Operationally, not when it comes to social membership, or, you know, company business, so to speak.**
Q. Okay. You became the deputy chief in -- on May 20 --
A. **May 2010.**
Q. May 2010?
A. **Yes, sir.**
Q. So, from that point, up until Brad Smith's drowning, you were supervising the operational activities of these two volunteer --
A. **Yes, sir.**
Q. -- organizations?
A. **Yes, sir.**
Q. Okay. All right. Now, what exactly would

these volunteers do in the summer months with respect to the boats that we were talking about 10, 15 minutes ago?
A. **Elaborate a little bit more.**
Q. Yeah. Well, there's three boats. Okay? What do these three boats do in the summertime?
A. **Again --**
Q. No, you know what?
A. **Okay.**
Q. That was a bad question.
A. **Okay.**
Q. Because you've already kind of answered it.
Would these boats, in the summertime, the three boats, would they patrol, just routine patrols?
A. **No, sir.**
Q. No?
A. **No, sir.**
Q. Okay. So, they would only be involved in some sort of an emergency?
A. **As called.**
Q. Okay. All right.
Now, in the very beginning of your deposition, we were talking about activities that the North Wildwood Fire Department would assist the

members of the North Wildwood Beach Patrol. Okay? And I just -- before we finish your deposition, I want to make sure that I truly understand this.
A. **Okay.**
Q. The -- in your experience, from the time you started, up until July of 2012, again, explain to me everything potential -- not potentially, everything that the fire department did as it relates to the activities of the North Wildwood Beach Department, or North Wildwood beaches.
A. **Okay. Again, up until -- it was before I took over as deputy chief. Maybe a year or so prior. The outgoing chief began a program with one of our members, in conjunction with the New Jersey State Police, what was called an Open Water -- the New Jersey State Police Open Water Rescue Course. And recognizing that, you know, our departments' responsibilities were growing, along with most other fire departments, you know, we began training people in this form of water rescue. And it kind of been up and down the coast. It was -- it's Wildwood, Crest is getting into it, but some of the northern beaches. And it's a program of a continuity of response, is the best way to put it. Because the fire department does have certain resources, and we have people on**

duty. So, the idea being, in an off-hours incident, any way we can help the beach patrol, our members are trained, but they're not trained to the standard of a lifeguard. There's a -- it's a different operation, in that they use different safety equipment, so to speak, because they're not going to be in the massive numbers, say, as maybe the lifeguards are. So, it's more of a -- more of a first responder program for, you know, when the beaches are closed, or so to speak, since the guards aren't on duty.

So, we started that, I'm going to say -- started the training around '08, '09. And now, the training is become mandatory.

Q. And this is training for all North Wildwood firefighters?

A. Yes, sir. For -- for career, and part-time employees.

Q. Right.

A. Volunteers can take it at their discretion.

Q. And you call this open water training?

A. It's called, yeah, I believe it's called specifically the New Jersey Open Water Rescue Training Course. And there's various levels to it.

Q. Okay. We are just sliding into the final area that I wanted to talk to you about. Because we

have all these records from the North Wildwood Beach Patrol, and you see references to the North Wildwood Fire Department.

A. Right.

Q. All right. So, let's focus now. Before July of 2012, give me some specific instances of where the North Wildwood Fire Department and its personnel would be providing services, as it relates to the North Wildwood beaches.

A. It would be an -- outside of EMS.

Q. Yes.

A. Okay. It would be a case where the lifeguards are -- have completed their tour of duty, and a water emergency is reported. And again, the fire department would be dispatched, along with the off-duty lifeguards. They have a way of notifying their folks, as well.

Q. Right.

A. And our department would respond with -- with the -- for EMS, and with EMS, again, the boats would be notified, and our personnel would go down there. At that time, we had some primitive equipment, but they would go down there with -- with whatever equipment they had. Command post would be set up. And normally, the lifeguards are in the water. If

they need our assistance, they would tap into our assistance.

Q. Yeah. But what assistance would the fire department offer the North Wildwood Beach Patrol in the instance that you just described?

A. Our guys -- our personnel are trained -- there's an awareness level, which they can go in and, to a certain extent and assist in the search. We got paddle boards. Everybody goes in in a floatation device. But it -- it's as a lifeguard backup, basically.

Q. Okay.

A. First response, lifeguard backup.

Q. Okay. If we wanted to see records of where the North Wildwood Fire Department provided lifeguard backup to the North Wildwood Beach Patrol, how would you -- where would you go to get those records?

A. They're generated in our normal standard reporting system.

Q. And what -- is there a particular name for those type of reports or records?

A. You know what, it's really how it's entered. It could be entered as a water rescue, agency assist, you know, beach patrol assist. But it's usually, where our guys -- if our guys are directly involved,

it's water rescue.

Q. Was the -- was the North Wildwood Fire Department in any respect involved in searching for Brad Smith?

A. I -- I remember setting up the command post, our boats were launched. And in addition, on a water rescue, the Wildwood City Fire Department is also notified at the same time. They are covered under the same standard of training.

I don't believe, at that point, we had -- I don't think we had enough people there on scene. We were not in the water. I believe it was the lifeguards that were in the water.

Q. Okay. And the services that the North Wildwood Fire Department provided to the North Wildwood Beach Patrol involved the beach area that was circled in red on Exhibit 61?

A. Yeah. It was -- yes, it was somewhere in there. We -- we -- we set up the command post there, which was a unified command, with the police and the beach patrol. Our beach -- the vehicle we used at that time that carried our water rescue equipment was dispatched to that area. And at one point, I do believe they were dispatched to the area of the lighthouse, or Moore's Beach, depending upon the

terminology, where I think one of the victims was brought to. That's where our ambulance was.

But the command was all sectorized. I had somebody in charge of that area, and.

Q. Right. Before July 2012, with Brad Smith's drowning, before that time, how far back would the North Wildwood Fire Department, time-wise, go in providing back up to the North Wildwood Beach Patrol?

A. Again, very -- not far back in. I'm going to say -- so, I took over in 2010. Maybe '8 or '9 is when the initial training started. So, we really didn't get involved with any type of actual water rescue type backup, other than sending an ambulance. That was --

Q. Until what time?

A. I can't really quantify the time on that. I'd have to say 2010, some point.

Q. Okay. Now, we were just talking to Chief Gallagher about SOPs for the police department, standard operating procedures. And he explained there's a time when they had SOPs, and general orders, and then they merged everything into general orders.

Let's talk about the North Wildwood Fire Department.

A. Okay.

Q. Does it have SOPs?

A. We have SOPs. And the entire inventory of SOPs are being rewritten as we speak.

Q. Okay. Does the fire department also have general orders or orders?

A. Yes.

Q. Okay. Now, I'm going to write to Mr. Barker for a copy of all North Wildwood Fire Department SOPs and orders that relate to the North Wildwood beaches. How would you, or you would direct somebody, what assignment would you give them? What would you say?

A. To -- if I received that order?

Q. Yeah. That request, yeah.

A. Just pull the -- pull the -- pull the policy.

Q. Okay.

A. It's that simple.

Q. The policy is all the SOPs. No?

A. The policy for water rescue. If you asked me for the policy for water rescue, I would give you the policy for water rescue, for response to water rescue emergencies.

Q. Got you.

A. Let me clarify that.

Q. Response to water --

A. Water rescue emergencies.

Q. Got you.

Okay. Oh, yeah, yeah, yeah.

What did you read or review to prepare for this deposition?

A. Really --

Q. Nothing?

A. No.

Q. I took the deposition of Chief Cavalier. When that deposition is finished, they prepare a transcript.

Did you read the transcript of his deposition?

A. No.

Q. All right. We were all there when we took the chief's deposition, and he was talking about a condition that exists at times in the water inlet, when the back bays are going into the ocean, the ebb tide, and that a vortex or whirlpool is created that you can actually visually see.

Are you familiar with that?

A. No, not really.

Q. Okay. If -- I'm the grandfather of nine grandchildren, and a grandson on the way.

A. Congratulations.

Q. Yeah. It's good stuff. Especially when you have seven grandsons, and you have no sons. So, it's good stuff.

A. I have none yet, and I can't wait, so.

Q. And it's all true what they say. It's all true.

A. Okay.

Q. If I said to you that I was -- before Brad Smith's drowning -- this is not a tricky question, this is a really important question.

A. Okay.

Q. If I said to you, I'm going to bring my grandchildren to come swimming off of Moore's Beach and The Inlet Beach here, it's unprotected, and -- what would you tell me? It would be safe for my grandchildren?

A. It's unprotected.

Q. Okay. Are you familiar -- unprotected, meaning no lifeguards?

A. Meaning, correct, no lifeguards.

Q. All right. Are you familiar with the depth of the inlet along the beach that we see in Exhibit 81?

A. No, sir, not really.

Q. Okay. Do you own a boat?

A. I've had two Waverunners and one boat, to which I've had no successes with.

Q. Okay.

A. My boat delaminated in the water last year.

Q. Have you ever had to negotiate on either of those vehicles this inlet?

A. No. We always -- I always go out towards the back, towards Stone Harbor. I'm a bay person.

MR. D'AMATO: Okay. All right. We're going to go off the record. I think I'm finished. It's 10 of 1.

VIDEOGRAPHER: Going off the record, 12:41.

(Discussion off the record.)

VIDEOGRAPHER: We're back on the record, 12:43.

BY MR. D'AMATO:

Q. As of July 2012, the three boats that we were referring to that were purchased by the volunteer organizations, okay, as of July 2012, who owned those boats?

A. The individual volunteer fire companies.

Q. Okay. And who paid for the maintenance on those boats?

A. The individual volunteer fire companies.

Q. And who paid for the insurance for those boats?

A. I believe the City of North Wildwood.

Q. Okay. And if there came a situation where the North Wildwood Fire Department, before and back in July 2012, was going to assist the North Wildwood Beach Patrol in a water rescue, would you, as the fire chief, be the ultimate supervisor over any involvement in that water rescue with the boats by the members of the volunteer organizations?

A. Yes, I would. But normally, the way the command system works is, I would -- it's always the first arriving officer that takes command. And, you know, in my absence, it would have to be somebody else. But I would establish incident command over the entire operation, and I always assign one of the subordinate officers, such as a volunteer battalion chief, to coordinate the boat operation with people that are more familiar with navigational terms and things of that nature.

Q. Okay. You told us very early in your deposition that you only supervise the -- I think you said, I'm involved in operational control, is that what you said, regarding the volunteer organization?

A. Correct, correct.

Q. Okay. If we want to find anything that write -- in writing that says -- that addresses that whole operational control, what do Mike and I ask for?

A. Policies. Any policies that the volunteer fire companies may have over their boats. What I do is -- my policies are just that they direct that the boats will respond, and it's up to the individual volunteer fire companies as to, you know, how they respond. In other words, they have certain personnel that -- they have to have boating licenses, you know, that are -- that are capable of operating the boats and such.

Q. Okay. I'll ask for that. But what I was talking about is, like if somebody in the North Wildwood volunteer, say, the Anglesea organization, says to you, as chief, You can't tell me to do that, and you would go someplace and say, Here, in writing, it says I can. What do you call that?

A. I call it insubordination.

Q. Yeah.

A. I call it conflict. What are you getting at, like?

Q. No, no, no. Is there anything in writing that says that the chief of the North Wildwood Fire Department has the following --

A. There is -- there is, in writing, I believe, in the city charter, or city code, that the municipal fire chief is in charge of operations.

Q. Got you. So, that's probably an ordinance. Right? Is that what you're saying?

A. I believe so, yes, sir.

MR. D'AMATO: Okay. All right. Thanks, Chief.

THE WITNESS: Okay.

MR. D'AMATO: Enjoy your trip to Italy.

VIDEOGRAPHER: This concludes the videotape deposition. Off the record, 12:47.

(Deposition concludes at 12:47 p.m.)

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, JEFFREY COLE, SR. 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.

Lynn Smith, CCR.

Certified Court Reporter
License No. XIO1520

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Exhibit 7

NORTH WILDWOOD
901 Atlantic Ave.
NORTH WILDWOOD, NJ 08260
Phone: (609) 522-2411 Fax: (609) 522-2531

Case Number: CM-12-000090 Case # : 12-0019472

Re

Supplementary Report

Incident:
Victim: Geo. B. [illegible] Rd., Horsham PA

On July 30th, 20[illegible] at approximately 0113 hours, I received a phone call from Sgt. Caranannte from the boardwalk squad advising that two of his officers that where assigned to the beach came across a body floating in the water at 21st Ave. He advised me that he had his 2 officers pull the body from the water.

I then contacted Sgt. McGra[illegible] To[illegible] advised them of what the officers on the beach had found. We then responded to 21st and the beach. Upon arrival, Officer Kramer and Officer Lobue where standing next to a white male wearing blue/green floral printed shorts. I was then able to determine from the photographs, personal [illegible] clothing description, that this was the missing person, George B. Smith. Smith was found in the water in Hereford Inlet on July 27th, 2012.

I then informed dispatch to contact the Office[illegible] the "on duty" CMC Prosecutors Office Detective notified. I then received a phone call from Det. McLaughlin and I informed him of the incident. Det. McLaughlin advised me that he would contact the Forensic Nurse that was on call. I advised Det. McLaughlin that the Medical Examiners Office had been notified and that they were going to respond once the death pronouncement was made.

I then received a phone call from the on call Forensic Nurse, Anne Wiggins. She was advised of the incident and she stated that she would be en route to our location. I advised her that when she arrived at 15th and the beach to call and I would have and officer pick her up and bring her to the scene.

After speaking with the Forensic Nurse, I received another phone call from Libby Owens of the Medical Examiners Office. I advised her that the Forensic Nurse was en route from Mays Landing. Ms. Owens stated that she was also going to be en route at this time.

At approximately 0210 hours, Anne Wiggins arrived on scene and began her investigation of George Smith. Ms. Wiggins then advised that the pronouncement date was 07/30/2012 at 0225 hours. After completing her investigation, she cleared the scene.

Libby Owens then arrived on scene begin her investigation for the Medical Examiners Office. After completing he on scene investigation, a John Moratelli and a Heather Maderia arrive on scene to transport Smith's body.

Smith's body was then transported from the beach, by the NWPD police vehicle and then transferred over to the Medical Examiners transport vehicle.

NORTH WILDWOOD
901 Atlantic Ave.
NORTH WILDWOOD, NJ 08260
Phone: (609) 522-2411 Fax: (609) 522-2531

Case/Incident#: CM-12-000090 **Case #:** 12-0019472

Investigating Officer: MP RICHARD-228 **Case Report Date:** 08/17/2012

DSG [signature] 228 8/17/12

Signature of Officer **Date**

Exhibit 8

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

SANDY SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND GEORGE BRADLEY SMITH,	:	CIVIL ACTION
Plaintiff,	:	DEPOSITION TESTIMONY OF: PATRICK ROSENELLO
vs.	:	
CITY OF NORTH WILDWOOD, STATE OF NEW JERSEY, JOHN DOE, MARY DOE, ABC PARTNERSHIPS and XYZ CORPORATIONS,	:	
Defendants.	:	

TAKEN BEFORE: LYNN SMITH, a Certified Court Reporter of the State of New Jersey, License No. XI01520, at the D'Amato Law Firm, 2900 Fire Road, Suite 200, Egg Harbor Township, New Jersey 08234, on Tuesday, March 1, 2016, commencing at 2:28 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

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APPEARANCES:

D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
BY: PAUL R. D'AMATO, ESQUIRE
For the Plaintiffs

BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
BY: A. MICHAEL BARKER, ESQUIRE
For the Defendant, North Wildwood

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
(609) 777-4872
BY: BRIAN HUNKINS, DAG
For the State of New Jersey

Videographer: Tom Zanaras

VIDEOGRAPHER: Today's March the 1st, 2016. This is the videotaped deposition of Patrick Rosenello. Going on the record. The time is 2:28 p.m. The appearance of counsel will be noted in the transcript.

Would the court reporter please swear in the witness.

PATRICK ROSENELLO,
having been first duly sworn, testified as follows:

EXAMINATION BY MR. D'AMATO:

Q. Mayor, have you gone through this process before of a deposition?

A. One -- one other time, yes.

Q. Did it relate to the City of North Wildwood?

A. No.

Q. Oh, okay. You have sitting next to you one of the most competent attorneys I know. He has a right, after I ask you a question, to say that he objects to the form of the question. I doubt he's ever going to say to you, do not answer the question.

A. Okay.

Q. It could happen, it could happen. The reason I'm telling you that is, you have to pause for a second after I finish the question to give Mike the opportunity, or Brian, who represents the State of

New Jersey, to say they object to the form of the question.

A. Okay.

Q. I'm not going to ask them what their objection is. And unless they instruct you otherwise, you just go ahead and answer the question.

A. Okay.

Q. I know you're the mayor, and I know about your background, because I went to the website. And as I told you, I've spoken to others about you. Just because you're the mayor doesn't mean that you're necessarily going to know the answer to each and every question.

For the benefit of all of us, if you don't know the answer, just say you don't know.

A. Okay.

Q. Okay? And what I'll probably do is ask you who, in your judgement, would know the answer to a question.

A. Right.

Q. Okay? So, let's get started.

As I understand it, you grew up in North Wildwood?

A. That's correct.

Q. Right. And you moved there in 1977?

A. Correct.

Q. Right. And how old were you?

A. Four.

Q. Okay. Okay. And have you resided in North Wildwood from the time, say, 1977, up until the present, other than going to college or living in Washington or something?

A. Right. So, I went to school in Washington, and I lived there for two years after graduation.

Q. Right. Okay.

A. Other than that, I've lived in North Wildwood.

Q. Fine. The -- you went to what I call Bob Sandman School, Wildwood Catholic. Right?

A. Correct.

Q. I say that, because he acts as if he's the only guy that ever went there, you know? I think I told you that.

And then you graduated from Catholic University in 1995 with a degree in what?

A. American government and philosophy.

Q. Okay. And then you decided to stay in Washington to do good, and you were a legislative aide to Congresswoman Sue Kelly?

A. Correct.

Q. From what district was she from?

A. The 19th district of New York.

Q. Okay. All right. And for how long did you serve as a communications director for Senator Nick Asselta?

A. Approximately two years. And then I went part-time for his campaign.

Q. Okay. You were elected to North Wildwood City Council in 2004?

A. That's -- I believe I was elected in '3 and sworn in in '4, if I'm not mistaken.

Q. Got it. And you -- you were there for 10 years on council?

A. Correct.

Q. All right. Let's stop right there.

The -- I understand that the form of government for North Wildwood is what I call a weak mayor, nothing personal, strong council. Correct?

A. That's incorrect.

Q. Incorrect. Go ahead.

A. City of North Wildwood has the city form of government.

Q. What does that mean in terms of the powers of the mayor?

A. I don't know in detail. It's a pre-Faulkner

Act form of government.

Q. Okay.

A. I don't know -- as far as the exact powers, I don't know that I could enumerate them all right now.

Q. Do you vote on resolutions?

A. No.

Q. And I gather you don't vote on the passing of an ordinance?

A. No.

Q. Okay.

A. The mayor only votes in the event of a tie.

Q. All right. When you were on council, for 10 years, were there certain departments that you were assigned to that you were your responsibility?

A. They had liaisons, but they're not your direct responsibility.

Q. Okay. Can you explain that?

A. Sure. So, in our form of government, the council is, I think the easiest description for me is, it's the legislative body. So, the mayor is the executor or administrative body, the council is the legislative body. And so, the council has no direct authority over any city employees. And so, what they had previously were liaisons, where, because there's seven members of council, they would make each member

a liaison to different departments in the city. And that was simply, really, a means of communication, so that a department had had one person that they could go to, and speak with, if they wanted to, and that person could carry information back to council.

Q. Okay. So, I understand -- I want to be really clear on this. A particular councilperson did not have the responsibility of running the particular department?

A. They did not.

Q. Did not. Okay.

During the time that you were city administrator, was there a city -- excuse me. Let me rephrase that.

I'm trying to get you out of here --

A. That's fine.

Q. -- quickly, and I'm going too quick, so I got to slow down.

During the time that you were on council, was there a city administrator?

A. There was, yes.

Q. And who was that?

A. When I was first elected, it was Ray Townsend. And then, after he left, it was a gentleman by the name of Lou Belasco. And then

during my last year on council, prior to becoming mayor, it was Kevin Yecco.

Q. Okay. Okay. And you became mayor, it says here, on January 7, 2014, you were sworn in?

A. That's correct.

Q. All right. Now, since becoming mayor, are there particular departments that you're responsible for?

A. Technically, the only department that reports directly to the mayor is the police department.

Q. Okay.

A. The other departments report to the city administrator.

Q. Got it. Okay.

Now, I don't know if you were there for that part of the deposition of Chief Cavalier of the beach patrol, but I started off by telling him that, when you do your homework to try to understand how this event took place involving Mr. Smith, you see various names, such as Moore's Beach, Moore's Inlet Beach, the inlet. All right. I am going to hand to you an exhibit marked as 63.

(Aerial Photograph, received and marked for identification as Exhibit P-63.)

Q. It's an aerial photograph that was taken by

the Engineer's Office of Cape May County on March 14, 2012. And do you -- before coming here today, have you used the phrase Moore's Beach?

A. Yes.

Q. All right. If you were to get that red marker, could you, on that aerial, delineate what you refer to as Moore's Beach.

A. (Witness complies.)

Q. All right. Now, I think practically every city employee whose deposition we've taken, we've had them mark this aerial photograph. Now, could you mark for us what is the inlet beach, if you use that phrase? And why don't you use the orange marker.

A. I'm going to do a starting point and an ending point.

Q. May I see that?

A. Sure.

Q. Okay. So, in other words, Moore's Beach is part of the inlet beach, as far as you're concerned?

A. Yes.

Q. Okay. Here.

MR. HUNKINS: Thank you.

MR. D'AMATO: He went like that.

MR. HUNKINS: Yeah.

MR. D'AMATO: Mike, are these yours?

MR. BARKER: Thank you.

BY MR. D'AMATO:

Q. Is there any other phrase that you, personally, have used to describe any of the beaches, or the beach area that you bracketed off as the inlet beach? In other words, you have Moore's Beach, you have inlet beach. Any other phrases?

A. Some -- some people may refer to it as Secon Street. Which it's kind of a strange geographic designation. Because Second Street runs parallel to the southern end of it. So, some people will refer to that as Second Street.

Q. Okay. So then, here, why don't you get the green marker, and -- yeah, use blue, and delineate what some people refer to as the Second Street beach.

(Dominic Speziali enters the room.)

A. I just have to get my --

And then it wraps out of this picture, as well.

Q. All right.

A. So.

Q. Now, given your personal experience with this inlet beach area, and then your experience as a city official, my question to you is, any of the beach area that you have delineated as the inlet beach, or

the Second Avenue Beach --
A. Second Street Beach.
Q. -- were any beach replenishment projects ever done for those beaches?
A. No.
Q. Okay. And is the reason that there was no beach replenishment is that the understructure of the actual inlet, the water inlet, is such that it is always changing, because of the currents?
A. I think -- no. My understanding of why we've never done beach replenishment there is because when we first went for a beach replenishment -- I shouldn't say first, the most recent one when I was involved was in 2006. And as part of the permitting for the 2006 beach replenishment, which was really the first complete engineered beach in North Wildwood, we were prohibited from doing any replenishment on that area, because of piping plovers, and other endangered species.
Q. Okay. When you talk about the piping plover. Right? I read an article about your predecessor, Mayor Henfey. Right?
A. Yes, correct.
Q. How closely did you work with Mayor Henfey when you were on city council?

A. Fairly closely.
Q. Okay. I could be wrong with this, but someone said that he was like a mentor to you --
A. Yeah.
Q. -- in terms -- is that correct?
A. That is correct.
Q. All right. Did you ever have any conversations with Mayor Henfey about any hazardous conditions that existed on what you have referred to as the inlet beach on Exhibit 63?
A. Only one that I recall was after the Smith drowning. Discussions about -- about the Smith drowning.
Q. Okay. And this was you and the -- Mayor Henfey?
A. I don't know that it was exclusively us. But I do recall being in his presence during conversations after that drowning regarding what had occurred, and if -- if -- what, if anything, the city could do moving forward.
Q. Okay. I believe that you were sitting in for part of Chief Cavalier's deposition when he was talking about the vortex or the whirlpool. Were you sitting in on that?
A. I don't recall that.

Q. Okay. Do you recall -- were you sitting in on the part of his deposition where he was describing how the vortex located in the inlet, that is, the body of water, eats away at the beach?
MR. HUNKINS: Object to the form.
A. I don't recall being there for that part.
Q. Okay. I had asked the chief, and I'm referring to page 41 of his deposition, and I said, "If I said to you what is your understanding of what happened to Mr. Smith, do you have one?"
And he said -- actually, I said to him -- he said, yes, he has an opinion. I'm trying to do this quickly. He said, yes, he has an opinion. And I said, What -- What do you base that opinion on? And he said, Being down there all the time.
And here's what he said. "At certain times of the day, when the tide is in or out, there's a drop off along that section of the beach.
"What do you mean by a drop off?
"It literally drops off.
"And how long has that particular condition existed, as far as you know?
"The inlet's changing all the time. Every year, it changes."
Then I said to him, "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?
"Answer: Yes."
And here's the last thing I asked him.
"And I know you're not a research scientist, but what is your understanding what causes the whirlpool or vortex?
"Answer: I believe it's the bay hitting the ocean at that point."
Then here's one more.
"How large is this whirlpool or vortex that you have seen in the past in the inlet?
"Twenty-five yards.
"And does it appear circular?
"Yes."
Were you there for that part of it?
A. I --
Q. Okay.
A. I don't --
Q. You don't remember. Okay?
A. I don't remember that.
Q. All right. Putting that aside. Before coming here today, had you ever heard of a whirlpool or a vortex existing at certain points in time in the

body of water that is called the inlet?
MR. HUNKINS: Object to the form.
MR. BARKER: Objection.
A. I -- a whirlpool or a vortex, no.
Q. Okay. What have you heard as to what this condition of water is referred to?
A. A current.
MR. HUNKINS: Object to the form.
A. I'm sorry. A current.
Q. Okay. And could you be more descriptive as to what type of current?
A. When the tide is coming in, there's a current coming from the ocean, pulling -- pushing you into the back bay. And when the tide is -- and interestingly, at high tide, for a period, there is -- the current's very little, because it's called a slack tide. And then on the outgoing current, the current's running from the bay out towards the ocean, and again, at dead low tide, there's another period of what's called slack tide where there's very little current.
Q. Okay. Were you involved in any way relative to the rescue of Mr. Smith?
A. No.
Q. Okay. Did you go to the beach when you

became aware that he was missing?
A. Yes.
Q. Was it on the day that he was --
A. Yes.
Q. -- that it was known that he was missing?
A. Yes, yes.
Q. Okay. And what role, if any, did you have, or to say, better yet, why were you there?
A. I knew that they were conducting a -- a search, and I just went down to check -- I'm not sure if the mayor was there or not. I don't recall. But I just went down to check in with the mayor, to see if, you know, what was happening.
Q. Okay. Since the drowning of Mr. Smith, do you have a better understanding of what he and his daughter and Mr. Smith's friend, Scott Sunderland and his daughter, were doing at the time that Mr. Smith went into the water?
A. I've heard various things. Some from -- in the media, and the little bit, I think, during your deposition of Chief Tony Cavalier. So, I've heard various explanations of what they were doing immediately prior to that occurring.
Q. Okay. And what are those explanations?
A. One explanation I had heard was that the sand

had -- they were walking on dry sand, the sand had actually given way underneath them. Another explanation I believe I had heard was that they -- some -- some number of them were walking in the water, ankle deep. I've also heard something along the lines of, they were walking at knee deep. And again, I'm not exactly sure how big or small the group was. I'm not sure of any of those things. But those were the different scenarios that I've heard.
Q. Okay. Did anyone tell you that Brad Smith and his daughter were actually swimming in the inlet at the time that he -- he was not able to return to land?
A. When you say swimming, do -- could you --
Q. That is, you know, in water that is up to your neck, and you're moving your arms, and --
A. No, I did not hear that.
Q. Okay. Would you agree that walking -- well, first of all, do you have an understanding of where this event took place?
A. I believe -- I'm not sure if the dot on the map is representative of that or not.
Q. Well --
MR. HUNKINS: Let me just object. Yeah, the basis of what he's about to say is my

objection.
MR. D'AMATO: Yes.
Q. Just looking at that aerial photograph that you marked up, do you have just a general idea of where it took place?
A. I do. I believe it was somewhere between Moore's Beach and Second Street, where the guarded area down here. So, somewhere in front of the lagoo and the wilderness area.
Q. Got it. Okay. Good.
And on the date of this incident, July 27, 2012, that beach, which you just described as the area where, I'll call it, the Smith event took place, that was an unguarded area?
A. That is correct.
Q. Okay. Was it a violation of any ordinance for a person to be walking in ankle deep water in the area that you have indicated was where -- is where you think the Smith event took place?
MR. BARKER: Objection. You may answer the question, however.
A. I don't know the answer to that question.
Q. Okay. All right. Now, let's talk about the particular activities that take place on that beach.
We supplied Mr. Barker with certain

photographs showing police officers walking on what you would call Moore's Beach, okay, in the summertime. And there's some testimony that you instituted -- was it you or Mayor Henfey that instituted that procedure?

A. The walking beats?

Q. Yeah.

A. That was something that I instituted.

Q. Okay. And that would have been the summer of what season; '14, '13?

A. '14.

Q. Okay. And why did you institute these patrols, if you will?

A. We instituted walking patrols on our entire beach, primarily to address the issue of the open display of alcoholic beverages.

Q. Okay.

A. And --

Q. Okay. Before July 27, 2012, did you, personally, ever observe police officers of the North Wildwood Police Department patrolling the beaches of North Wildwood? Just walking?

A. Not walking.

Q. Okay.

A. No.

Q. Were they on quads?

A. They were usually in some type of a vehicle, yes.

Q. Okay. And was it customarily one officer, or two officers?

A. Customarily -- I would say it would be two.

Q. Okay. And would they patrol on quads to what you have called the inlet beach area on that exhibit?

A. I witnessed police officers on quads in this guarded area. I can't definitively say that I saw them anywhere else prior to that.

Q. Okay. And when you're saying the guarded area, you're referring to the Second Avenue --

A. Correct. Between --

Q. Right. All right. Now, you're aware that North Wildwood issues mercantile licenses to ice cream vendors. Correct?

A. Yes.

Q. All right. And what person or persons within city government are responsible for administering the issuance of those mercantile license for the ice cream vendors?

A. The city clerk.

Q. Okay. Have you had any involvement with these licenses as councilman, as mayor?

A. We changed the policy -- previously, when a license became vacant, if a person moved out of the area, or passed away, they maintained a list in the city clerk's office, and they would automatically offer the license to the next person on the list. We stopped that after I became mayor, with the intent long term of looking at possibly bidding these licenses out.

Q. Has that been done yet?

A. It has not.

Q. Okay. The persons to whom mercantile licenses are issued, as ice cream vendors, they're allowed to sell ice cream on all of the beaches of North Wildwood?

A. That is correct.

Q. Okay. Now, if I want to go fishing on the beaches of North Wildwood, do I have to get a permit?

A. You don't have to get a local permit. But I believe the state may require a salt water fishing permit now. I -- but I --

Q. Okay.

A. I'm pretty sure they do, actually. But North Wildwood does not.

Q. Okay. As a councilman and as a mayor, have you had any interaction with the Public Works

Department?

A. Yes.

Q. Okay. Would you agree that the Public Works Department, before July 27, 2012, cleaned what you have referred to as the Moore's Beach and the Inlet beach?

A. They -- so, our public works rakes the beach every morning with large mechanical rakes. We are prohibited from going -- I'm just going to use north and west, so, even though it's not technically.

The mechanical equipment is not allowed west of the guarded area, again, due to the permitting and restrictions in the permit that we have.

Q. All right.

A. So. And we also, to my knowledge, do not place any -- to put it in context. So on the guarded areas of the beach, we have trash containers, recycling containers, things of that nature. So, the Public Works Department will come down, rake the beach. They also have a machine that goes down and empties the trash cans. Those are mechanicals. We don't have any mechan -- we don't have any trash can on this beach. We're not allowed to rake it. But occasionally, guys will go down and clean up, and

it's primarily sea grass and stuff like that, that accumulates in large -- and starts to -- starts to smell.

Q. Right. Did you see any of the photographs that I provided Mr. Barker with as part of what we lawyers call discovery?

A. I think I saw them during Chief Cavalier's, yes.

Q. Okay. Okay. I'll show you some of these before we finish. There are public works people working down there at Moore's Beach.

What involvement as a councilman did you have, if any, with the North Wildwood Beach Patrol?

A. I was, as we spoke about earlier, I was the counsel liaison to the beach patrol during most of the time I was on city council.

Q. Okay. Now, did you ever have any discussion with Chief Cavalier when you were the liaison person about any hazardous conditions existing along what we have called, or what you have called the inlet beach because of the body of water referred to as the inlet?

A. Not that I recall.

Q. Okay. Did you have any discussion with Chief

Cavalier, before July 27, 2012, about the posting of lifeguards in the area which you have referred to as Moore's Beach and the inlet beach, before Second Avenue?

A. No. Any -- any of that discussion would have been precluded in 2006 by the permit. We were not allowed to place any lifeguards in that area.

Q. Okay. Now, when you say that area, does that include Moore's Beach?

A. I don't know the answer to that question. I always took it as any area what I'm calling west of where Surf Avenue comes in to the inlet. We were not -- that was my understanding was, we were not allowed -- we're not allowed to do any guarding or raking or anything mechanical west of that area.

Q. You had your pen over a blue line there.

A. Um-hum.

Q. So, your pen was over -- you were trying to --

A. I believe -- yeah, so that's -- this street coming in here is Surf Avenue. So, if you -- and there's a beach entrance at Surf Avenue. If you go straight out that beach entrance, immediately to your left, the -- it's either the state or the federal fish and wildlife, fairly shortly, usually it's from

about early March until about late August, will erect either a snow fence or rope fencing immediately to your left. And they'll take that out almost to the high tide line. And so, we don't do anything with mechanical cleaning or guarding when you -- when you enter on Surf Avenue, to the left. So, the last lifeguard stand is straight ahead a little bit to the right. And that's where the guarded and clean -- protected beaches end.

Q. Okay. I've seen the area that has been cordoned off for the birds. Can you take the black marker, and could you define for us where that designated area is for the birds?

A. Sorry.

Q. That's okay. That's all right.

A. This. Roughly.

Q. Okay. Now, is there a diagram, a piece of paper in city hall that we could look at that would support your opinion as to where this designated area is?

A. I believe there is a document called Beach -- Beach Management, perhaps. It was a document that was, as I understand it, agreed to -- signed by North Wildwood, the state, and the federal government, as a condition of our 2006 beach replenishment permit.

And I believe that document spells out this area, what can and can't be done there. Among many other things.

Q. Okay. Who's the person Mr. Barker could ask in city hall to get that document for us, the complete document?

A. Mr. Jett, the city clerk.

MR. BARKER: We did send it to you. If I'm not mistaken, I'm almost sure, within the last month, I think we sent it to you.

MR. D'AMATO: Yeah, I think you did. I think you did. So, I stand corrected. I'm not sure, though. Let's see. I'll be honest with you, I read it, and I didn't see anything about what could or could not be done in that area, but I could have missed it. That's okay.

Q. Were you involved in the installation of any safety measures, such as the installation of warning signs, after the Smith incident?

A. Me, personally?

Q. Yeah.

A. I was not, no.

Q. Okay. Was that handled by Mayor Henfey?

A. Pri -- I would assume it would have been, yes. Or the Public Works Department.

Q. Okay. Let me show you an exhibit that was marked for identification on February 9, 2016, as Exhibit 1. And this was actually marked up by the chief. And this is an aerial photograph which shows the body of water that I'm going to call the inlet. All right?

Now, I've said that -- I've used that phrase several times today. I said the body of water referred to as the inlet.

Is that what you call it, too?

A. Yes.

Q. All right. This is kind of a follow-up question to something I asked you about 15 minutes ago: Looking at that body of water called the inlet, and given the fact that you started living in North Wildwood at age four. Right? Up until July 27, 2012, the drowning of Mr. Smith, what have you, personally, observed about the inlet, itself, the body of water, relative to the -- I'll be a little bit more specific -- relative to how the actual channel moves?

A. Right. It changes on an almost daily basis. There are what I call shoals or sand bars that come and go. This large piece of sand you see up here coming off the bottom of Stone Harbor didn't exist

five years ago, and it might not exist tomorrow. The inlet beach that we're talking of didn't exist until probably the late '80s, maybe, mid to late '80s. There was no sand accumulated there. So, it -- it -- the whole -- the whole area changes on a -- I say on a daily basis. I still live in an area where I can see the inlet. And literally on a daily basis.

Q. Yeah. We all know the sea wall that was built.

A. Um-hum.

Q. I have the date someplace here. What year was that?

A. I think it was around 2006.

Q. Yeah. 2006. Right. Why was that sea wall built?

A. There was a sea wall in some way, shape, or form almost the entire area where the current sea wall is. But it was built in pieces. Some in different stages, over -- over many, many years. I don't know how -- when the first piece was built. So, that sea wall was part of a U.S. Army Corps of Engineer project to basically protect the northeast side of the island from storms.

Q. Okay. Did the building of that sea wall have any effect on changing the channel in the inlet?

MR. HUNKINS: Objection.

A. Not to my --

MR. BARKER: Join.

A. Not to my knowledge.

Q. Okay. You know what, can I have that back?

A. Sure. Both of them, Paul?

Q. Yeah.

A. Okay.

Q. Okay. Now, let me show you what's been marked for identification as Exhibit 3 on February 9, 2016. That's a photograph that was made by a drone.

As you're getting your orientation in that photograph --

MR. BARKER: When did you say it was, Paul?

A. "Indicating."

MR. BARKER: That's when it's marked. But did you say when it was taken? I'm sorry, if you didn't. I'm just -- oh, yes, it's -- no, I don't know. There's a date at the bottom, says July 31, 2000 -- 2014.

MR. D'AMATO: That's when it was taken.

MR. BARKER: Okay.

BY MR. D'AMATO:

Q. You see the beach there?

A. Yes.

Q. All right. Is any of that beach, in your judgement, the protected beach relative to what was established by the -- is it New Jersey Department of Wildlife?

A. The agreement that I've referenced?

Q. Yeah.

A. I believe it was between the city and the state DEP. I -- but I don't want to --

Q. All right. But does -- does that --

A. No. This isn't -- this is not a protected area.

Q. Okay. When we say protected, we're not talking about lifeguards, we're talking about --

A. I'm sorry. Sorry. I thought you meant lifeguards.

Q. No.

A. So, yes, a piece of this, I believe, would be in the restricted environmental area.

Q. Okay. With the black marker, could you delineate that.

MR. BARKER: Okay. Wait one second. If he writes on this now, this is already Exhibit 3 from 2/9/2016.

MR. D'AMATO: Okay. We'll go off the

record, we'll get a clean copy.

VIDEOGRAPHER: Going off the record, 3:05.

(Discussion off the record.)

VIDEOGRAPHER: We're back on the record, 3:07.

BY MR. D'AMATO:

Q. Okay. As was noted on the record, this is Exhibit 3, marked for identification on February 9, 2016. And as Michael has suggested, I'm going to remark it as Exhibit 64 with today's date, and ask you, with the black marker, if you could delineate the area that's supposed to be protected relative to the birds.

(Photograph, received and marked for identification as Exhibit P-64.)

A. I don't want to digress too much.

Q. Okay. Go ahead.

A. But --

Q. No. Go ahead.

A. There is a physical fenced off area, where they don't want pedestrians, or anybody to access. However, my understanding is that the nature of the piping plover is that it goes down to the ocean. And so, I believe the entire area is protected. But what

I depicted on that was my recollection of the fenced area. Is that what you want me to --

Q. Okay.

A. Because I believe that the area mentioned in the agreement, I don't know if there's a map, or if it's just verbally stated.

Q. Okay. It's helpful what you just said. Let me tell you what I'm struggling with.

In all the times I went down there, and I saw that fenced off area, it wasn't, candidly, as large as you have made it on Exhibit 63. The fenced off portion, I'm talking about, for the birds. And that's why I'm -- I'm trying to explore with you --

A. Yeah.

Q. -- the basis of how you arrived at this --

A. Can I -- may I see that again? I want to make sure I got the landmarks proper. My -- my --

Q. Yeah. Would it help if I showed you some photographs that were taken that show the fence? Would that help you?

A. You can, if you'd like. My recollection is that when you come down the stairs from this Moore's Inlet parking lot --

Q. All right.

A. -- there's a fence almost 10 or 15 feet in

front of you, and that fence line kind of goes out towards the ocean, and then turns, which is what I believe I depicted on this photograph here.

MR. BARKER: 63?

THE WITNESS: Yeah.

A. And the only -- the only reason I'm second guessing myself on that, is because I'm looking at where the outfall pipe is now, and I can't recollect what side of the -- so I may have went a little bit too far over here.

MR. BARKER: On 63.

THE WITNESS: On 63. I'm sorry.

MR. D'AMATO: Hold on.

Dominic --

A. And I believe -- I believe that 64 is actually showing, if I'm not mistaken, the -- in the bottom left-hand corner there, I believe they may be the posts that I was trying to -- so, I may have gone a little bit too far on this one here --

MR. BARKER: 63.

A. -- 63. Maybe I should have come in a little closer.

MR. D'AMATO: There are two or three more of these, numbered one, two, three. Okay?

Q. I'm going to get you the photographs that we

have that show the wooden fence. So, let's -- I'll move on from this point.

A. Sure.

Q. Okay. Before Mr. Smith's drowning, were you aware that people would get married on what is referred to as Moore's Beach?

A. I don't know that I have any specific recollection of that, or knowledge of -- or witness, or seeing that. I have -- and so, no, I do not recall that.

Q. Okay. We obtained a series of aerial photographs of Hereford's Inlet that goes from 1920 up to February 22, 2013. Did you ever see these?

A. I believe I have. Well, I don't -- I don't know that I've seen your pictures. I have seen aerial photographs going back quite awhile, though, on Hereford Inlet.

Q. And those photographs would be located in city hall?

A. I believe that we -- I saw them courtesy of Dr. Stewart Farrell, from the Stockton coastal research --

Q. Okay.

A. -- I believe.

Q. All right. And when did Dr. Farrell show you

these photographs?
MR. D'AMATO: Just leave them right there. You can leave them right there. Yeah.
Q. When -- when did he show you these photographs?
A. I believe that he provided me with those photographs since I have been mayor, is my best recollection.
Q. Okay. And did he give those photographs to you?
A. I believe it was an e-mail.
Q. Okay. Could you e-mail those photographs to Mr. Barker, so he can e-mail them to us?
A. I'll probably ask Dr. Farrell to send them.
Q. Okay.
MR. HUNKINS: Before you do that, please consult with your attorney. Reason is, he's account acting as an expert in the case, so.
THE WITNESS: Okay.
MR. HUNKINS: And just so I'm clear, these are photos he'll be looking for are what?
MR. D'AMATO: Photos that Dr. Farrell e-mailed him of the Hereford Inlet.
MR. HUNKINS: And specifically what of the inlet do they show?

MR. D'AMATO: They're just aerial photographs like the ones we obtained from the county.
MR. HUNKINS: Okay.
BY MR. D'AMATO:
Q. Take a look at the ones that we obtained from the county. And you'll see at the top, it gives the date.
A. I think this is the same -- these are the same ones I've seen in the past.
Q. Okay.
A. Yeah.
Q. All right.
A. I think this is the same set of pictures that Dr. Farrell provided me.
Q. Okay. As you're going through those photographs that have the different years at the top of them --
A. Um-hum.
Q. -- is the changing of the actual Hereford Inlet consistent with what you observed over the years, as you see in those aerial photographs?
A. My perspective, obviously, starts about 10 pages in.
Q. Okay.

A. So, there's a big -- so, again, there's a big gap here from 1970 to 1995, which is what I would have observed most of Hereford Inlet, because we moved here in 1977. So, from a personal standpoint, I would be familiar with, basically, the pictures from 1995 on.
Q. Yeah. Did you ever operate a boat through the Hereford Inlet?
A. Yes.
Q. Do you own a boat?
A. Yes.
Q. All right. And before July of 2012, what type of boat or boats have you owned?
A. I -- same one. I have a 20-foot outboard.
Q. Okay. Is the Hereford Inlet -- strike that.
You know that strike that means I'm going to start over again.
A. Okay.
Q. Has the Hereford Inlet ever been marked by the United States Coast Guard, the New Jersey State Marine Police, to delineate those areas where boats should, in fact, operate?
A. It was, many years ago, when I was younger, it -- there were buoys that would take you in -- you would follow those buoys to get in and out of the

inlet, yes.
Q. And when you say -- because you're still young, when did that practice stop?
A. Oh, I would have to say it was at least 25 years ago.
Q. Why did it stop?
A. I don't know. I don't know the answer to that question.
Q. Okay. Okay. I'll take those back from you.
A. Sure.
Q. And for the record, I just -- I showed the mayor Exhibit 4, marked at a deposition on February 9, 2016. And it was also marked as Exhibit 5 at the deposition of the county engineer on July 23, 2015.
Okay. Let me show you Exhibit 7, marked for identification on February 9, 2016. This photograph came from a -- I'll call it blog, or blog/website of -- that you can go on line, and it's Moore's Beach. And you'll see chairs that are set up there for a wedding.
Have you ever seen chairs like that before July 2012?
A. The only reason I'm hesitating is because I have seen a wedding set up. I'm not sure what this location is. It's hard for me to tell by the view.

I have seen chairs set up in the -- in the guarded area of the inlet beach. But I believe it was after 2012. I want to say it was probably -- it wasn't last summer. Maybe '13 or '14, as I recall.

Q. Okay. Before July 27, 2012, do you know of any law that prevented a person from standing in ankle deep water in the area that you have called Moore's Beach?

A. I don't know the answer --

MR. BARKER: Objection.

A. Oh, I'm sorry. I don't know the answer to that. I'm not aware of -- of such a law.

Q. Okay. Before July 27, 2012, did you have any understanding as to the depth of the channel, which we call Hereford Inlet, as shown in Exhibit 2?

A. Yes.

Q. Okay. So, why don't you share with me what that understanding was.

A. Well, from being in the channel on my boat, I have a depth finder, so it varies from one or two feet to maybe 28 feet, I believe, I want to say is -- 28 to 35, perhaps, in certain spots.

Q. Okay. I can show you an article where Dr. Farrell says that there are certain parts of that Hereford Inlet that are 50, 60 feet deep.

A. I don't think my depth finder goes that deep.

Q. Oh.

A. I don't doubt that. I don't doubt that. But from my personal experience, that's what I've witnessed.

Q. Oh, all right. Now, let me show you a photograph that's been marked for identification as Exhibit 9 that was taken the -- by Lou DiJoseph, who was that licensed private investigator --

A. Yes.

Q. -- I think you met at the deposition, of people in the water adjacent to Moore's Beach. This is Exhibit 9.

And my question is, before July 2012, did you ever see people wading in the water off of Moore's Beach?

A. Yes.

Q. Okay. Now, were those individuals that you saw in violation of any city ordinance?

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

A. I don't know.

Q. Okay. When you saw those people wading off the Moore's Beach, before July 2012, did you call the North Wildwood Police Department, or the North

Wildwood Beach Patrol?

A. No.

Q. Okay. When you saw those people wading in the water off of Moore's Beach before July 2012, did you think that they were exposing themselves to any hazardous conditions existing in the water that constitutes Hereford Inlet?

MR. HUNKINS: Object to the form.

A. I believe that if you're not swimming in front of a lifeguard, you are subjecting yourself to a hazardous condition in the ocean.

Q. Okay.

A. So, the answer is yes.

Q. I'll take that back.

Okay. All right. I'm going to have marked for identification as Exhibit 65 what I'm going to call a tourism brochure for 2016 for North Wildwood that comes off of the city's website. And I want to direct you to page 8.

(2016 Tourism Brochure is received and marked for identification as Exhibit P-65.)

Q. Okay. And for the benefit of my colleagues, you will -- I just want to tell them what we're looking at. It says at the top, on page 8, Beach and Fishing Information.

MR. BARKER: Yes.

Q. Then it talks about handicap surf chairs. You see that part? And --

A. Yes.

Q. -- before you get to accessible restrooms, it says "three are located on the inlet beach." Do you see that?

A. Yes.

Q. Now, were you aware of this entry in this document before I showed it to you?

A. I -- I did review this document. I can't guarantee that I saw that particular line item.

Q. Okay. So, when did the city, North Wildwood, that is, offer handicap surf chairs to persons using the North Wildwood beach?

A. Many years. I can't tell you exactly how many years, but for many years.

Q. Okay. Now, given your definition of the inlet beach, it says "three are located on the inlet beach." What beach?

A. The guard -- that -- the guarded beach.

Q. The guarded beach?

A. Yes.

Q. Okay.

A. They are provided by the lifeguards at

guarded beaches.
Q. Okay. All right. I'll take that back. Thank you.
A. Sure.
Q. Now, let me show you what's been marked for identification as Exhibit 29. All right? I'm going to hand this to you.
As you look at it, the beach that we're looking at, and you can use the buildings as landmarks, is covering what area?
A. I would refer to this to the Moore's Inlet Beach, because it's directly adjacent to the Moore's Inlet parking lot.
MR. HUNKINS: And can we get a date that that was taken?
MR. BARKER: 2/9 --
THE WITNESS: No.
MR. BARKER: I don't know the date it's taken. It's Exhibit 29 marked 2/9/16. That's all we know.
MR. D'AMATO: I could tell you, it was taken the September after the -- September 2012, I'm pretty sure.
MR. HUNKINS: Thank you.
MR. D'AMATO: Okay.

Q. All right. I have some other photographs I want to show you in a moment.
With respect to the area that you call the inlet beach, excluding the Second Avenue beach, all right, have you witnessed, growing up, and after you came back here, after, you know, working in Washington, D.C., parts of that inlet beach, including Moore's Beach, just falling away?
MR. HUNKINS: Object to the form.
A. I have not -- I have seen what this picture describes. I have seen what this picture depicts, which is, in my belief, the result of a storm event that scarped -- we call it scarping, when you have those types of -- like, a drop off like that. We had a lot of them after Jonas, we have this scarping, where this -- where a violent storm takes away a lot of sand at one time; as opposed to a gentle slope, you'll have something like this.
Q. Okay. I'll take that back.
A. Sure.
Q. Okay. We established earlier in your deposition that no one had told you that Mr. Smith and his daughter were actually swimming at an unprotected beach. Right?
A. I don't --

Q. Or maybe -- I'm sorry, I didn't mean to misstate your testimony. I --
A. No.
Q. Go ahead.
A. What -- my -- my -- the three different scenarios that I had heard about Mr. Smith and the other folks involved were that they were in ankle deep water, that they were in knee deep water, or that they were walking on dry land.
Q. Okay.
A. I don't know -- again, we had discussed a little bit -- I had asked you the definition of -- your definition of swimming, and my definition of swimming are not the same.
Q. Okay.
A. So, I want to be clear on that.
Q. Okay. Well, what's your definition of swimming?
A. As it relates to my children, if I tell my kids don't go swimming in the ocean, and they're knee deep in water, they're in trouble.
Q. Okay.
A. So, I mean, very rarely do you see people doing what you described as swimming in the ocean. People rarely -- first of all, the lifeguards don't

let you go out neck deep. And rarely do people go out there and do free style and breast stroke. I mean, to me, once you're calf, knee deep, you know, you're swimming in the ocean.
Q. Okay. Now, using your definition, do you have any personal evidence that Mr. Smith and his daughter were swimming as the mayor uses the term?
A. I've -- I have no personal knowledge of what they were doing prior to the incident. Only what I've heard in the media, or heard through some of these depositions.
Q. Okay. Good.
Was it at any time before July 2012 part of your responsibilities as a councilperson to ensure that any signs warning of dangers associated with the beach and the water were in good order, so that persons could understand what the warning was?
A. As a council member?
Q. Yeah.
A. No.
Q. Okay. When you were the liaison to the beach patrol, was that part of your responsibility?
A. No, no.
Q. This would have been strictly the responsibility of the beach patrol and the chief?

A. Signs are typically made by the Public Works Department. And different departments can request signs be made.

Q. Okay.

A. And they would typically be installed by the Public Works Department.

Q. Let me show you what's been marked for identification as Exhibit 12. You're going to see some white poles with signs.

Okay? Before Mr. Smith's drowning, did you ever see white poles with signs like that?

A. Yes.

Q. Okay. And they were posted at what beaches?

A. These are very -- these are standard -- the lifeguards use these at a variety of locations on the beach to demark the end of a guarded section of beach.

So, for instance, at that Surf Avenue, where the last chair is, you'll see some of these right at the wet line, so people know -- the red sign is a person swimming with an arrow through it.

Q. All right.

A. So, these are used pretty frequently around outfall pipes, or any other area where it's not designated for swimming.

Q. Okay. Brian and Mike heard the testimony of Mrs. Smith, that they had gone to the first protected beach, where I'm going to say Surf.

A. Yes, that would be Surf Avenue.

Q. And that -- and that her husband and daughter and Scott Sunderland, who is Mr. Smith's best friend, and his daughter, decided to take a walk towards Moore's Beach.

A. Okay.

Q. Do you know if, on the date of this incident, there were any signs that Mr. Smith and Mr. Sunderland would have had the opportunity to observe relative to any dangers associated with walking on the beach?

A. If they were there during the guarded hours, which I'm not sure if they were or not, they would have encountered those signs that you just showed me in that last exhibit at the water's edge, during guarded hours. However, lifeguards would usually remove them at the end of the guarded hours, because they wouldn't make it through a tide cycle.

Q. Okay. Given your history as a resident, as a councilman, and a mayor, have you ever seen any signs on the area that you delineated as the inlet beach, warning anyone about the dangers of walking on -- in

ankle deep water?

A. Not specifically referencing ankle deep water, no.

Q. Okay. Now, let me show you Exhibit 14. We took testimony about that.

Was the establishment of these concrete boulders and the balls with the warning the idea of Mayor Henfey?

A. I don't know.

Q. Okay. Do you know how many seasons these boulders and no swimming balls were used?

A. To my knowledge, they were placed there after the Smith drowning, and they didn't -- I don't think they made it until the end of that summer. I think just natural forces removed them.

Q. Okay. Now, let me show you Exhibit 16. And I want you to get your orientation. And you could see the date's in the right-hand lower corner there. Do you see that?

A. (Witness nods.)

Q. And what's the date for the record?

A. August 16th, 2012.

Q. Now, looking at the homes and the landmarks there, can you describe for us the beach that we're looking at?

A. You would be heading, again, what I call west from -- and again, I don't know what -- I don't know how far away this was taken. But you'd be heading west towards the Moore's Beach from this picture.

Q. Okay. Would you agree that the people that we see on the beach and those people in the water, that that is -- that they are at what you call Moore's Beach?

A. Yes.

Q. Okay. Prior to July 2012, were you involved in any conversation, or any discussion, or any communication about closing Moore's Beach?

A. No.

Q. Okay. Now, let me show you what's been marked for identification as Exhibit 19. And for the benefit of my colleagues, there -- one of the signs is no dogs, cats, or any other domestic animals on beach. No animals on boardwalk.

Okay. Now, given your involvement with city government, you were aware of that ordinance, generally. Correct?

A. The animals on the beach?

Q. Yes.

A. Yes.

Q. All right. Now, again, going back to your

definition of the inlet beach, which includes Moore's Beach, but stops at the Second Avenue Beach, were animals allowed on the inlet beach, as defined by you?

A. I would think that they were allowed -- they're not allowed on the guarded sections. I mean, I've never thought about the question before. But as I think of it now, I would connect that with the guarded beach. So, in other words, when the lifeguards are there, and the area that's raked, those are the areas that the animals -- that we would not allow animals to be.

Q. Okay. So --

A. Or for lack of a -- again, just for definitions, a managed beach, which is an area that we clean, provide trash receptacles, lifeguards, things of that nature. So, I never thought about the question before. But if you're asking me now, I would think that an unguarded, unprotected area, we probably wouldn't necessarily prohibit animals.

Q. Okay. You can leave that there. Okay.

Now, let me show you Exhibit 23. And as you look at that particular photograph, do you have your orientation?

A. Yes.

Q. Okay. So, what would you call the beach that is shown in that photograph?

A. You are standing more out on the inlet beach, looking towards Moore's -- Moore's Beach over here.

Q. Okay. But this is an unguarded, unprotected beach. Correct?

A. Correct.

Q. And would you agree that we see a -- we see public works employees on a quad?

A. Yes.

Q. In that area?

A. Yes.

Q. Okay. Have you ever seen, before July 2012, public works employees on that type of vehicle in that area?

A. Yes.

Q. Okay. And what were they doing when you saw them?

A. I have seen, as recently as last summer, public works employees -- if you see, there's a set of stairs over here, and sometimes what will happen is a tide will come in and all this grass type of material would gather at the bottom of the stairs, making the stairs impassable. And so, they'll go in and move that material off the stairs.

Q. Okay. Now, let me show you, I'll call it an adjunct photograph to the one you just saw, Exhibit 24. And would you agree that that is one of the unguarded beaches that is part of what you call the inlet beach, which includes Moore's Beach?

A. I would, yes.

Q. All right. And do you know the gentleman that's operating that machine?

A. I do not.

Q. Okay. Do you -- can you tell by looking at that photograph what activity he and the coemployee are involved in?

A. If I were to take a guess, it looks like there is a high trash bag in the cart. So, my guess is that they emptied a full trash can down on the guarded beach, and were heading down towards the Moore's Inlet Beach.

Q. Okay. And why would they be heading to the Moore's Inlet Beach?

A. Again, I don't know. To -- I don't know. Other than to maybe get some debris off the stairs. That would be a reason.

Q. Okay. All right. Now, let me show you what's been marked for identification as Exhibit 25 and 26. These photographs were taken on May 21,

2014. You'll see a front end loader. I think the next one's bigger. You can see it better.

A. Yes.

Q. Okay. Now, would you agree that that's what we call the unguarded, unprotected beach --

A. I would.

Q. -- of the inlet beach?

A. Yes.

Q. Okay. Have you ever seen that before July 2012?

A. Yes.

Q. Okay. And were you able to determine, before July 2012, why the -- why was the front end loader down there?

A. Yes. He would have been -- he would have just dug out the outfall line that's located adjacent to the Moore's Inlet parking lot, and taken the material to move it somewhere else, probably put it up against a dune somewhere.

Q. Okay. You can put those down. Thank you.

I'm going to show you an exhibit marked for identification as 28 on February 9, 2016. This is an interview of Patricia Posey, which my colleagues have. And I want -- I want you to tell me if you've ever seen that interview before.

A. I don't believe I've ever seen this document.
Q. Okay. Can you -- would you please read the interview, and tell me when you're finished.
A. Sure.
MR. BARKER: Can I take a five-minute break? Okay.
MR. D'AMATO: Okay, sure. Can he read that while he's doing that?
MR. BARKER: Sure, he can.
MR. D'AMATO: Okay.
VIDEOGRAPHER: This is the end of tape number 1. Off the record. 3:37.
(There was a brief recess.)
VIDEOGRAPHER: This is the beginning tape of number 2. Back on the record, 3:46.
BY MR. D'AMATO:
Q. Mayor, did you read Exhibit 28, which is the interview of Patricia Posey, P-O-S-E-Y?
A. I did, yes.
Q. All right. Let me show you a photograph that was made from the video that she references, which was posted on the Internet on May 27, 2012, a couple months before the Smith drowning. And when you look at that particular photograph, have you ever seen the condition of the beach and water as shown in that

particular photograph at what you have defined as the inlet beach, including Moore's Beach, and excluding the Second Avenue Beach?
MR. HUNKINS: Object to the form.
A. I --
MR. BARKER: No, I -- you may answer.
A. I saw this after this aired, in whatever year that was, on -- on the news. I went down and looked and saw this.
Q. Okay. Did you ever have occasion, when you saw it on the Internet, to go to the beach and see if the condition still existed?
A. I did. I -- I went down there the day -- I believe the day it aired.
Q. Okay. And did you see the condition that's shown in that particular exhibit?
A. I don't -- it looked very similar, yes.
Q. Okay.
MR. HUNKINS: What's that exhibit number? I'm sorry.
THE WITNESS: I'm sorry. 27.
MR. BARKER: Just -- 27. And the statement itself was 28, I think.
MR. HUNKINS: Oh, okay.
MR. BARKER: Is that right, Paul?

MR. D'AMATO: Yes.
(Photograph is received and marked for identification as Exhibit P-66.)
Q. Okay. Now, let me show you what I've had marked for identification as Exhibit 66, which is a photograph that was taken of the beach in North Wildwood on July 2, 2013. It would be the summer after the drowning of Mr. Smith. And I want to hand that to you, and ask you to get your orientation. Okay.
Do you see those signs that are --
A. Yes.
Q. -- posted in the ground?
It's my understanding that those signs are -- in fact, here, better yet, I can show you a close-up of the sign. Exhibit 30.
That the signs that you see in the photograph that you're holding in your left hand, which is exhibit?
A. 66.
Q. 66.
MR. BARKER: And Exhibit --
A. 20.
MR. BARKER: -- 20 is in his right hand, not 30.

MR. D'AMATO: Oh, wait. Yes. I'm sorry. You're right. Okay.
Q. Here's my point: What's in your right hand is Exhibit 20. The sign that you see there is the sign that's on those posts delineating the endangered bird area. Correct?
A. I believe that to be the case, yes.
Q. Okay. Now, have you seen where this delin -- this area that is delineated, you know, relative to endangered birds, doesn't have the snow fence around it?
A. Not at this location, it does not, no.
Q. Okay. And the location that you're looking at in the exhibit in your left hand is -- what would you describe that as?
A. It's -- I don't know. I think -- I don't know. I think -- I don't know. I think it could possibly be coming down the stairs from the Moore's Inlet parking lot.
Q. Okay.
A. Looking in a northerly, northeasterly direction.
Q. The people that you see in the photograph there, okay, you would agree that they're not sitting or standing in the endangered bird area. Correct?

A. I agree.
Q. All right. But where they're standing is an unguarded beach.
A. **I agree.**
(Photograph is received and marked for identification as Exhibit P-67.)
Q. Okay. Now, let me hand you what I'm going to have marked for identification as Exhibit 67. Okay. And this is a photograph where the photographer is standing back more, and the photograph that you now have in your hand includes the photograph that was in Exhibit 66. Correct?
A. **I'm sorry. Can you repeat that question?**
Q. Yeah. Exhibit --
A. **67.**
Q. -- 67 shows the area that is in Exhibit 66, in part?
A. **I can't be sure. It looks like, perhaps, 66 was taken further down here and out. But I can't say for sure. But that's my assumption.**
Q. Okay. All right. Hand me those two for a second.
A. **Sure.**
Q. Because I don't want to confuse this. Okay.
In looking at Exhibit 67, do you see

the area for the endangered birds?
A. **Yes, I believe I do.**
Q. You see the signs there sticking up. Correct?
A. **Yes, um-hum.**
Q. And nobody's standing or sitting behind those signs?
A. **That is correct.**
Q. Okay. So, that would lead you to believe that's the endangered bird area. Correct?
A. **That's the roped off area, yes.**
Q. Okay. Is it -- before we leave today, I need to nail this thing down. Are you absolutely sure that you have a clear understanding of the dimensions of that endangered bird area?
A. **I -- I think that is a good point of clarification. So, the -- as I understand it, according to our agreement with the state and the federal environmental folks, the entire area west of Surf Avenue, down to the water's edge, is an area -- well, piping plover area.**
My further understanding is a piping plover -- and I'm not a wildlife expert. Piping plovers nest up beach, and they spend the day running from their nest down to the water's edge to feed.

So, the area that's roped off is the nesting area. They don't want people stepping on the nests.
The entire area, though, is -- that's why we're not allowed to rake that beach front, that's why they don't want heavy vehicles down there, because they don't want vehicular traffic to hit a piping plover as it goes down to the ocean.
So, I -- I believe the entire area down to the water's edge is a -- is an environmentally sensitive area.
Again, I'm not the expert on that. And I can't quote directly from that agreement -- from that permit.
Q. We asked you to delineate with a marker where this endangered bird area was, but let's do this by words now. At what street does the endangered bird area begin, and where does it end? And if you want, you could go north to south, or south to north, whatever's easier.
A. **So, let me go east to west.**
Q. Okay.
A. **So, to the east --**
MR. BARKER: You know what, Mayor, rather than point to this aerial photograph of March 14, 2012 to describe your testimony, it's going to be

helpful if you mark that document up, which you may. That's a photocopy. You can create a document to help you in your --
MR. D'AMATO: So, we'll mark it for identification.
(Photograph is received and marked for identification as Exhibit P-68.)
MR. BARKER: He'll mark on it whatever he's going to say, I think.
MR. D'AMATO: Yeah.
MR. BARKER: He can put east, west, north, south.
MR. D'AMATO: Yeah.
MR. BARKER: Anything else he wants on it.
MR. D'AMATO: That's fine.
BY MR. D'AMATO:
Q. I just wanted you to verbalize --
A. **Yeah.**
Q. -- in terms of street addresses, and not a configuration.
A. **So --**
Q. And that exhibit that you're going to be using is exhibit number?
A. **68.**

Q. Right.
A. **So, my understanding, there are two components of the endangered bird area. One component is a physically fenced off area that has, sometimes there's a snow fence, and then it turns into posts with strings. There is a physically fenced off area, where I believe they feel that the piping plovers may nest.**
Q. All right.
A. **My understanding, however, from the city's standpoint, as far as an area where we are restricted from conducting any activities with heavy machinery, raking, guarding, things of that nature, is the area west of Surf Avenue.**
Q. Okay.
A. **So, would you like me to --**
Q. Ending where?
A. **I'm not sure about that.**
Q. Okay.
A. **I -- from a practical standpoint, there is no other access, as you go west. The only vehicular access is at Surf Avenue. So, from a practical standpoint, my understanding is that we are restricted from heavy equipment, raking, any of those activities west of Surf -- Surf Avenue entrance to**

the beach.
Q. Okay.
A. **During -- let me further clarify that. There is a certain window of time in that agreement, as well. And again, I would -- I can't give you the exact dates off the top of my head.**
MR. BARKER: If there's no objection, may I have the mayor mark on this exhibit what he is pointing to as west?
THE WITNESS: That's a good point.
Q. Sure.
A. **So -- well, it's --**
MR. BARKER: That arrow designates west.
THE WITNESS: Yes, for the purposes of this picture.
Q. Okay. Let me see. There we go. Now, I'm going to have three photographs marked for identification. The first one will be Exhibit 69. It was taken on May 21, 2014. Just get your orientation on that one. Then the next one will be Exhibit 70. And the next one will be 71.
(Photographs are received and marked for identification as Exhibits P-69, P-70 and P-71.)
A. **Okay.**

Q. And here, I represent to you, and I'm sure you would agree, that all three photographs are showing the same activity.
A. **I would --**
Q. Now, given -- given your personal and governmental experience with this -- the beaches that we've been talking about, do you know what those men are doing?
A. **Looks like they are constructing a small protective dune in front of the vehicle access at either Ocean Avenue or Surf Avenue.**
Q. Okay.
A. **There are two entrances -- there are two vehicular accesses to the inlet beach, one's at Ocean Avenue, one's at Surf, and it's hard -- I believe, because of where the picture is taken from, it's most likely the Ocean Avenue access to the inlet beach is what that is a picture being taken of.**
(Photograph is received and marked for identification as Exhibit P-72.)
Q. Let me show you what's been marked for identification as Exhibit 72. And you would agree that this is the parking lot that's located near the sea wall near Moore's Beach?
A. **Yes.**

Q. Okay. When was that parking lot built?
A. **It was there my whole life. So, from at least 1977. I don't -- before that, I don't know.**
Q. Okay. Given your governmental experience, why was a parking lot built there?
A. **Primarily, it was to service what is known as the entertainment district, which is a couple blocks of bars and restaurants in that area.**
Q. Okay. Let me show you what's been marked for identification as Exhibit 72, a photograph taken on June 16, 2014.
Would you agree that the beach shown in there, that photograph, is all of it is Moore's Beach?
A. **Yes.**
Q. We took the deposition of Lieutenant -- Lieutenant Lindsay, who's retired from the North Wildwood Beach Patrol. Michael and Brian and Dominic were there, Tom was there, Lynn was there. And he recited to us, in his opinion, the dangers with Hereford Inlet with the currents and the tides.
If I had gone up to you before Brad Smith's drowning on July 27, 2012, and asked you if you think Moore's Beach, for whatever reason, should be closed, in the sense that nobody should be

EXHIBIT LIST

No.	Description
1	Sandra Smith Deposition Condensed
2	Scott Sunderland Deposition Condensed
2A	Exhibit 12 to Scott Sunderland's Deposition
2B	Exhibit 11 to Scott Sunderland's Deposition
2C	Exhibit 5 to Scott Sunderland's Deposition
2D	Exhibit 13 to Scott Sunderland's Deposition
3	Aiden Sunderland Deposition
4	Ally Sunderland Deposition
5	Brandy Smith Deposition
6	Jeffery Cole, Sr. Deposition
7	N. Wildwood 20-21 – Supplemental Incident Report
8	Patrick Rosenello Deposition
9	Harry Wozunk Deposition
10	Chief Joseph Anthony Cavalier Deposition
11	Dr. Stewart Farrell Deposition
12	6-23-16 Farrell Report
13	4-16-16 Dr. Weggel Report
14	In re Estate of Fassett, 2012 N.J. Super. Unpub. Lexis 464
15	Lynch v. Thorwart 2010 N.J. Super Unpub. LEXIS 1430
16	Lee v. State, 2009 N.J. Super. Unpub. Lexis 1661

Exhibit 1

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

SANDY SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND GEORGE BRADLEY SMITH,	:	CIVIL ACTION
Plaintiff,	:	DEPOSITION TESTIMONY OF: SANDRA SMITH
vs.	:	
CITY OF NORTH WILDWOOD, STATE OF NEW JERSEY, JOHN DOE, MARY DOE, ABC PARTNERSHIPS and XYZ CORPORATIONS,	:	
Defendants.	:	

TAKEN BEFORE: LYNN SMITH, a Certified Court Reporter of the State of New Jersey, License No. XI01520, at the D'Amato Law Firm, 2900 Fire Road, Suite 200, Egg Harbor Township, New Jersey 08234, on Tuesday, March 1, 2016, commencing at 11:30 a.m.

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6 NORTH BROAD STREET, SUITE 202
WOODBURY, NEW JERSEY 08096
Ph. (856) 384-2770 Fax. (856) 384-2779

APPEARANCES:

D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
BY: PAUL R. D'AMATO, ESQUIRE
For the Plaintiffs

BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
BY: A. MICHAEL BARKER, ESQUIRE
For the Defendant, North Wildwood

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
(609) 777-4872
BY: BRIAN HUNKINS, DAG
For the State of New Jersey

Videographer: Tom Zanaras

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(Exhibit attached)

REQUESTS

Page 20, Line 20 - Address for rental property
Page 31, Line 18 - Financial information for 2011
Page 31, Line 24 - Financial information for 2010
Page 36, Line 5 - Sandra's income, 2012 through 2015
Page 39, Line 21 - Business debt
Page 40, Line 14 - Financial obligations of business from July 27, 2012 until children took over
Page 40, Line 18 - Any debt at the time of husband's death
Page 44, Line 4 - Life insurance benefits
Page 44, Line 15 - Funeral expenses
Page 47, Line 2 - Household expenses in 2012
Page 47, Line 10 - Household expenses in 2016
Page 51, Line 4 - Expenses from 2012 to present
Page 80, Line 8 - Photographs
Page 84, Line 8 - Brandy's height at the time of the incident
Page 84, Line 22 - Brandy's weight at the time of the incident

VIDEOGRAPHER: Today is March the 1st, 2016. This is the videotaped deposition of Sandy Smith. Going on the record. The time is 11:30 a.m. The appearance of counsel will be noted in the transcript.

Would the court reporter please swear in the witness.

SANDRA SMITH,

having been first duly sworn, testified as follows:

EXAMINATION BY MR. BARKER:

Q. Mrs. Smith, my name is Michael Barker. I'm an attorney, and I represent North Wildwood in this case, which has been brought by you, and on your behalf. I'll be asking you questions today. This proceeding is called a deposition.

A deposition is a question and answer session, which allows the attorneys in the case to find out facts, information that could be useful to the court and to the lawyers and to the parties in the proceedings that are called litigation.

A. Okay.

Q. So, we'll be here for awhile, we've already said. If you need to take a break at any time, we're going to do that.

A. Thank you.

Q. Certainly. If I ask you a question, which is not clear at any time, please stop me. I'll be happy to go back and rephrase it. Please don't answer a question unless and until you completely understand it.

A. Okay.

Q. Please don't guess in responding to any question. What you know, tell us what you know. What you remember, you can tell us what you remember. And importantly, what you can't remember, tell us what you can't remember.

If you never had an opportunity to observe what I'm asking about, just let us know that.

A. Okay.

Q. Now, your full name, is it just Sandra Smith?

A. Sandra Poust-Smith is my legal name.

Q. What's the middle name? How do you spell that?

A. Lynn. Oh, it's Sandra Lynn Poust-Smith. P-O-U-S-T dash S-M-I-T-H.

Q. And your date of birth?

A. 7/2/65.

Q. The event involved in this case was July 27, 2012. And before that July of 2012, had you and your family come to the beaches of North Wildwood?

A. Yes. Just trying to figure out what days -- I think we went two days before that day.

MR. D'AMATO: I think Mr. Barker meant, didn't you mean before the week.

THE WITNESS: Not ever before in the past, no. But we were -- it was a Friday, and we had gotten there on Sunday.

Q. Oh. So, that means you had been there about five days?

A. About, yeah.

Q. And during the five days before the event on July 27, 2012, were you staying in the same place?

A. Yes.

Q. And what was the address of where you were staying?

A. It was on Ash Avenue. I don't remember the -- the exact address.

Q. All right. And were the two families staying together?

A. Yes.

Q. And did you and the other members of your family and the Sunderland family go down to the beach on days prior to the date of the event?

A. Yes.

Q. And when you went down to the beach on the

days prior to the date of the event, did you go to the same location to set up?

A. Yes.

Q. And here's what Brandy marked as Brandy-1, and she put a red circle, you may recall, about where you set up.

A. Yes.

Q. Is that approximately correct?

A. I'm not sure. Wherever the lifeguard stand was, that's where we were, right behind, right behind the lifeguard stand. And it's the first one from this way.

Q. This way, meaning --

A. First --

Q. If we're moving from north to south --

A. From north to south, it was the first one south.

Q. First one south?

A. Yeah.

Q. Okay.

A. Because that's the closest to where we were. Because we were back over by the bay side, on Ash. So, when we drove over, it was just right -- you know, we just had to park, and --

Q. Where did you park?

A. There was, like, a paid parking place right there. I don't -- it was a metered --

Q. Was it further north, where you parked?

A. No. Because we just had to walk right in, and then right -- it was right there where the lifeguard stand was.

Q. Okay. On the dates that you had been down to the beach before the date of the event, did -- well, let me take it this way.

The first day you got there was Friday. Right? The Friday before July 27.

A. No. Sunday was the first -- our first day.

Q. I -- I got it backwards.

A. Yes.

Q. I'm sorry. So, the first day you got there was the Sunday before July 27, 2012. Do I have that right?

A. Correct.

Q. And you arrived in time to go to the beach or not?

A. Not that day, no.

Q. Right. The next day was Monday. Did you go to the beach that day?

A. I think -- I think we went Monday and Wednesday are the two days I think we went before.

Q. When you went on Monday, how long did you and the other members of the group stay at the beach?

A. I don't -- I don't really remember. I know -- yeah, I -- I don't really remember if we stayed -- you know, because sometimes we go, we stay all day, or sometimes we -- because we're there, we only stay a couple hours.

Q. Okay.

A. I'm sorry. I don't remember. But yeah.

Q. No problem. I understand.

When you went on the Monday before July 27, 2012, did you or any of the members of your group take a walk on the beach?

A. No.

Q. The next day that you went to the beach was the Wednesday before July 27, 2012.

Do I have that correct?

A. Correct.

Q. And do you recall when you went there, what time of day?

A. It might have been later that day, because I remember Andrea didn't go with us that day.

Q. Andrea?

A. My friend. The mother of the other three children. But the rest of us, we all went, and we

met one of their nieces there. She was there in Wildwood, and she met us there and sat with us for awhile.

Q. When you went to the beach on the Wednesday before July 27, 2012, did you or any members of your group take a walk on the beach?

A. No.

Q. The next day that you went to the beach was the date of the subject event?

A. Yes.

Q. That was July 27, 2012?

A. (Witness nods.)

Q. Yes?

A. Yes, correct. Sorry.

Q. And what day of the week was that?

A. A Friday.

Q. And what time did you arrive at the beach?

A. I would say about three o'clock.

Q. And when you arrived at this beach, approximately in the area where the red circle is on Brandy-1. Correct?

A. Wherever the lifeguard stand was, that's where we were, yes.

Q. And you all were situated more inland, that is, behind the lifeguard stand?

A. Behind him, yes. In between where the flags were. Because the boys were boogie boarding.

Q. And is that an area for boogie boarding, between the red flags?

A. Swimming, boogie boarding. They're allowed to do whatever there, I guess.

Q. All right. Okay. So, did you tell me what time you arrived on that Friday?

A. Approximately three.

Q. All right. And approximately what time was it that your husband and Scott Sunderland and the children accompanying them went to go on a walk?

A. Approximately five. We were just talking about where we were going to go for dinner, and they said, Well, we're just going to go for a walk, and we'll be right back, and then we'll -- and then we'll leave.

Q. Um-hum. I recall seeing that you gave a statement to a policeman that they went for a walk about the time that the lifeguards were going off duty.

Do you remember that?

A. Yes. Because right after they left, that's when the lifeguards called everybody in, and Jett and Kole came in, and they were sitting on the beach

there by the water.

Q. Okay. So, I understand that the lifeguards go off duty and call everybody in at about 5:25 p.m.?

A. Is that what time? Okay.

Q. So, would that --

A. So, they must have -- yeah.

Q. Does that sound right to you?

A. I guess. I mean, we were sitting there, and the boys got called in, but then I'm not sure when we started hearing all of the sirens and seeing the police boat --

Q. But don't get ahead of me.

A. -- go by. Okay.

Q. I was just asking what time --

A. I know. I'm just trying to figure out my time frame.

Q. I was only trying to get the pinpoint on the time that they commenced their walk.

A. Yeah. They did -- they left before they -- because that's why Jett and Kole didn't go with them on the walk, because they were still out boogie boarding. And then, in that time, the lifeguards called everybody in.

Q. A few minutes later?

A. Yeah.

Q. Okay. When you were there on that Friday, July 27, 2012, you were seated facing the ocean. Correct?

A. Correct.

Q. And did you have your own time to go in the ocean that day at all?

A. I didn't go in the ocean, no.

Q. You just stayed, sat in the chair on the beach?

A. Sat. I was reading. Yes, I was actually reading.

Q. All right. And did you have the opportunity to view the ocean from where you were seated?

A. Yes. Because I was watching the boys, too. And I could see, they would start on one end, and end up on the other side. You know, they'd start one side of the flag, end up, and then come out, and then go back in again. Like, they kept going back and forth.

Q. All right. And how would you describe the surf on that day? What was the surf condition?

A. I don't -- just that things were moving, you know, sometimes you know when it's going sideways, and people -- you're in the water, and then you're moving from one side to the other kind of thing.

Q. So, you're saying there was a kind of a current in the water?

A. Yeah.

Q. And was the current moving from north to south or south to north?

A. South to north.

Q. As you're facing the ocean, it was moving from your right to your left?

A. Right.

Q. Correct?

A. Yes. Correct.

Q. Got you. Anything else you observed about the water? Were the waves high, were the waves low, anything?

MR. D'AMATO: At what point in time?

MR. BARKER: Good question, actually.

Q. At about the time that the boys were still in the water, just before the lifeguards had called people out, that's the end of the day.

A. Correct.

Q. Did you have the opportunity to observe the surf at that time?

A. No. The boys were sitting at the edge of it, and they were fine -- I mean, they weren't getting knocked all over the place or anything. They were

just sitting there with their legs in the water, and -- so, it didn't -- no, to me, it didn't seem all that rough.

Q. All right.

A. Yeah.

Q. And they had been on their boogie boards and playing in the water for about two hours?

A. Pretty much the whole time we were there, yeah.

Q. All right. And the whole time that they were there playing in the water, you thought it was safe?

A. Yeah. Yes.

Q. Now --

MR. D'AMATO: Wait. Can we go off the video record, please.

VIDEOGRAPHER: Sure. Going off the record, 11:43.

(Discussion off the record.)

VIDEOGRAPHER: We're back on the record 11:43.

BY MR. BARKER:

Q. I'm going to just read you a reference that was made by the policeman, Richard Schmidt, who wrote a supplemental report. And it's North Wildwood Document 16. And in pertinent part, he said -- he's

talking about his speaking with you.

A. Okay.

Q. And he recorded it this way, and I'm just trying to see whether you confirm it.

A. Okay.

Q. So, he wrote --

MR. D'AMATO: Are you quoting now?

MR. BARKER: I will read it directly in just one second, yes.

MR. D'AMATO: Yeah.

Q. "I asked what time they arrived at the beach, and she stated that it was around three p.m."

That's correct?

A. Correct.

Q. Right?

A. Yeah.

Q. "I asked what time her husband and daughter took the walk, and she stated that she was unsure, but she did remember that the lifeguards appeared to be leaving for the day." That's correct?

A. Correct. Yeah, all of that happened, and -- yes, in the same time period.

Q. Are you the administrator of the estate of your husband, George Bradley Smith?

A. Yes.

Q. Were there some kind of court documents filed that created you in that position?
A. **Yes.**
Q. And was that done in Atlantic County?
A. **Norristown. Montgomery County, Pennsylvania.**
Q. What was the date of marriage for you and Mr. Smith?
A. **March 15th, 1997.**
Q. Did you have any previous marriages?
A. **Yes.**
Q. To whom?
A. **Michael Finley.**
Q. And when were you married to Michael Finley?
A. **I was 21. I'm not sure of the date. I'm sorry.**
Q. How long were you married to Michael Finley?
A. **Three years.**
Q. Did it end by divorce?
A. **Yes.**
Q. What was the date of divorce?
A. **It was probably after -- like, the two years, or whatever, when you can do a no-fault divorce, or something like that. I don't know.**
Q. Okay. So, do you remember the year of the divorce?

A. **No.**
Q. Okay.
A. **I was 23; 23, I think.**
Q. And do you remember what county and state the divorce took place?
A. **Bucks County, Pennsylvania.**
Q. After the marriage to Michael Finley, and before the marriage to George Bradley Smith, was there any marriage in between?
A. **No.**
Q. Did you have any children with Michael Finley?
A. **No.**
Q. Did Mr. Smith, George Bradley Smith, have any previous marriages before his marriage with you?
A. **Yes.**
Q. To whom was he married?
A. **Laura Smith.**
Q. And do you know for how long he was married to Laura Smith?
A. **I don't know exactly, no, I don't.**
Q. And do you know if that marriage ended in divorce?
A. **Yes.**
Q. And do you know when that marriage ended in

divorce?
A. **I -- I don't know exactly. Sorry. I know I have it in my papers, but I just don't know the date.**
Q. You had children with George Bradley Smith. Correct?
A. **Correct.**
Q. You had how many children?
A. **Two.**
Q. And their names and ages?
A. **Brandy, 11; and Kole, 15. K-O-L-E, 15.**
Q. And what's the date of birth for Kole?
A. **2/3/01.**
Q. And Brandy is 9/20 --
A. **9/20/04.**
Q. -- 04.
Do you have any children from any other relationship?
A. **No, no.**
Q. And Mr. George Bradley Smith had children from his first marriage?
A. **Yes.**
Q. And their names?
A. **Nicole. And her last name, she's married, Gaeta, G-A-E-T-A.**
Q. And -- and --

A. **And Kyle Smith.**
Q. That's Kyle Bradley Smith. Correct?
A. **Yes.**
Q. And the date of birth for Kyle Bradley Smith?
A. **He is 12/5 -- he just turned 30 this year. And Nicole is 7/31 -- and she just turned 35 this year, or last year. Last year, I'd say.**
Q. Last year?
A. **Yeah, last year.**
Q. What is your current address?
A. **610 Mann, M-A-N-N, Road, Horsham.**
Q. Road, did you say?
A. **Um-hum. Horsham, PA 19044.**
Q. And how long have you lived at that address?
A. **Since 2000. January of 2000.**
Q. When you came to North Wildwood for the time that you were there in July of 2012, you rented a place?
A. **Yes. Two weeks.**
Q. For two weeks. If you come across anything that indicates the address for that rental property, would you please give it to Mr. D'Amato?
A. **Yes.**
Q. I'm going to ask you to look for that, and then I'll ask the court reporter to make a note on

the record that I'm making the request.
So, if there's any documentation that shows us the street address, we would appreciate that.
A. Okay.
Q. So, as of the date of the event involved in this case, your residence, and that of your husband, George Bradley Smith, was 610 Mann Road, Horsham, Pennsylvania?
A. Correct.
Q. And you lived there with, at that time, how many children?
A. Two.
Q. The two youngest children?
A. Correct.
Q. And you had been living there together for 12 years?
A. Yes.
Q. Before the date of this event, in the year of 2012, did Mr. Smith pay any costs associated with the residence of his daughter, Nicole Gaeta?
A. Yes. He would pay lots of money. Yeah. He was helping them out a lot, all the time.
Q. Gaeta?
A. Yes.

Q. Before the date of this event, and in the year 2012, did your husband pay any costs associated with the residence of -- of his adult son, Kyle Bradley Smith?
A. I guess I would say yes. Because he lived at an apartment that was attached to the shop for free. So, yes.
Q. He what?
A. We -- we have a shop, a mechanic shop, and it has an apartment next to it. And that's where Kyle lives. So, he lived there for free.
Q. How long had Kyle lived there for free before his dad passed away?
A. He lived -- he probably moved in there shortly after 2006, when he started working there.
Q. For how long, to your knowledge, did your husband provide assistance to Gaeta for her residence before the year 2012?
A. I'm not really sure. I mean, we would give them money now and then. So, I -- I'm not exactly sure. Nicole's husband's had some back issues, and he's been out of work for a really long time. So, there were -- you know, we would help them out when they needed it.
Q. Was there any regular support to Gaeta and

her husband?
A. Nothing -- no, not regular. But as needed.
Q. Is there any record as to how much support was provided to them?
A. Not that I knew of, unless Nicole has kept some track of it. I don't know. And knowing him, he probably gave them more than he ever told me, too, so. He was just like that.
Q. Do you own the home at 610 Mann Road?
A. Yes.
Q. Do you still live there?
A. Yes.
Q. Is there any mortgage?
A. No. That's -- when I got the money from the life insurance, I paid the house off so we could stay there.
Q. What did you receive in life insurance benefits?
A. One policy was a million, and the other one was a hundred thousand.
Q. And what was the amount of mortgage that you paid off?
A. One was 200,000, and the other one was about 140,000.
Q. You paid them both off?

A. Yes.
Q. And they were on the same property?
A. Yes. Yeah. One was the first, and one was a home equity line.
Q. The 140 was the home equity line?
A. The opposite way.
Q. The opposite. Oh, okay.
Did Mr. Smith, your husband, own any other properties or homes at the time of his death?
A. Yes. The shop.
Q. You say it's a mechanic's shop. What kind of mechanic's shop?
A. Auto repair.
Q. And did your husband own that free and clear, or was there a mortgage?
A. Mortgage.
Q. Did you pay that mortgage off?
A. No.
Q. Okay. What happened to the auto repair business?
A. Nicole and Kyle are running it. And when Brad passed away, they each received 25 percent of ownership of the business. That -- it was something we had done, we had just done a will the year before -- should I be saying all this?

Q. Yeah, go ahead.
A. **And I was just -- because then I -- we were giving them the shop, basically, if anything happened to us. So, they got -- they each got 25 percent when -- when he passed away. And then I was still 50 percent owner.**
Q. And what happened to your 50 percent ownership?
A. **I just recently signed that over to them. Because they're -- they've been running it. I mean, they've been paying the bills, they've been doing, you know.**
Q. Okay. And from the time of July 27, 2012, up until -- up until you recently signed over your 50 percent of the ownership, did you derive any income from the auto repair?
A. **No. I just work for them, for free.**
Q. You did?
A. **Yes. I still do. But I -- and I always will, so.**
Q. All right.
A. **Yeah.**
Q. Apart from those that you've already indicated to me to be next of kin of George Bradley Smith, was there anyone else that was next of kin to

your husband?
A. **I don't understand.**
Q. Well, he had two children, Kyle and Nicole, he had Brandy and Aidan. Do I have that right?
A. **No. Brandy and Kole.**
Q. Brandy and Kole.
A. **Um-hum.**
Q. So, that's four children, and you. Any other next of kin?
A. **Oh, well, like, mom and dad, and -- yes. Mother, father.**
Q. They still were alive in July of 2012?
A. **Yes. Two sisters, and a brother.**
Q. They're all still alive?
A. **Yes.**
Q. Did Mr. -- did your husband provide any support to other family members, other than you and the four children?
A. **Not that I know -- I laugh, because he helped everybody. But no, not -- no. We wouldn't say support, per se. He gave them cars, and, you know, did all of that stuff for them. So, I would say, yes, he was, you know -- he supported them all in one way or another, but.**
Q. Anything you can pinpoint for us?

A. **Well, no, just his brother. I don't know how many cars he gave to his brother, but.**
Q. Anything else?
A. **That's -- that's it.**
Q. Okay. Did you keep any kind of record as to how many cars he gave to his brother?
A. **No. I tried to forget. Stop giving him things.**
Q. Why did he give him things?
A. **I -- I don't know. He just wanted to take care of him. He was just like that.**
Q. Was it his little brother?
A. **Yeah. Yeah.**
Q. So, Mr. Smith was employed at the time of his passing?
A. **Yes.**
Q. And he was employed by running this auto repair shop?
A. **Correct.**
Q. Did he have any other type of employment?
A. **No.**
Q. How long had he done the auto repair shop?
A. **Since he was 18.**
Q. What was your husband's date of birth?
A. **6/11/58.**

Q. So, how old was he on the date that he passed away?
A. **Fifty-four.**
Q. Do you know what his yearly income was? Let's take it from the year 2011, that full year.
A. **I don't know. I mean, we tried -- I do all the bookkeeping. We always tried to do, like, a thousand dollars a week. I mean, that was the goal. So, it would be, like, 52,000 a year.**
Q. For how long had that been the income that he would derive from this auto repair shop?
A. **Before 2006, it used to be a little bit more, because he had a partner then, and they didn't have much of a mortgage. But in 2006, we bought the partner out, so we then had a mortgage again, so we had -- you know, you cut down a little when it's your own business.**
Q. Right. So, would you say between 2006 and through the year 2011, the average income was $52,000 a year?
A. **Yes. And I probably made about 400 a week working there, also.**
Q. Okay. That's in addition to the 52,000?
A. **Yes.**
Q. Do you have an estimate as to what the weekly

take-home was for Mr. Smith? This would be before the July 27, 2012. We could --

A. And you mean, like, taking taxes out?

Q. Right. What you -- what's net? What's the take-home that he would show on his pay stubs?

A. I'm trying to -- if I had a calculator, I could think more. But I think --

MR. D'AMATO: Do you want me to get one, Mike?

A. If I had a brain extension, I could think.

Q. If that helps you, fine, let's do that.

MR. D'AMATO: You know what, hold on one second. I think I have one in the drawer there. Hold on.

(Discussion off the record.)

A. Yeah. See, our thing, too, is, if we made a certain amount, we also had a huge depreciation that came out from the K1s from -- there's two businesses. One was the mortgage account, and because of the property, and the property depreciation started all over again in 2006 because we bought the property.

Q. Okay.

A. So, our -- our tax rate was probably cheaper then, is what I'm saying. Because you get to a certain -- you get your income down to a certain

amount, and then you -- you don't pay 30 percent in taxes, you pay 10.

Do you know what I mean?

Are you still waiting for an answer from me?

MR. D'AMATO: I'm sorry. What did you say?

THE WITNESS: Nothing.

MR. D'AMATO: Whatever you say, it goes on the transcript there.

THE WITNESS: Okay.

BY MR. BARKER:

Q. I'm going to show you now what Mr. D'Amato was good enough to give to us on January 5, 2015, which includes some tax returns.

A. Okay.

Q. Some tax return information for the year, it says 2012 on this.

So, it's all together here. And I've turned it to the place.

A. Okay.

Q. I'm trying to figure out, would this show your income for the year 2011, and you're reporting it in 2012 or not? So, here's your document, and you can explain it to me.

A. Right. Well, yeah, this would be for 2012.

Q. That's the 2012 income?

A. Right.

Q. I see. So, what we don't have -- we have the year -- if you flip back to the very cover page that Mr. D'Amato was good enough to -- right in your left hand there.

A. Yes. 2012, 2013.

Q. Okay. So, would you have documents like that for 2013 -- I'm sorry, for 2011?

A. Yes.

Q. I'm trying to get a point of comparison here, so I can see what the earnings were in the year before the subject event.

A. Yes.

Q. You have that?

A. I do.

Q. And would you be good enough to retrieve that, and provide it to Mr. D'Amato, please.

A. Yes.

Q. And for the year 2010, were your answers -- would your answers be the same?

A. I think I can get that, sure.

Q. And would you also provide that to Mr. D'Amato, please.

A. Yes.

MR. BARKER: And would the court reporter please note that we have a request for that information.

Q. Thank you, ma'am. I better take that before I walk out of here and forget it. Right?

A. Take that back.

Q. Okay.

A. It's quite a stack.

Q. Pardon?

A. It's quite a stack of paper.

Q. Yes. Okay.

By the way, this shop, the auto repair shop, what was the real name of the business?

A. Brad -- well, the legal name is Turnpike Auto. What we call it is Brad's Turnpike Auto.

Q. All right. It was an LLC?

A. LLC, yes.

Q. All right. Did Mr. Smith, your husband, have any other sources of income at the time that he passed away, other than that which he derived from Turnpike Auto?

A. No.

Q. At the time Mr. Smith passed away, did he have any investments, other than the house and the --

the auto repair business? That includes the property.

A. A little. We were trying to save some. But mainly, the business was something we were banking on as being our retirement some day.

Q. So, did he have an IRA, or a 401K?

A. An IR 1 -- IRA, yes.

Q. IRA?

And did he have any stocks?

A. No. Just -- just the IRA.

Q. What about you? Did you have any?

A. I had an IRA. I have an IRA, too, yeah.

Q. Okay. So, the two of you in terms --

A. I did a SEP. Yeah, mine was a SEP. Because I'm self-employed as a bookkeeper.

Q. What do you call it; a what?

A. Bookkeeper. Oh, a SEP? Yeah, it's --

Q. It's a type of IRA?

A. Yeah. If you're self-employed, you can get it.

Q. All right. What's the amount that was in the IRA for your husband at the time he passed?

A. Maybe 50 -- 50,000.

Q. And yours, at that time, was?

A. Maybe 20,000.

Q. What was the highest level of education for your husband?

A. High school.

Q. Did he hold any certificates or licenses?

A. He did, because he had to do some schooling for -- for mechanic. And then also emissions and state inspection license. Those are something he had to go for, I think, you know, every couple of years, you have to go back and do some continuing --

Q. In order to run the auto repair business?

A. Yeah, yeah, because it's with the state.

Q. Okay. Are you currently employed?

A. Yes.

Q. And where?

A. I'm self-employed. As a bookkeeper.

Q. And how long have you been -- well, you were self-employed as a bookkeeper even when you were doing the work for the auto business. Right?

A. Correct.

Q. And you're still doing that?

A. Yes.

Q. For free?

A. Yeah. Well --

Q. Is that true?

A. I have to. Yes.

Q. I'm just asking. Okay. But who pays you?

A. I have to help them.

Q. Somebody's got to --

A. No, somebody pays -- yeah, I do have other clients. I have several businesses that I work for, and I also do some personal books.

Q. Okay. As a self-employed bookkeeper, do you know what your income was in the year 2013?

A. I was actually just finally starting to make some decent money. I was probably making a thousand to 1500 a week.

Q. In the year 2013?

A. Not 2013, no. No.

Q. In the year 2012, you mean?

A. Yes. 20 -- a little prior to 2012, I started -- the kids were getting a little older, I had more time that I could -- and I picked up more jobs, and I had a huge job that I worked 40 to 60 hours a week, just that one job.

Q. Um-hum. What --

A. That I lost after my husband passed away.

Q. All right. What -- what -- we just went through 2015. Do you know what you earned in 2015?

A. Oh. I should know this, because the Marketplace asks me this all the time for insurance.

I think it's -- oh, I don't know. Can I -- can I get that back to you, too?

Q. Yes, ma'am.

A. Okay. Sorry.

Q. And if you could do that for 2012 through 2015.

A. Okay.

Q. And it's good. Don't guess.

A. Okay. I know, I know.

Q. As I say, don't -- if you don't know, just let me know you don't know. And my follow-up question is going to be, is there another source that might tell us the answer to that question, and then we'll take it from there. All right? So, that's what we just did.

A. Okay.

Q. And if you would provide that information to Mr. D'Amato, we would appreciate that.

A. Okay.

MR. HUNKINS: Keep going, counsel. I'm going to step out.

Q. Other than being employed as a bookkeeper, in the year 2012, did you have any other employment?

A. No.

Q. What is your highest level of education?

A. **High school, and some college.**
Q. And how much college is that?
A. **No degree. I made some -- you know, I took accounting courses, and marketing. A company that I went -- I worked at full-time sent me to school, because I worked in the accounting department. So, they paid for school, as long as it was related.**
Q. Do you have any certificates, certifications, licenses, degrees, other than a high school diploma?
A. **I was a real estate agent once.**
Q. But that's lapsed?
A. **Um-hum.**
Q. Long time ago?
A. **Yeah. I think since Kole was two. I think I -- yeah. I missed one year of going back for the continuing ed when he was two, and that was it.**
Q. Is anyone, other than you, providing financial support to your household at this time?
A. **Social security.**
Q. And would you explain to us what that social security income is, and what the amount is.
A. **It's 1200 a month for each of us.**
Q. That's for you?
A. **Kole, and Brandy.**
Q. Kole, Brandy. So, it's $3600 a month?

A. **Approximately, yeah. Close. And that goes until -- I get it until Brandy's 16, unless I earn enough to not get it.**
Q. What's the limit that you can earn?
A. **I -- I -- you know what? I don't know what it is. I just -- you know, they figure it out year to year, so.**
Q. And Kole gets it until what age?
A. **Kole gets it until he's 18. Brandy gets it until she's 18.**
Q. Oh, you just said 16.
A. **I get it until Brandy is 16. Until my youngest child is 16, I -- then it's over.**
Q. And Brandy and Kole get it until they're 18?
A. **Correct.**
Q. Got you. Other than you and Mr. Smith, your husband, was anyone providing financial support to your household at the time that he passed away?
A. **No.**
Q. Did your husband have any debts at the time that he passed away?
A. **Yes.**
Q. And what do you recall about that? There's a couple mortgages. Right?
A. **Well, the -- yes. And we did have some -- we**

had some credit card debt, too, because we're working on trying to fix -- the shop also has rental properties out front. So, we were trying to renovate everything to get them rented out. So, there was some debt involved there.
Q. All right. So, you told us about the mortgages. I think there were two mortgages. The 200,000 mortgage was for a line of credit. The 140 mortgage was for the real estate. They were both on the house. Correct?
A. **Correct.**
Q. There was no mortgage on the business property?
A. **There is a mortgage on the business property.**
Q. There was. So, that's another debt. What was that amount?
A. **Probably, at the time, 350,000.**
Q. On the business property?
A. **Yes.**
Q. Any other debt?
A. **Yes. There's two -- two lines of credit with the business. I -- I have all of that written down somewhere, which I can give that to Paul.**
Q. Thank you.
A. **Yeah, I have a whole list of what I paid.**

Because I paid a few things off, too. And then some of the things the kids have been paying off, as they go along, you know, with the business. They've paid off one loan already, and trying to get the mortgage in their name now.
Q. So, there's a mortgage for the business that was 350, that -- as of July 27, 2012, and then there were two lines of credit, and you paid them for awhile, and then, at some point, the children took -- the adult children took over?
A. **Correct.**
Q. And they've been paying them?
A. **Correct.**
Q. All right. So, from the time of July 27, 2012, until the time that they took over those obligations, we would -- we would need to know that.
A. **Okay.**
Q. And any other debts that your husband, Mr. Smith, had at the time that he passed away, if you could give all that information to Mr. D'Amato, and if the court reporter would please note that we're making a demand for that information.
A. **Okay.**
Q. At the time Mr. Smith, your husband, passed away, did he have any outstanding judgements pending

against him?
A. **No.**
Q. At the time Mr. Smith, your husband, passed away, did he receive any governmental assistance at all?
A. **No.**
Q. Did anyone in the family at that time receive any governmental assistance?
A. **No. Except for my son-in-law. I don't know if -- does disability fall under that? Is that government?**
Q. Yes.
A. **Or is that insurance? I don't know.**
Q. Well, so, this is your --
A. **Nicole's husband. My stepdaughter's husband.**
Q. How long has he received that governmental assistance?
A. **I'm not sure.**
Q. What's his name?
A. **Jared, J-A-R-E-D.**
Q. He receives some type of disability policy?
A. **On disability, yeah.**
Q. Disability insurance?
A. **I guess.**
Q. Is that from -- social security? You don't

know?
A. **I don't know. I thought it was maybe -- it could have been just from a -- because he worked at a job, that's how he hurt his back. So, I'm not -- I'm not sure. But how long, that doesn't last forever. Right?**
Q. Other than what you and your children receive for governmental assistance from social security, that you told me about, those monthly payments of about $1,200 a month.
A. **Right.**
Q. Is there any other form of governmental assistance or aid that you and the children receive?
A. **The kids are on CHIP. Does that count?**
Q. Yes.
A. **And I get a discount from the Marketplace. Or -- is that the government? I don't know.**
MR. D'AMATO: Say that again.
A. **It's based on government -- it's based on your income, and -- it's the Obamacare thing.**
Q. You call it the Marketplace?
A. **I do. Because they -- because I'm always constantly giving them more information. But yeah, they're called the Marketplace. Isn't that what it's called?**

Q. I don't know.
A. **Marketplace.gov, or something like that, I think it is.**
Q. So, you get some type of assistance for healthcare from Obamacare?
A. **Yeah.**
Q. Other than the life insurance, which you told me about, the $1 million policy, and the $100,000 policy, did you or the children receive any other life insurance benefits?
A. **The only other one would be, there was, like, a thousand dollars from a bank one, you know, when -- the bank sends those free ones, or whatever. I think -- I can't tell you if I ever got it, but.**
MR. D'AMATO: But, Mike, it's -- it's 12:30. And they were up really early. And I have a sandwich tray.
Do you think we could take a 15 -- just a 15-minute break. Okay?
MR. BARKER: Absolutely, okay.
MR. D'AMATO: We'll go off both records. All right?
VIDEOGRAPHER: Going off the record, 12:25.
BY MR. BARKER:

Q. Just your last answer was, you're not even sure if you got that, right, the thousand?
A. **I would, if I looked. But I'm not even sure.**
Q. Put it on your list.
A. **Okay.**
(There was a recess.)
VIDEOGRAPHER: This is the beginning tape of number 2. Back on the record, and the time is 1:04.
BY MR. BARKER:
Q. What was the amount of Mr. Smith's funeral expenses?
A. **I don't -- I don't know exactly. Again, I do have all of that. I can get that for you.**
MR. BARKER: Okay. I'd like to make a request for that information. Please provide it to Mr. D'Amato.
Would the court reporter please note the request in the index.
MR. D'AMATO: Mike, you already have it. Do you want me to go get it?
MR. BARKER: No.
MR. D'AMATO: Okay.
MR. BARKER: It's okay. If I already have it, I apologize. I didn't -- I didn't remember

that.

MR. D'AMATO: Yeah.

MR. BARKER: But you've given me so many documents.

MR. D'AMATO: Exactly. Yeah.

MR. BARKER: So, I apologize.

BY MR. BARKER:

Q. Do you recall, ma'am, how they were paid?

A. I paid for them.

Q. Out of the insurance policy benefits?

A. Yes.

Q. Now, we need to get some information that's more specific. Just do the best you can in answering these questions.

At the time Mr. Smith passed away, we're trying to determine the monthly household expenses. So, for instance, were there car payments that were monthly car payments?

A. I'm not sure if we had a car payment at that time.

Q. Utilities, monthly?

A. (Witness nods.)

Q. No knowledge?

A. I don't -- I don't know right now, no.

Q. Okay. Food?

A. (Witness nods.)

Q. No knowledge?

A. No knowledge. Sorry.

Q. Medical expenses?

A. No knowledge. I have it all. I'm a bookkeeper. So, I have everything in Quicken. Like, I can print out reports in a few seconds.

Q. You could do all of that for us?

A. Yes.

Q. Well, I'm sure that's going to be beneficial.

And I'm just going to keep asking. I only have one more on this part.

A. Okay.

Q. Children's activities. Do you know how Brandy was telling us she goes to classes, and there might be costs with that.

A. Yes.

Q. And you have two young children living at home, so for all I know, they're in private school. I don't know.

So, any -- any expenses that are part of the household expenses just prior to the date of death. We're looking for the monthly household expenses. And if you can recreate that through your Quicken.

A. Yes, I can.

MR. BARKER: We make the request, Madam court reporter, that this be noted in the record, and that the information be provided to Mr. D'Amato, who, in turn, will provide it to us.

Thank you.

Q. Now, I'm going to have the same set of questions at the present time.

A. Okay.

Q. In the year 2016. So, you could go through and do the same printout. You could look for car payments, utility payments, food payments, medical expense payments, children activity payments, and any other normal operating expenses for your household at this time.

A. Yes.

Q. So, we'll be looking at what it was in 2012, let's say, for instance, the first six months of 2012, compared to the first several months of 2016. We can do a comparison.

A. Okay.

Q. All right, ma'am?

A. Yes.

Q. During the break, perhaps you thought about this. Apart from what you already told us about

financial support that your husband provided to other children outside of the house, anything to add to that which you've already told us?

A. No.

Q. Anything that he might have provided for Kyle Bradley Smith or Nicole Gaeta, other than what you've told us?

A. No. Because there was nothing on a consistent basis. It was, you know, as-needed.

Q. Whether it was a continuing expense or a prior expense which he paid, did your husband pay any college tuition expenses at the time of his death for either one of his adult children?

A. Some. For Nicole, yes. Not -- not a lot. But yeah, some. But that was a long time ago. I mean, she's 35 now, so.

Q. Right. But at the time that he passed away in 2012, was he paying any --

A. No.

Q. -- college debts, loans, anything like that?

A. No.

Q. And you're saying that for Nicole, he had paid some at one point in time?

A. Yes.

Q. But you don't know what?

A. **No.**
Q. Did he pay any such college debts or loans for Kyle?
A. **No.**
Q. Now, there may have been certain household chores, repairs, or upkeep duties that your husband did on a routine basis.
If so, tell us what they were.
A. **Well, of course, all of the yard, everything in the yard, he did. Any repairs on the house, he did. He could -- he could do anything, really. Plus, he cooked, he cleaned, he did everything. Not all of the cooking. I do some -- I did some of it. But I mean, he cook -- we were a great team. We, you know, it was I did my thing, he did his thing. You know, we both picked each other's slack up. Like, whenever needed. So, we were -- I always said, we were such a great team.**
Q. Does that mean that you were doing the yard work and the household chores?
A. **I did the gardening. Mine -- I was gardener, and -- we have a -- almost two acres. So, I mean, he -- you know, took quite a bit to do the lawn. So, I did the flowers, and the vegetable garden, and he did the grass, and -- so, yeah, we --**

Q. Okay. Were there any household repairs that you recall, or was the home not in need of that type of thing?
A. **I -- well, it's always in need. I mean, you start one room, and you finish that, and then you have to go back -- you know, you go -- it's constant. I have a list. I have someone now that comes, that I pay, to do things. And I have a list for him all the time that, you know, things that I can't do.**
Q. And how long have you had this person?
A. **I guess a little after Brad passed away. And he's someone I've known for a long time. He was friends with my one friend, and he does repairs at her house, and I was, like, oh, I got to call him, please, so.**
Q. All right. So, is that another line item in your Quicken system?
A. **Yeah, I guess. Yeah. I might have paid him cash sometimes, too. I don't know. But yeah.**
Q. Well, let's make it a line item, and let's make it an item that I would like for you to produce that information.
A. **Yes. His name's Tom.**
Q. Okay. Let's --
A. **The Tom list.**

Q. The Tom list from --
A. **Yeah.**
Q. -- from 2012 to the present.
MR. BARKER: And I ask the court reporter to note, I'm making a request for that financial information be provided by the witness to Mr. D'Amato, and that request should be noted in the index.
Q. Did your husband, Mr. Smith, have any hobbies?
A. **Golfing.**
Q. Some people call that a sport, you know.
A. **Yes, I know. Well, it's four hours.**
Q. All right. Anything else?
A. **Well, yeah, we played tennis, bowling.**
Q. Anything else?
A. **And went to the shore.**
Q. You did that every year?
A. **Yes.**
Q. But this was the first year, 2012 was the first year that you went to North Wildwood?
A. **Correct.**
Q. And that ties in somewhat with the next question, which deals with the activities that your husband, Mr. Smith, engaged in with you, and then

we're going to talk about what he engaged in with the children.
So, what were the activities that he would engage in with you before he passed away?
A. **We played tennis, and bowling. We all did bowling as a family. I told him I wasn't ready for golf yet. I had to -- I wanted to be older and play golf. He was going to teach me.**
Q. Any other activities that he did with the family, then? I've got for activities with you, it's tennis, and then bowling with the family. Correct?
A. **Yeah.**
Q. And then just your husband and the children, anything that you recall that he would --
A. **Well, with -- with Brandy, their thing was, he would -- he would sit and watch her sing and dance for hours. I mean, he had the endless patience to -- and they would watch their Taylor Swift things together, and their -- they had their whole TV show lineup that they would watch together.**
Q. Anything else?
A. **I just -- well, I mean, of course, you know, always doing things with Kole outside, and all -- you know, playing catch with Kole, or -- but Kole said to me, like, one of the things that were the hardest for**

him, like, was the wrestling around. You know, like --

MR. D'AMATO: It's okay, it's okay. Do you want me to get you a fresh bottle of water?

THE WITNESS: No, I'm okay, I'm okay.

MR. D'AMATO: Okay.

Q. Should I proceed?

A. Yeah. Go ahead.

Q. I'm going to ask you some medical background information about Mr. Smith.

To your knowledge, had he ever been hospitalized?

A. No.

Q. Was your answer no?

A. No. Yes.

MR. D'AMATO: That also includes emergency room visits, same-day surgeries, things like that.

THE WITNESS: Not that I can think of, no. I mean, he hardly ever went to the doctor, really. I mean -- not that he didn't go to the doctor, but he hardly ever. I mean, he wasn't a person that ever complained about anything.

Q. Okay. To your knowledge, did your husband, Brad Smith, have any chronic illness?

A. No. The only thing that bothered him, his knee did bother him. So, that would be the only thing he would ever -- that's the only thing he went to the doctor about was his knee. Because he was concerned about it, because we were going to go to Disney, and he didn't want it to bother him.

Q. Which knee?

A. I think it was his right knee. But again, I say, not a -- much of a complainer. So, he didn't complain much. So, it's not, like, he was always, like, oh, my knee, you know. And he's a man who stood every day on a concrete floor, you know, working all day, so.

Q. Did he have a primary care physician?

A. Yes.

Q. Who was that?

A. North Willow Grove Family Practice. He probably went there three times ever.

He did have a vasectomy. I forgot about that. You asked -- now you're saying that. Sorry.

MR. D'AMATO: Was that done in a hospital?

THE WITNESS: Yes.

Q. Where is the North Willow Grove Family

Practice?

A. In Willow Grove, Pennsylvania. Blair Mill Road. I don't know the address exactly.

Q. Do you have any health issues at this time?

A. Not that I can think of, no.

Q. Do any of the children of Mr. Smith have any health issues at this time?

A. No.

Q. Are you receiving at this time, meaning, generally, at this time frame, any psychological or emotional counseling?

A. Not at this time, no. I haven't been to someone in awhile.

Q. Okay. Where did you ever receive psychological or emotional counseling, and when?

A. Well, everything happened in July, end of July. September, we all started going to Safe Harbor, and that's in Willow Grove, Pennsylvania. And they have a group -- they had a group for parents. They had a group for Brandy's age group. They had a group for Kole's age group. And they had a group, a young adult group for -- Nicole and Kyle went, also.

Q. How many visits were made; do you know?

A. Well, we went there for -- for, like, two

years, probably. We went there for awhile. And they have a summer camp. Brandy went to their summer camp, too. Like, just a week. It's right around the corner from our house, so it wasn't --

Q. And what did you do there?

A. They had a parent group there that -- it was kind of -- kind of, like, a group therapy.

Q. Do you know approximately how often you went?

A. I think it was twice a week. So, we -- we would either go once or twice a week.

Q. And for how long did you go once or twice a week?

A. For the same amount of time as the kids. We all went together, when we went.

Q. About two years?

A. Yeah. We went pretty much the whole first year, and then we -- maybe the second year, we didn't go as many times the second year. But in between there, we did go do some other counseling, too.

Q. With whom?

A. One was -- it was called Crystal. The kids went. I would -- I didn't go at that time. I would take them, and they each saw someone. But neither one of them -- like, you saw the thing from Dr. Debbie. Neither one of them would talk about it.

And, like, what happened. Like, they -- they never went through it all. They just kind of sat back and watched everybody else kind of go through it, you know.

Q. So, Kole went, and Brandy went?

A. Yes.

Q. To Crystal?

A. Yeah.

Q. Is that right?

A. I know. I'm thinking he's got all the copies of all of that. But I think it was called Crystal -- I don't know. I'm not sure.

Q. Was it in Willow Grove?

A. No. This was in Flourtown, Pennsylvania.

Q. Are any of the children at this time receiving any kind of psychological or emotional counseling?

A. Not right now, no.

Q. And you are not either. Correct?

A. I would like to go back. But yeah, I just haven't had the time.

Q. When do you recall that you were last receiving any such psychological or emotional counseling?

A. I think during the last summer was probably

the last time I went to the place I was going to.

Q. The summer of 2015?

A. Yeah.

Q. And the place you were going to was called?

A. I don't remember. Sorry. And that's in Horsham. It's right down the street from me. I just don't remember the name of the place.

Q. All right.

A. I have all that, though.

Q. All right. If you don't mind, we'll start a new piece of paper, and you can continue your list.

A. Okay.

Q. There you are.

THE WITNESS: But you have all that, Paul, don't you? All the places that we've gone to?

MR. D'AMATO: Yeah.

THE WITNESS: Yeah.

A. Insight, insight.

Q. There you are.

A. Insight Counseling. That's the name.

MR. D'AMATO: I thought we had mentioned that in our answers to interrogatories. I thought, but.

MR. BARKER: You might have, but we didn't receive answers to interrogatories. I have

lots of documents from you, though.

MR. D'AMATO: Oh, no, no, no. We answered. Do you want me to get them? Oh, yeah. Okay.

Can you just go off the video record?

VIDEOGRAPHER: Okay. Going off the record. The time is 1:24.

(There was a brief recess.)

VIDEOGRAPHER: We're back on the record, 1:28.

BY MR. BARKER:

Q. Other than Mr. D'Amato, have you spoken with anyone about what happened on the date of the event?

A. Yes.

Q. Who was that?

A. The lady at Insight Counseling, I've talked to her, when we -- I've talked to Dr. Debbie, myself, also. I don't know. My -- my parents. Of course, everyone's asked me. I don't -- I don't know at what time I -- when I started being able to talk about it. I don't -- I'm not quite sure. But when I could. And I've talked about it.

Q. Do you have any knowledge of your own about how this event took place?

A. No.

Q. Apart from the observations about the ocean that you told me on the date of the event, do you have any other knowledge of your own about the conditions of this beach that you were at on July 27, 2012?

A. No. Only what I was told.

Q. Okay. And who told you something about the conditions of the beach?

A. The police officers.

Q. And anyone in particular, any particular police officer?

A. I don't -- there were two police officers that came to the house probably every night to, I guess, give us an update on -- and I don't know their names. But there's probably -- they're probably in a report, I guess.

Q. Okay. And what did either one of them tell you?

A. They just told us how dangerous it is in that area, and how -- told us that several people were rescued there again today. And like -- it was strange -- like, it was strange to hear. Like, why are -- like, what does this all mean? You know, like, why are -- so they were kind of, like, painting the picture of this place is dangerous.

So, that's where it started, you know. And Andrea would be there with me, too. And we would be, like, why -- you know, like, because we were just thinking they went for a walk, and a terrible accident happened. And to find out here they keep telling us, it's a dangerous area. Like, well, why didn't we know it was a dangerous area? Like, why didn't someone tell us that before we went there? Like, why would a man -- two men and three little children go on a walk in a dangerous area, if they would have known it was dangerous.

Q. Um-hum. Well, what did they -- what area, in particular, if any, did they say was dangerous?

A. Where he -- where they went in the water.

Q. And what did they say was dangerous about that area?

A. They said that people get rescued from that area all the time, because they get swept out, or -- something, you know, because that was a thing, too, because that -- none of us would have gone swimming there, ever, because there's no lifeguard there. So, that wasn't the issue. The issue was walking along the beach. And they're telling me it's dangerous, that whole area is dangerous. So, that's where we even started, you know -- but then the more we talked

to everybody else, even around the complex, people were saying, oh, yeah, that area is dangerous, you know. And again, we were, like, well, again, why didn't we know it was dangerous?

Q. Um-hum. Well, what specifically was it that was dangerous in the area? And that's the first question.

A. I -- from what I -- what the police -- all the police were telling us were that area is dangerous, and people -- they would say, three people were saved from there today. Like, that's what they would come back to us at night and say that to us. So, you know, that was our first idea that, why -- you know, that this place was dangerous.

Q. That area, does that mean the inlet?

A. The inlet area, yes, where -- yeah.

Q. The inlet area?

A. (Witness nods.)

Q. And in the inlet area, there's a -- a flow of water; is that true?

A. (Witness nods.)

Q. You don't know?

A. I -- that's what I hear. That's what I've heard from others. And I -- yes. I've read it in several things now, and I've seen it. And I've heard

it said. I'm -- even a woman who I talked to recently, after the boy disappeared out there this past summer, talked to an ice cream vendor, and he told her about it.

Q. Okay. So, first of all, let's start with this: There's two policemen, and you say one or both of them told you something about the area being dangerous.

A. Correct.

Q. Okay. Was it one or both of the police officers?

A. Both of them.

Q. Okay. Next, can you tell me the names of either one of the policemen?

A. I cannot, no.

Q. Could you describe either one of the policemen?

A. No. Maybe my friend Andrea could. I don't know.

Q. Next, the ice cream vendor who told you something about the area being dangerous.

A. Not me. Another -- another person that I know.

Q. Okay. So, an ice cream vendor told a person that you know that the area was dangerous?

A. Right. That there's a well-known vortex there, in -- in the area, yes.

Q. In the water?

A. In the water, yeah.

Q. So, where is the vortex?

A. At the inlet beach, yeah.

Q. But do you know where in the inlet?

A. No. I mean, and I've seen the depositions of the lifeguard chief, and he -- he was saying it's right off of the beach. I mean, basically. I don't -- I, personally, no, don't know where it is.

Q. Okay. Who was the person that the life -- sorry, sorry, sorry.

Who was the person that the ice cream vendor was speaking to?

A. A -- a lady that I've been in contact with, because she's been trying to get a Disney -- well, she did get a Disney grant to put signs up in that area to warn people about the danger.

Q. Okay. What's her name?

A. Jacqueline -- I don't know the -- I don't know the spelling of her last name. She lives -- she's a Girl Scout troop leader in New Jersey. And she must go to North Wildwood a lot. And when that boy was missing last year, she started doing a lot of

research, herself, and that's how she realized that -- you know, everyone was telling her it was dangerous, and then they actually saved someone while they were out there on their Jet Ski that was basically on his last breath.

Q. He was out in the water?

A. He was out in the water, yes. And they said, You can't be out here, it's dangerous. And he said, I didn't know.

Q. Okay. Now, Jacqueline, have you recalled what her last name is?

A. No.

MR. D'AMATO: D'Uria, it's spelled D-'-U-R-I-A. I have her telephone number and e-mail in the other room, if you want it.

MR. BARKER: All right. When we finish, if you'll give me that, I'd appreciate it.

MR. D'AMATO: Yes. I'll write it down.

BY MR. BARKER:

Q. Now, is there any other source of information that you can point to which you indicate is a source of information about danger in the inlet area?

A. Lots of articles from Atlantic City Press, and there's some quotes from the old mayor and the new mayor, and -- talking about the vortex, Stewart Farrell talking about the vortex.

Q. Anything else?

A. That might be it. That's all I can think of right now.

Q. To your knowledge, had your husband ever been to this area of beach before you arrived there in July of 2012?

A. No. I'm pretty sure he's never been -- he used to go to Ocean City all the time. So. I don't even know if he's ever been to Wildwood.

Q. Have you ever given a statement about what you observed on the date of this event, other than what you reported to the police, which we have?

A. I don't know when we did our press conference. Does that count as a statement of --

MR. D'AMATO: Yeah.

Q. Yes, it would.

A. Okay.

Q. You did a press conference with whom?

A. We did that in July of 2014?

MR. D'AMATO: Yeah.

Q. Do you recall --

A. We did it here. I don't know. There were a lot of different radio -- or TV station -- Scott was here, and Andrea was here.

Q. Do you have any knowledge of how this event occurred? If I refer to it as an accident, do you have any knowledge as to how this accident occurred involving your husband?

A. Direct knowledge?

Q. Yes, ma'am.

A. I mean -- no. I mean, only what I know from what Brandy says, and what Scott has said. I mean, you know, what happened with them. I just know they went for a walk, and didn't come back, so.

Q. Other than speaking to Brandy and Scott, have you spoken to anyone else that reportedly was a witness to what happened?

A. No. I didn't even talk to the Jet Ski guy, really, that much. I mean, to me, that was all, like, in denial that that even happened. You know, so I'm so glad other people rallied around him, because I felt like I left him out. Because I just couldn't believe she was even out there, you know.

Q. There's a statement in the complaint, that's the pleading that was filed on your behalf in court, there's a statement in the complaint that says that the sand collapsed.

Did you make that statement?

A. I don't know -- I don't know. That's what I

was told happened.

Q. Do you know who was the source of information that the sand collapsed?

A. I think that's Scott.

Q. You think?

A. Yeah.

Q. Do you have anyone else that you think may have made a statement that would support that allegation in the complaint; that the sand collapsed?

A. I don't know. And I'm not sure what Brandy -- I thought she had said something like that to the doctor, when that -- you know, when she was going through everything. But we haven't gone through it ever again. We only did it that one time at the doctor's office. And --

Q. Is that Dr. Debbie?

A. Yeah. And I -- you know, because I don't -- I'm not going to, like, sit there and say to her, let's go through this again, kind of thing. You know, I want her to do it, if she wants to. And that was the whole reason we were there, was because she had it so bottled up, she was exploding. Like, she just -- she was afraid of everything she said and did, and thought something bad was going to happen because of it. And that was, what, two years after

it happened, you know. Like, it was scary. Because she -- it was so out of character for her. I mean, she just totally -- I'm surprised -- I was so happy that she came out of it, and the doctor said it's because she needed to talk about it, and get it out. So, you know -- I don't know. Whatever it was, it helped her.

Q. When you -- when your husband went for the walk with Scott Sunderland and the children, you stayed at your belongings back on the beach --

A. With Andrea.

Q. -- true?

With Andrea --

A. And the two boys, Jett and Kole.

Q. Okay. And then what happened? Did somebody come to you at that location?

A. Yeah. Well, we started hearing lots of sirens, and -- and Andrea kept going, God, what's taking them so long? And I kept going, Well, it has nothing to do with them, they're just for a walk. They're probably just standing there watching whatever is going on. And I kept saying, No, you know, has nothing to do with them, nothing to do with them. And finally, she said, I'm just -- I'm going to go walk down there and see what's going on. And

then she walked down there. And they must have sent Aidan -- Aidan. I only remember seeing Aidan, and Aidan was 11 at the time. And I saw his face, and he said -- he just looked at me, and I just ran. Because then, as soon as he came back by himself, I knew something -- something was wrong.

Poor Aidan.

Q. Did Aidan talk to you about what he saw?

A. No, I don't think either one of her kids have talked in -- I don't know. Yeah, I don't think either one of them has talked about it. And he didn't fall in. He must have been just far enough away that it didn't get him.

MR. D'AMATO: How do you spell Aidan.

THE WITNESS: A-I-D-A-N.

MR. D'AMATO: How old is he now?

THE WITNESS: He's -- no, wait a minute. If he -- if they were seven, he was probably nine. Because he's 13 now.

MR. D'AMATO: Okay. Thank you.

THE WITNESS: Right. Because he just turned nine, because he's July 1st.

BY MR. BARKER:

Q. Date of birth of July 1 --

A. I don't know. I don't know his year. I only

know, because he's the day before my birthday. But I'm not sure of the year.

2003.

Q. Were you at the beach when the lifeguards at that beach said that they were leaving for the day?

A. Yes.

Q. Did you hear them say that?

A. Yes. Because the boys came in.

Q. And when they were saying that, had the group of Brad and Scott and the children already left?

A. Yes.

Q. And how long was it from the time that they left to the time that you heard the lifeguards say, That's it. It's the end of the day. Everybody's out?

A. I'm not really sure. Not sure.

But one thing I have to say is, Kole was at the edge, because the lifeguards told them to get out, and he could see Brad, and Brad was waving to him, and telling him to come. And he stayed, because he didn't go, and he stayed there. So, they --

Q. So --

A. So, they could see -- he could see them still.

Q. So, it's rather simultaneous --

A. Yeah.

Q. -- close in time?

A. Yeah.

Q. Did you have any conversations with any of the lifeguards that day prior to the incident?

A. No.

Q. Did your husband have any conversations with any of the lifeguards before this event?

A. I don't think so, no.

Q. Did you have any conversations with any North Wildwood personnel after the event?

A. I'm sure. Because when I walked up, I didn't know where the kids were. I don't know. This -- that's hard. And then they -- then they told me they were looking for Brad. And I'm, like, well, why isn't anyone in the water? Like, why are we standing here? I'll go look for him. And then they pulled me away, and then they put me in the back of the ambulance. And then that's where Brandy and Kole were. Because they said Brandy had to go to the hospital, because she was in there. And I'm, like, what do you mean she was in there? They went for a walk on the beach. Like, what are you even talking about? And sorry, I'm freaking, but -- okay. But,

yeah. So, then to see her wrapped up in a towel, and it -- all of it was just shocking, just --

Q. And after that, did you have any conversations with any North Wildwood personnel of any type?

A. I don't know. They took us in the ambulance to the -- to the hospital from there.

Q. What happened at the ambulance -- in the ambulance, if anything?

A. Nothing. I'm just -- we were just riding and looking out the back, waiting for another ambulance to come behind us, thinking, you know, he's going to be right behind us.

Q. What happened when you arrived at the hospital?

A. They took -- they took Brandy in. I don't know. They -- they took her in, they hooked her all up to I.V.'s. I guess they took her in to make sure she didn't have water in her lungs. We sat -- we sat there forever. We sat there forever just looking and waiting at the door, waiting for them to come in with Brad. Like, that's -- but with Brandy sitting in the hospital bed, and Kole and I just sitting there waiting.

Q. Did Brandy have any physical injuries?

A. I don't know. I -- I'm still in denial, but when I read the report of possibly drowning with her, you know, like, that's -- I have the report from the Cape May Hospital. And it was, like, you know, what are you even talking about? Like -- but, yeah, there -- I mean, they were checking her for that. Because she was out there awhile.

Q. Well, to your knowledge, did Brandy have any physical injuries?

A. No. Not that I --

Q. Did you speak to any Coast Guard personnel after this event?

A. No.

Q. Did you speak to any New Jersey State Police personnel after this event?

A. I -- yeah. Someone came and talked to us, and came and talked to Scott, too.

Q. Was that on the date of the event?

A. Yes.

Q. Do you know the name of the person?

A. I don't.

Q. Do you know rank?

A. I don't know -- I don't know his name, anything.

Q. Was this a member of the New Jersey State

Police?

A. I -- again, I don't know. I don't know who he was. I -- yeah. I was in shock. I just -- to say -- to even believe that I was there in the first place was -- yeah.

Q. Okay. So, I had asked you whether you spoke to anybody from the New Jersey State Police, and you said yes.

A. Well, he was police. But I don't know state police, local. I don't know.

Q. Okay. Thank you for the clarification.

A. Yeah.

Q. Do you happen to know whether the person that you were speaking to, who you say was police, whether that was someone from a marine police unit, meaning they have some kind of job on a boat?

A. I don't know. He seemed like a regular police officer. I just don't know what his rank, or where --

Q. Now, you and Mr. D'Amato have indicated that you did answer written questions, and I have a set here with me, which Mr. D'Amato's been good enough to provide. And --

MR. D'AMATO: I have an extra copy, if you want me to put it in front of her, if you want.

MR. BARKER: Oh.

MR. D'AMATO: If it's necessary.

MR. BARKER: Yes, please, if you don't mind. I'm just trying to find, Mr. D'Amato, where the certification page is.

MR. D'AMATO: Well, you just asked me for answers to interrogatories. But now you're really getting demanding. Now you want a certification page, hum?

MR. BARKER: Okay.

MR. D'AMATO: You know, Mike, I looked in the file, there wasn't one.

MR. BARKER: Okay.

MR. D'AMATO: So, I can --

BY MR. BARKER:

Q. Let me ask a couple questions, then.

Here, ma'am, this is the set that we have here that Mr. D'Amato was good enough to give to us.

A. Okay.

Q. And there's -- you'll see after the first couple pages, there's a lot of typewritten answers.

Do you see that?

A. Yes.

Q. Do you remember answering written questions,

and providing information to answer written questions?

A. Yes. Yeah, a long time ago.

Q. Okay. Are those the answers that were prepared based on information you provided?

A. Yes.

Q. At some point in time, you reviewed it, these answers?

A. About three years ago, yeah.

Q. And you reviewed it for accuracy. Is that correct?

A. Yes.

Q. To see that your answers to the written questions were accurate; is that right?

A. Sure. I haven't read it in three years, but.

Q. I'm just asking what you did it --

A. I know. I'd like to read it again, and say, oh, yeah, okay, yes, it's accurate.

Q. But what I'm asking you is, did you go through that process? See, what generally happens is -- well, strike that.

It may have happened that you provided information to Mr. D'Amato, or somebody on his staff, they prepared it in a typewritten form, and you would then read the questions, and read the answers, and

make sure it says what you want it to say.

A. Correct.

Q. Did that happen?

A. Yes.

Q. Okay. And that's what the work product is, what I have here now. Right?

MR. D'AMATO: Yes.

MR. BARKER: Okay.

MR. D'AMATO: But with your permission.

MR. BARKER: Sure.

MR. D'AMATO: You -- I'll give you another copy, with the questions and the answers, because we have a continuing obligation to update the answers. So, you'll take it home.

THE WITNESS: Okay.

MR. D'AMATO: And then send me an e-mail, and I'll send -- if there's any changes, you'll note it. And then I'll send the e-mail to Mike and Brian. Okay?

THE WITNESS: Okay.

MR. D'AMATO: All right?

MR. BARKER: Good suggestion.

And since we've been referring to this document, I'm going to mark it Sandy-1. I think you're the first -- this is our first exhibit with

you. So -- is that all right?

THE WITNESS: That's fine.

MR. BARKER: Thank you.

(Answers to Interrogatories, received and marked for identification as Exhibit Sandy-1.)

THE WITNESS: I'm trying to figure out where the rainbow's coming from.

MR. D'AMATO: You'll take this with you. Okay?

THE WITNESS: Okay.

MR. D'AMATO: This is what he was referring to. Okay?

THE WITNESS: Okay.

BY MR. BARKER:

Q. Now, did you provide any photographs to your attorney -- to your attorneys, to this law firm, that were taken at or about the time of the event?

A. In -- if they were taken when we were at --

Q. Yes.

A. -- at the shore that time?

I'm not sure if I did or not. I -- the only reason I'm hesitating is because there was this guy at the beach on probably the Wednesday before this happened, and he took a lot -- he took some pictures, like, he was a hired, you know, person that

works there, and he did a bunch of pictures of the kids.

Q. Do you have those photographs?

A. I probably do. Probably Andrea's probably asked me for them a thousand times, and I probably never gave them to her. So, yeah, I probably do have them somewhere. They were on a disk.

Q. Would you write that down on your list, please.

A. Yeah, yeah.

MR. D'AMATO: I don't have them, Mike, the ones she's talking about.

MR. BARKER: So, those photographs we are requesting, Madam Court Reporter, and if you would so note that request at the index at the beginning of the transcript.

Q. Do you recall that you provided any other photographs in discovery?

I should really say, do you recall whether you provided any photographs in discovery?

A. No. The only photographs I gave were to Paul, just of pictures of Brad, and -- and the family. He wanted some -- you know, he has a picture of Brandy and Brad.

MR. D'AMATO: I sent you just what she

said, family photos before the event. She never provided me with any photographs that were taken by her, friends, or family, you know, at the time of this incident.

Q. Any photographs from the date of the incident, that you know of?

A. Not that I know of, no. And now, I wish I had them, but I don't. Yeah.

Q. Since you are the executrix and the named plaintiff in this case, what is your goal at the conclusion of this case?

A. My goal is to make sure this doesn't happen to somebody else. I want whatever it takes. If it has to be shut down, if it -- it just -- it needs to -- it's not a safe area for people to be walking on. It's not -- and that's -- that's my goal. I need people to know. I don't want people going there, as tourists, and have no idea what's a nice, look -- seemingly beautiful walk on a beach could turn into; losing your family.

Q. Anything else?

A. That's -- that is my main goal. And -- and I wish they could have done the right thing from the beginning.

Q. Meaning?

A. Meaning, they knew that it was dangerous, it should have been -- well, it should have been done from the beginning. And then when it happened again and again, it should have happened -- it should have -- they should have done the right thing and shut the beach down a long time ago. But here we are.

Q. Any other goal?

A. That's it. I want to be -- you know, I want my kids to be okay. I want us to be okay. And that's --

Q. You mean emotionally?

A. I -- in every way, I want us to be okay. I want us emotionally, physically. I know we'll never be the same, for sure. We'll never -- you know, and I worry about Brandy, how her life will go. I mean, how Kole, his -- my poor son is so quiet, and sweet. But I know that he -- you know, has had a hard time with this, too. And it's just unfair their father was taken away from them so early. They didn't have enough time.

So, that's it. We want to do right by Brad. I want to make sure this doesn't happen to anybody else again.

Q. Have you spoken to anyone about closing the inlet beach?

A. Sure. Yes.

Q. To whom did you speak?

A. Well, I know when we did the press conference, that was one of our main things was, please, shut down this beach. You -- you know, that was everywhere. And it wasn't, like, we didn't ask for that before, too. Because that was asked for right from the beginning.

Q. Did you go meet with anyone to make a request that the beach be closed?

A. No. I know the former mayor must have called Brad's father in Michigan, and I -- I don't know what was the outcome of that phone call. But I know he probably went off on him about it at that point.

Q. Who went off on who?

A. Brad's father, on the mayor, you know, because I think the mayor called him. He might have been the only person he called. He probably was the wrong person to call, anyway, but.

Q. Meaning, to call Brad's father was the wrong idea?

A. Yeah, probably. Yeah. He probably wasn't the best person to call.

Q. Anyone else that -- strike that.

My question should be: Did you meet

with anyone in person or by telephone to discuss closing the beach?

A. No.

Q. Next question, how tall was Brandy in July of 2012?

A. I can tell -- I can tell you that from her doctor, but I'd have to get that information.

Q. Would you mind writing that down on your list.

A. Certainly, not as tall as she is now. She shot up, like, a I don't know what lately.

Q. I noticed she's almost as tall as you.

A. I know. No.

Q. You can use the other piece of paper, if you like.

A. Yeah. I know. I don't know why I keep writing.

I'll tell you, Ally, her friend, who was also seven at the time, was probably, like, 35 pounds, and Ally's, like, teeny, teeny, tiny. So, she was a lot smaller than Brandy even.

Q. While you're getting her height, you might as well get her weight at the time.

A. Yeah. That's what I'm doing. I'm writing that, too.

Q. Thank you.

MR. D'AMATO: The piece of paper to your left that you wrote on, is that an exhibit?

MR. BARKER: Yes.

MR. D'AMATO: Oh, okay. All right.

MR. BARKER: It's the opposite side of Brandy-1, I think.

MR. D'AMATO: Okay.

MR. BARKER: That's the first time we've had anyone do that.

THE WITNESS: Sorry.

MR. D'AMATO: That's the truth, that's the truth. We'll make a copy of that.

MR. BARKER: Yes. Don't --

MR. D'AMATO: When she lifted it up, I went, that's an exhibit.

THE WITNESS: Oh, oh, sorry. That's an actual --

MR. D'AMATO: Don't worry about it. Don't worry about it.

MR. BARKER: I have no further questions at this time.

MR. D'AMATO: Brian.

MR. HUNKINS: No questions. Thank you.

MR. D'AMATO: I have no follow -- I

have no questions.

VIDEOGRAPHER: This concludes the videotaped deposition. Off the record. The time is 2:05.

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, SANDRA SMITH 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.

Lynn Smith, CCR

Certified Court Reporter
License No. XIO1520

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Exhibit 2

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

SANDY 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

* * *

Videotape Oral Sworn Deposition of SCOTT SUNDERLAND, held at the D'Amato Law Offices, 2900 Fire Road, Suite 200, Egg Harbor Township, New Jersey, on Tuesday, March 22, 2016, commencing at 11:13 a.m., before Lisa Reagan, CCR in the State of New Jersey, there being present:

* * *

WORD FOR WORD REPORTING, LLC
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6 NORTH BROAD STREET
SUITE 202
WOODBURY, NEW JERSEY 08096
PHONE: (856) 384-2770
FAX: (856) 384-2779
email: office@word4word.net

APPEARANCES:

D'AMATO LAW OFFICES
BY: PAUL R. D'AMATO, ESQUIRE
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
and
BARRY, CORRADO, GRASSI & GIBSON, P.C.
BY: JOSEPH C. GRASSI, ESQUIRE
2700 Pacific Avenue
Wildwood, New Jersey 08260
Attorneys for the Plaintiffs

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
BY: BRIAN HUNKINS, DAG
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
Attorneys for the Defendant
State of New Jersey

BARKER, GELFAND & JAMES
BY: A. MICHAEL BARKER, ESQUIRE
210 New Road
Linwood, New Jersey 08221
Attorneys for the Defendant
City of North Wildwood

Also Present: Tom Zanaras, Videographer
Lou DiJoseph, Investigator

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* * *

WITNESS: SCOTT SUNDERLAND

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EXHIBITS

* * *

NUMBER	DESCRIPTION	MK'D
Sunderland-10	Photograph	4
Sunderland-11	North Wildwood Police Department Supplemental Report	55
Sunderland-12	Report prepared by North Wildwood Investigator Richard Schmidt	63
Sunderland-13	Newspaper Article	92
Sunderland-14 through 25	Set of Enlarged Photos	120

REQUESTS FOR PRODUCTION

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(Photograph was marked for purposes of identification as Exhibit Sunderland-10.)

THE VIDEOGRAPHER: Today is March 22nd, 2016. This is the videotape deposition of Scott Sunderland. We're going on the record and the time is 11:13 a.m. The appearance of counsel will be noted in the transcript. Will the court reporter, please, swear in the witness?

SCOTT SUNDERLAND, after having been first duly sworn, was examined and testified as follows:

* * *

THE VIDEOGRAPHER: Thank you. You may proceed.

* * *

EXAMINATION BY MR. HUNKINS:

Q. Mr. Sunderland, good morning.

A. Good morning.

Q. I introduced myself a little earlier. My name is Brian Hunkins. I'm a Deputy Attorney General, and I represent the State, and we're here today for a deposition, as you know. You heard some of the instructions

already, but I'll just repeat them for you real quick.
A. Sure.
Q. You're sworn to tell the truth. Do you understand that?
A. Yes, I do.
Q. If I ask you a question that you don't understand, please do not answer it. Okay?
A. Yes.
Q. Instead, what you should do is tell me you don't understand it and I'll rephrase it. Okay?
A. Okay.
Q. All right. So if you answer any of the questions that you're asked today, we will all assume that you understood the question and gave us your best answer. Okay?
A. Okay.
Q. There will probably be things that we ask you about that you just don't know the answer to, and if that's the case, you should say "I don't know." Okay?
A. Okay.
Q. You are not to guess. Do you understand that?

A. Yes, I do.
Q. There may be facts or details, though, in fact, the location of the incident itself, where you are not going to know the exact answer but you will be able to approximate for us, and estimate, and if you can give us estimates, we will want you to do that, but you should let us know that they are estimates. Okay?
A. Yes.
Q. You can take a break at any time. Are you okay to proceed now?
A. Yes.
Q. Okay. Do you have any questions for me before we start?
A. No.
Q. Okay. Just for the record and to let you know, we marked a few things before we got started. First we have a video that was taken of a site visit to the beach on February 5, 2016, and we marked the DVD as Sunderland-1.
Then we marked as Sunderland-2 a color photograph, aerial photograph taken March 14th, 2012, of the beach area.
Then Sunderland-3 is a typed

report, which is, as I understand it, a summary of Investigator DiJoseph's meeting and discussion with you about the incident.
A. Correct.
Q. Okay. And Sunderland-3 is five pages. And the last page has an aerial photograph of the beach which we marked as Sunderland-4. Then Sunderland-5 is the same statement as Sunderland-3 but it's got some markings on it. From what I understand, are these your markings or edits to the statement?
A. Yes, they are.
Q. And I called it a statement but really we'll call it a report by the investigator.
A. Right.
Q. Does Sunderland-5 make corrections to what the report says?
A. Yes.
Q. And I'm sure we will go into those changes later, but if we turn to the last page of Sunderland-5, we, again, see that aerial photograph; is that correct?
A. Yes.
Q. But we marked this one as Sunderland-10 as a separate exhibit because it

has an X mark on it; is that right?
A. Yes.
Q. And is that an X mark that you put there?
A. I put that there, yes.
Q. And it looks like you also put your initials?
A. Initials, correct.
Q. Maybe just to kind of cut to the chase, let me hand you Sunderland-10, or you can have the equivalent. It's the aerial photograph with your X and your initials SAS. And that's your X, correct?
A. That is my X.
Q. Was that your effort to mark the location of the incident as carefully and as accurately as you could?
A. Yes.
Q. When I say incident, I mean the location where you and the people with you suddenly went into the water. Do you understand that?
A. Correct. Yes, I do.
Q. What I would like to do, now that you have identified that, though, is see if we can

find an approximate -- the approximate location on another exhibit. Let's look at Sunderland-2. Let me show you that. It's another aerial photograph. And I want to note for the record Sunderland-2 has a green dot off the beach at one point. Do you see that?

A. Yes, here (indicating.)

Q. For today's purposes or for right now at least, I want you to ignore that green dot because there's probably a story as to how that got on there, but you don't know how that green dot got on there, correct?

A. No, I have no idea.

Q. That has nothing to do with you and we're going to ignore that. Don't assume that means anything. Okay?

A. Yes.

Q. To orient ourselves, I just want to ask you whether it seems to you the beach at this location, generally speaking, kind of has a -- I'll use the term shoulder -- that juts out into the ocean a little bit. Do you know what I mean?

MR. D'AMATO: Can I have the question read back, please?

MR. HUNKINS: I'll rephrase it.

BY MR. HUNKINS:

Q. If you look at Sunderland-2, and if you look at -- yes, that's this photograph, Sunderland-2.

A. Okay.

Q. And if you look at where I'm pointing, do you see where the beach kind of protrudes out somewhat from the land?

A. Okay.

Q. I'm going to refer to that as a shoulder. Is that okay with you?

A. Yeah, that's fine.

Q. Does it seem to have somewhat the shape of somebody's shoulder?

A. Okay.

Q. Okay. Now, if you look back at Sunderland-10, which is the photograph where you marked the location of the incident, do you see what appears to you to be part of the shoulder on Sunderland-10?

A. I mean it juts out.

Q. And if you, again, compare Sunderland-10 with Sunderland-2, if you look at some landmarks, you notice that on

Sunderland-10 that your X is approximately adjacent to a curve in the roadway?

A. Okay, yes.

Q. All right. And if you look at Sunderland-10, can you find that same curve in the roadway?

A. I can.

Q. And so then sort of comparing the two, if you were to put an X on Sunderland-2 approximately where the incident occurred, do you think you would be able to do that?

A. Not accurately, no.

Q. Okay. Looking at Sunderland-10, which is where you put your X, use your own words, but is that sort of like on the top side of the shoulder?

MR. D'AMATO: What is?

MR. HUNKINS: The X. I'll rephrase the question.

BY MR. HUNKINS:

Q. Did you put your X, generally speaking, on the top of the shoulder?

A. I'm not really quite understanding what you are asking. I mean you're saying -- you're saying it looks like a shoulder. So

I'm trying to imagine what you are saying it looks like, if that makes any sense. So if you are asking me to put the X here onto this, it doesn't look...

MR. D'AMATO: I have an objection.

MR. HUNKINS: I'm going to withdraw it. I'm going to let him finish and then withdraw it.

THE WITNESS: In order to put this area, I would have to go off of the curve and the angle, because it looks different to me.

MR. D'AMATO: I have an objection.

MR. HUNKINS: I'm going to withdraw that question.

MR. D'AMATO: Let me tell you what my objection is, and I'm not trying to interrupt. Somebody has to identify what exhibits he's looking at because we're going to have a transcript.

So, Mr. Sunderland, this here is Sunderland-2; this is Sunderland-10. A transcript is going to be made of this. So if you could, when you are pointing here, say Sunderland-2.

THE WITNESS: Okay.

MR. HUNKINS: Thank you.
BY MR. HUNKINS:
Q. Just to get back on track, looking at Sunderland-10, that is where you put your X identifying the location?
A. Correct.
Q. All right. When you put your X on Sunderland-10, what is it that you used to look at your X there? Is it because you have a memory of some certain landmarks?
A. Yes.
Q. Okay. What are they?
A. It would be where the rock wall and the parking lot are and where I believe the oceanfront is.
Q. Okay. So looking at Sunderland-10, can you just point with your finger at the rock wall that you just referred to?
A. The rock wall would be here, in that corner (indicating.)
Q. And immediately next to it is the parking lot?
A. Yes, behind it.
Q. All right. So with your permission, I'm going to write the words "rock wall" and a

"parking lot" with an arrow. Is that all right with you?
A. That's fine.
Q. Okay. Rock wall and parking lot.
Point for me one more time at the rock wall.
A. Rock wall would be right there. I believe it to be a rock wall (indicating.)
Q. It looks like a line of rocks almost?
MR. D'AMATO: May I suggest something? Here's a marker. Let's mark it.
BY MR. HUNKINS:
Q. Take the color marker and just draw a circle around the rock wall and the parking lot.
A. (Complies.)
Q. Thank you. I'm going to draw an arrow in black pen to your colored circle. So if I understand you correctly, looking at Sunderland-10, when you drew your X, you used the rock wall and parking lot as your landmark to locate the incident?
A. Well, the overall -- I use the whole overall.
Q. Okay.

A. But yes, that is one of the landmarks I looked at it, yes.
Q. Is there any other landmark you used to draw your X?
A. The relationship to where this is where I believe the oceanfront would be on 10, Sunderland-10, would be at about this location. So between those two, that's kind of how I would figure that's where we were at that time (indicating.)
Q. Thank you. And you've helped us by drawing your X and identifying the location, and I don't want to belabor the point or have you do anything that you are not able to do, but just for informational purposes, would you be able to draw an X on Sunderland-2 using those same landmarks or any other method where you could be reasonably sure you are giving us the location? And if you are not able to do that, no problem.
A. No.
Q. Okay. So Sunderland-10 is the location of the incident?
A. Yes.
Q. Okay. Now what I would like to do is

direct your attention to Sunderland-1. That's the video of the site visit from February 5, 2016, and you had a chance to look at that before we started today?
A. I did.
Q. And we might not even have to play it. Let me just ask you, approximately two minutes into that video, is there some images of the view of the beach and waves and then the camera turns about 180 degrees and looks at the land?
A. Yes.
Q. And at about that point in the footage there's some words that come up that identify three towers as being equidistant, roughly?
A. Yeah, I saw that.
Q. And then after that does the footage show the camera panning to the left and to the right?
A. I believe so, yes.
Q. And in panning, it shows landmarks that exist to the left of that location and to the right?
A. Okay.
Q. Okay. Having looked at that video,

does that footage starting at about two minutes where it looks at the sand and the ocean and then it turns 180 degrees and looks at the three towers, is that approximately where the incident occurred?

A. I wouldn't be able to tell because I don't recognize those landmarks.

Q. Are there any landmarks that you recognized by looking at that footage on Sunderland-1?

A. Not -- not really.

Q. So in other words, when the camera panned to the left and there were some buildings off in the distance, I think they're condos, but I'm not sure, they're buildings, did you recognize any of those?

A. Not really, no.

Q. Okay. And similarly, when the camera panned to the right, it focused in on a rock wall. Do you remember that?

A. Yes.

Q. Is that a landmark that you recognize?

A. I recognize the pathway on top of the rock wall, but as far as where I was when we went in and trying to compare that, I would

have no idea.

Q. Okay. So if I understand you correctly -- well, let me back up. On the day of the incident, you went in the water; thankfully you got out, right?

A. Yes.

Q. And I assume you were present at the scene when initial rescue efforts were under way?

A. Yes.

Q. I assume at some point that day you left the beach?

A. Yes.

Q. When is the next time you came back?

A. The next day.

Q. Okay. And did you come back to the location of the incident?

A. To the location, yes.

Q. And when you went back the next day to the location of the incident, how did you figure out where to go?

A. You could kind of -- I just kind of, again, looking to where the oceanfront was and there was kind of almost an abrupt -- I don't want to say abrupt, but like -- kind of like

how the roadway is on 2.

Q. Sunderland-2?

A. How the road turns around there, it kind of almost looked like that --

Q. Okay.

A. -- at the beach at that area. It wasn't, you know, walking down there I could kind of tell where the approximation was where I went in.

Q. Correct me if I'm wrong. The appearance of the actual beach and the sand would change based on the height of the tide?

A. Oh, absolutely, absolutely.

MR. BARKER: On the what? I didn't hear you. Height of the?

MR. HUNKINS: Tide.

BY MR. HUNKINS:

Q. And I imagine over time sand is going to move somewhat so that would change the appearance?

A. Yes.

Q. So what you were doing, if I understand you correctly, is you noticed that the curve of the road which you pointed out on Sunderland -- actually, Sunderland-10 and

Sunderland-2, was roughly adjacent to the location of the incident?

A. No, that's not what I meant. I meant the curve of the road was kind of how the beach shape was.

Q. Okay.

A. So I didn't use that as a, you know, a landmark to get to that area. It was more where the oceanfront -- I call it where the oceanfront and the inlet basically meet.

Q. Okay. And that's what you marked on Sunderland-10?

A. Correct.

Q. All right.

A. Correct.

Q. After -- so you told me about the day after the incident you went back to the location of the incident?

A. Yes.

Q. How many times since then have you gone back to the location of the incident?

A. I went that -- actually, actually, I went the night of after it happened. I took Brad's older children down and his brother and we were calling for Brad.

Q. So the evening of the incident and then the day after?
A. **The day after I went down myself.**
Q. After that, how many times did you go back?
A. **I probably went, I believe, the next day after that, and then it was -- it might have been two or three times during that week. I'm not a hundred percent sure. But then the next time it was when I -- when I met the investigator.**
Q. Okay. Mr. DiJoseph?
A. **Yes.**
Q. All right. And when you took Mr. DiJoseph down, you made your -- you located the scene of the incident?
A. **Yes.**
Q. And you did that how?
A. **Again, by the oceanfront and the rock wall and the distance between the two. I mean that's the generalization. That's where I, you know, I guesstimated where it would be.**
Q. And when you say the distance between the two, do you mean in your mind's eye, you know, in your memory the distance?

A. **Yes.**
Q. You don't mean that feet or yards?
A. **No, no, just in my mind, yes.**
Q. All right. On the day of the incident -- and by the way, I've read Sunderland-3 and also the version with your edits, but basically from what I understand, on the day of the incident you and the group you were with walked from the guarded beach almost up to a rock wall and turned around and came back?
A. **Yes.**
Q. And it was on the return trip that the incident occurred?
A. **Yes.**
Q. And can you tell us how far you got on the way back when the incident occurred? Were you, for example, halfway back to the starting point when the incident occurred, or are you able to estimate it in that way?
A. **I would say we were -- I mean a guesstimate, we were --**
Q. It can't be a guess, but if it's an estimate...
A. **An estimate, I would say we got -- we**

got pretty close to the rock wall. We didn't get all the way down towards it. So I would guess that I was --

MR. D'AMATO: He doesn't want you to guess. You can approximate. You can estimate.

MR. HUNKINS: And let me stop you there. Your answer so far already suggests to me maybe there's some confusion.

BY MR. HUNKINS:
Q. I understand from the report that I read that you didn't walk all the way up to the rock wall?
A. **No, we did not.**
Q. Is that because the beach sort of ran out and it was just water and you couldn't get to the wall?
A. **I have no idea why.**
Q. Okay. For whatever reason, you didn't walk all the way to the rock wall, so I'll just ask you approximately how close did you get to the rock wall?
A. **I really don't know. I'd say maybe a hundred feet. I don't know. Maybe two hundred feet.**

Q. Okay. And it was at that point that you turned around and walked back?
A. **Yes.**
Q. All right. So my question was, from that point where you turned around and walked back, did you get halfway back to your starting point when this happened or some other estimate?
A. **Well, we started all the way out to where we were originally seated, where we went down to the beach. So I would say we got, I don't know, maybe three-eighths of the way, not quite half.**
Q. Okay. So when the incident occurred, you were an estimated three-eighths of the way back to your starting point on the beach from where you turned around?
A. **Possibly less than that. Possibly less than that.**
Q. In any event, putting aside that estimate, the X that you wrote on Sunderland-10 is your --
A. **Yes.**
Q. -- indication where this occurred?
A. **Yes.**

MR. HUNKINS: Okay. That's all I have. The other attorney will have some questions for you. I might have some more later. Thank you.

THE WITNESS: Okay.

* * *

EXAMINATION BY MR. BARKER:

Q. Mr. Sunderland, my name is Michael Barker. I will be asking you some questions and, again, if, at any time, I ask you a question which is not clear for any reason, please stop me and I'll be happy to go back and rephrase it, and please don't guess when responding to any questions.

A. Okay, I understand.

Q. What's your full name?

A. Scott Alan Sunderland.

Q. And how do you spell Alan?

A. A-L-A-N.

Q. And what's your date of birth?

A. 4/24/65.

Q. And where do you presently live?

A. 1383 Lake Road. That's in Feasterville.

Q. And how do you spell Feasterville?

A. F, as in Frank, E-A-S-T-E-R-V-I-L-L-E.

Q. That's in Pennsylvania?

A. Correct.

Q. And you're married?

A. Yes, I am.

Q. And to whom are you married?

A. Andrea Sunderland.

Q. And you have how many children?

A. Three.

Q. And what are the names of the children who were with you on the walk on the beach that day?

A. Ally. At the beach with me? Ally, Aidan and Jett.

Q. When you started off walking on the beach, about what time of day was it?

A. I would say it was 3, 4 o'clock. That's when we went down to the beach. I would say 3 o'clock we went down. So the walk, 4:00, 5:00.

Q. Do you remember -- you were at a lifeguarded area when you started your walk, right?

A. Yes.

Q. Do you know the name of that

lifeguarded area? Could you identify it otherwise?

A. Not really, no.

Q. And when you left the lifeguarded area, were the lifeguards still there?

A. Yes.

Q. And as you started to walk, you walked in a northerly direction?

A. Yes, I would imagine it would be north, yes. Yes, it would be north.

Q. I'm not so sure that it is north, but it's the top of the picture, right?

A. Yes.

Q. And I saw that you had referred to it in a statement as north, or at least towards the rock wall, right?

A. Yes, I was going up the coast; let's put it that way.

Q. Understood. And as you are going up the coast, do you recall that there was a point in time shortly after you left that Brad turned around and waved to his wife?

A. Can you repeat that, please?

Q. Yes. Do you recall that shortly after you left, commenced this walk, there was a

point in time that Brad turned around and waved back to his wife?

A. I don't -- I don't remember that, no.

Q. Do you remember the lifeguards going off duty?

A. I don't remember that, no.

Q. Do you have any recollection that you looked at the time or noticed the time?

A. I only know from about when we got there to when the incident approximately happened.

Q. You mean when you first got to the beach?

A. When we first got to the beach, yes.

Q. Well, let me ask you this for an estimate. Do you know, from the time you commenced this walk to the time that you went in the water, how much time had elapsed?

A. I would say a couple hours, two hours, maybe three, possibly.

Q. You were walking for two or three hours?

A. No, we didn't walk --

Q. So my question might not have been clear or you may not have understood it. So

here's the question again.
A. Okay.
Q. From the time you started the walk --
A. Oh, okay.
Q. -- until the time that you went in the water --
A. Okay.
Q. -- meaning this unfortunate accident took place, what's the elapsed time?
A. I would say under an hour.
Q. Okay. As you were walking north, when you started walking north, do you remember the position of the people, like who was where, if you remember? So you're going towards the rock wall or to the top of the photograph or, north as we say --
A. Right.
Q. -- and you're at a certain place on the surface of the earth there and there's somebody to your right, somebody to your left --
A. Right.
Q. -- and I'm trying to figure out who is where.
A. So if we were walking towards the rock

wall, we weren't necessarily all together at that point. We didn't go for a walk together. It didn't start off as that.
Q. I see.
A. The girls, Ally and Brandi, were playing in the tidal pools, and I believe that my son, Jett, was there, and Cole, in that general same area, but that was closer to where we were sitting. Brad got up and he kind of ran up to the girls to scare them, you know, just like the monster, and I was still sitting there and, you know, I told him he looked ridiculous. So I just got up and started going after him, walking, you know, behind him, and then we were there for a little while.
Q. At the pools?
A. At the -- at that pool area. And then we just, you know, started walking. Who got in front, it might have been the girls first; it might have been Brad and I first. At that point, I really don't know, but we did all end up together and kind of walked together down towards the rock wall.
Q. Up towards the rock wall?

A. Well, yes, okay, up towards the rock wall.
Q. All right. So then you got to the point where you're closer to the rock wall and someone makes the decision to turn around and go back?
A. Correct.
Q. Who made that decision to go back?
A. I have no idea.
Q. All right.
A. We have two little girls. So who knows.
Q. So the group kind of now turns around and is going back in a southerly direction?
A. Yeah, it wasn't like a, you know, purposeful walk. We were just kind of --
Q. Meandering?
A. Yeah, meandering, talking. I'm sure Brad and I are talking and the girls are just, you know, yammering on nonstop.
Q. So did you notice anything unusual as you walk up towards the rock wall, or northbound?
A. I remember seeing a -- I don't know if it was before we got walking up towards the

rock wall or if it was on the way back, but I remember seeing a fisherman.
Q. Anything else you noticed?
A. No.
Q. And the fisherman was standing off in the water?
A. He was standing off in the water.
Q. Was he to your right when you observed him?
A. So I'm not sure where I saw him, if I saw him, you know, so it would be depending if I was going north or coming back from the walk.
Q. And you don't remember that?
A. I do not remember that.
Q. So as you are walking with your little group back in a southerly direction, who is closer to the ocean side and who is closer to the land side?
A. I'm closer to the ocean side.
Q. And are you the closest to the ocean side?
A. Yes.
Q. And then who would be to your right?
A. To my right would be --

Q. Well, wait, wait, you are walking south, so --
A. Oh, are we talking towards the rock wall or walking away from the rock wall?
Q. You are walking away from the rock wall walking back to where you started, and you may refer to that photograph in front of you, if you like. You can hold it up, show it to the video camera.
A. So if we're walking from here --
MR. BARKER: Wait, can you see it, there, Tom?
THE VIDEOGRAPHER: Yes.
BY MR. BARKER:
Q. Now you can point.
A. If we are walking from here --
Q. Going south.
A. -- up to that point --
Q. Where is your position? Closer to the ocean?
A. I consider that east, to be honest, because this is the ocean. So the ocean is east. So we're going east and the ocean would be on -- so going in this direction (indicating.)

Q. Yes, sir. And where is your position and what's the position of the others?
A. I was closest to the water.
Q. Yes, sir.
A. And then it was, I believe, my daughter and then my son, Aidan.
Q. All right.
A. Brad was behind me.
Q. Oh.
A. So we were not all side by side.
Q. Okay. You're closest to the water?
A. Yes.
Q. Ally is now to your right or a little landward side?
A. Yes.
Q. And then Aidan is to the right of Ally, right?
A. Of Ally, yes.
Q. And as you are walking back in that direction east, as you say --
A. East, east, yes.
Q. -- do you notice anything unusual as you are stepping and walking, or is it just the same way as when you walked up?
A. Well, when we walked up, we were more

inland. We were more inland.
Q. And this time, as you are walking east going back --
A. We were along the coast.
Q. Right. And you're in the water at that point?
A. Yes.
Q. And how deep is the water on you just before you go in the water?
A. Calf.
Q. And what about Ally, she's right next to you, right?
A. That I'm not a hundred percent sure. I'm not sure if she was next to me or if she was on my back. I don't know if I was giving her a piggy-back or not.
Q. I see. And what about, did you happen to observe your son Aidan and where he was in the water?
A. Yeah, he was next to me but, again, I'm not sure if Ally was next to me or if I was giving her a piggy-back.
Q. And Aidan was how old at the time?
A. He was nine.
Q. And did you happen to notice anything

about the depth of the water on his lower extremity?
A. He wasn't in the water at all.
Q. He was more towards the sand?
A. Yeah, he was on the sand. He wasn't in the water.
MR. D'AMATO: At what point are these observations of his?
MR. BARKER: These observations of his as he's described them is on his walk back down east.
THE WITNESS: This is right before the incident. So this is just before the incident.
BY MR. BARKER:
Q. As you are walking in the fashion as well as you can describe it based on your memory, do you remember what happened, how you felt and what happened to you as you found yourself going in this water?
A. As I was walking, I took a step on my left leg and it just dropped.
Q. You mean your left leg went out and you went --
A. No, just like I was walking and then

it's just like I just stepped right into, like, nothing. It was like it almost slid, like it slipped, and then with that I just went over. So it was like my leg just went out from underneath me.

Q. I saw that you described to the policeman it was like you walked into a gully; is that correct?

A. Yeah.

Q. And with that, you just toppled in?

A. Toppled and went right in.

Q. If Ally was on your back, she went in with you?

A. She was on my back immediately. I know that. Because I thought she fell on top of me, and when we had spoken about it when I asked her what she remembered, she said I was giving her a piggy-back.

Q. Is this the conversation that she referred to earlier this morning as having taken place back in January?

A. Yes.

Q. Of this year?

A. Yes, yes.

Q. And she told you at that time what you

just said?

A. Yes.

Q. So she really refreshed your memory as to where she was?

A. She did. And that's not the first time, right?

Q. Right, okay. As you were now in the water, you've described how you got there, where was Aidan?

A. Aidan was on land. He never went in.

Q. Now, just before you went in, did you have the opportunity to look back --

A. No.

Q. -- and see Brad or Brandi?

A. No. I know Brad was right behind me because I think we were talking, but I never seen him -- I never saw where they were at that time. I don't know how they went in. I don't know.

Q. For clarity of the record, you cannot describe what happened to Brad and how he went in the water?

A. Correct, I cannot describe it, no.

Q. And you cannot describe what happened to Brandi and how she went in the water?

A. Right, I do not know.

Q. Excuse me, I just lost the mike.

A. I saw.

Q. Okay. What happened to you now that you're in the water? Ally is on your back?

A. Correct.

Q. Pick it up at that point and tell us what you recall happening.

A. As soon as I went in the water, I immediately, you know, tried to -- I wasn't -- how do you say it? I wasn't, like, panicked. I just thought, Oh, we just fell in the water. So at first I was kind of, you know, laughing like, Oh, wow, how did that happen, and went to, you know, feel for the bottom and didn't feel the bottom. So I just started to swim and I wasn't really paying attention. I was just swimming. And Ally was on my back, and that was probably for the first -- under a minute, maybe within the first 20 seconds, maybe 30 seconds passed. That's when I looked up from swimming with my head down that I realized that I was further from shore than when I started. And that's when it started to get real. So I started swimming harder.

And I remembered at that point that the fisherman and he -- Brad and I had kind of joked when we initially saw him that he was like Jesus. He was just standing in the middle of the ocean in a way. And I knew that he was there. That spot was there. So I knew it was shallow at that point, but it was not where I was at. So I'm in kind of recovery mode now, and I'm thinking that's my go-to. If I can't get back to the beach, that's where I need to get to.

So I then just started swimming really hard, and I wasn't necessarily looking up. I just had my daughter on my back and I knew I needed to get back to the beach where we went in. And I just -- just started plowing really hard. There was a point I was -- I'm going to say I was swimming for maybe, like, two minutes, and I just kept throwing my arms out, because I wasn't looking. I was just too concentrated on swimming, and I kept throwing my arms up like where is the sand, where is the sand, and I remember just before I hit, You're going to have to float, because I started thinking about, you know, when you

are in -- they tell you to ride with currents, ride with currents, and I'm, obviously, fighting something, but it felt like I was almost swimming through air. I couldn't get any traction. I don't know how to describe it other than that. Or like even a rope was pulling on me, like on my feet, because it felt like I was in this one spot.

And about at that point, that's when I felt on my fingertips, just these two, just felt the sand and then I just started scrambling. Aidan ran down, and as I was grabbing at the sand, I believe at that point he took Ally. I remember saying, "Grab her, grab her," and I literally climbed up and kind of on my belly. And I just kind of laid there for a minute because I was exhausted, and then that's when I turned over and that's when I saw Brad and Brandi.

Q. And what did you see when you had that observation?

A. They were separated. And I'm going to approximate they were off the beach about a hundred, 120 feet. Brandi was closer to inside the inlet, Brad was closer to the

ocean, and they were getting further apart. Brandi was staring directly at me, and Brad was on his back facing Brandi, so looking back towards the inlet. And he was just kind of almost -- almost on his back like just going with the current. And it seemed like Brandi was stuck in this -- she wasn't getting turned around in like a whirlpool. She was on this outer side of it, and then it seemed like Brad was caught in this other -- almost like a river and he was getting pulled further away from her.

He yelled for me. He said, "Scott, Brandi," and that's when I went back in the water to get her. When I got back in the water, same thing, kind of just -- kind of slide or almost kind of like -- not slide, but more of a kind of like dive, I guess, but not a dive, because there's definitely -- it goes from, I would approximate, a foot and a half to nothing or, you know, deep, over my head, because when I was out in the water, I never touched bottom not once.

I started to swim towards her and I realized at that level she was too far and I

turned around.

At that point, I climbed back up and I got up, stood up, and I just -- I started waving. I remember trying to yell. My mouth was open, but I was not making any noise, any sounds.

I believe at that point that's when I saw the State trooper in his boat and I saw him and he was moving. He was -- I'd say he was probably going, you know, 20 miles an hour, 25 miles an hour. He was driving pretty fast and he was coming out of the inlet towards where Brad was. So I yelled to Brad. I said, "You're good, buddy, you're good, just stay up. He's coming." And I was waving like this, so I was waving to where Brandi was and I was doing this to where Brad was. And he saw me; the officer saw me. We locked eyes. And when I pointed like this, he turned his head and he looked in the other direction. So he didn't look down. He looked out into the ocean, and he just went literally right by Brad by, I would say, probably about 40, 50 feet. And that's when Brandi really started to get panicked. She was swimming

very hard. She wasn't making any sounds at that time. And she was treading water. So she wasn't trying to swim back to shore. She was just treading water. But I remember seeing her, like, she was so far out of the water because she was treading water so hard. And at that point, after the boat went by, that's when she started to scream and in my mind I kept thinking, "Don't scream, don't scream, you need your energy" type. And that's when I just started waving, and I turned back towards the sea wall, because there were people down there, and I started waving and, you know, just kind of jumping. Again, I was -- you're helpless. You don't know what to do. I didn't want to leave the area because I didn't want to lose contact with where they were. I kept telling myself, You have to stay in contact with Brad and Brandi, so I would know where they were at all points, at all times. I started waving. I saw people down there towards the rock wall and there were two jet skiers, two jet skis.

Q. Towards the rock wall?

A. Down towards the rock wall. They were

in shallow water sitting. They weren't moving and they were kind of just laying back on their jet skis, and there were other people on shore that I believe that maybe they were talking to, and next thing I knew, I saw the jet skier, the first one, just -- I mean he was gunning it and he just came flying up. I would say he was probably about maybe 40 feet off the beach, and as he was coming up, I was, again, pointing to where Brandi was and Brad, and as he got closer, he kind of swerved in a little bit so he could hear me.

Q. In towards the sand?

A. In towards the sand to where I was, but still probably no more than 30 feet in. Probably not even more than 40 feet in. So he kind of swerved in but that far off the beach still.

So I yelled at him, "Little girl and my buddy," and he immediately turned and he saw Brandi, and as he was approaching her, I took my eyes off of her and I was then watching Brad, because he clearly saw her.

Q. Could you see Brad?

A. I did see Brad at that point, and he,

again, was laying on his back, and at this point he was where -- now I could see, as I was watching him, I could see the wave formations and he was in them, short, though, very small waves, small waves, but it kind of outlined -- it was out towards where this hook was where the fisherman was. So you could see like a sand bar. You didn't see it, but you could kind of see it by the waves. So they kind of were going around it and he was in that.

And as I watched him, you know, I kept glancing back and I saw the jet skier get Brandi and then I just locked on Brad. And the jet skier, I believe, kept going towards Brad, but then eventually just came to shore to bring Brandi back. He had taken off his life vest and had given it to Brandi. And he brought Brandi to the beach, and they got off the jet ski. And at that point, before that, he actually got back, that's when the last I saw of Brad. I just saw, you know, he was on his back and basically almost lying, you know, flat on his back, and a little wave came up and then that was it. But the waves, very

small, and that was it. That was the last I saw of him.

Q. When you saw the jet skier with Brandi as he's bringing her in, what do you say to him and what does he say to you?

A. Well, first I ran to Brandi and she was, you know, very stunned, very quiet, very stunned. She went up to where Aidan and Ally were (indicating.)

Q. Up to -- you're pointing in a certain direction.

A. Up on the beach. So from the water's edge to the beach but to where Aidan and Ally were. This whole time, even when I went back in the water after Brandi, they were up together playing on the beach. And I would say they were probably, from water's edge, maybe 40 feet, 50 feet up. And Aidan, I could see him drawing like trying to distract Ally from what was going on.

And I remember seeing them right before I went back in the water, because I thought I was -- I knew I was going to drown. When I went back in the water, I knew I was never going to make it to her, but I knew Brad

would do that. He would have done that for me. He would have went after my kids.

MR. HUNKINS: Why don't we take a break?

MR. D'AMATO: Yes.

THE VIDEOGRAPHER: Going off the record, 12:03.

(A short recess was taken.)

THE VIDEOGRAPHER: This is the beginning of tape No. 2. Back on the record. The time is 12:11.

BY MR. BARKER:

Q. So we got a little side-tracked before the break, and the question that I was really putting before you at that time was I can see in my mind's eye the jet skier coming in with Brandi and I've got the scene of her as you've described it and she gets on the beach, and I'm asking you: At that point in time, what's the conversation, if any, between you and the person on the jet ski?

A. I ran up to him, I hugged him, and I said, "You just saved my niece's life," and he jumped back on the jet ski and he went looking for Brad.

Q. Well, how did he know that Brad was there?
A. **I told him.**
Q. Right there in that conversation?
A. **I pointed to both of them. So as soon as he picked up Brandi, he knew Brad was out there.**
Q. I see. So he went out looking?
A. **He went out looking.**
Q. And what happened then?
A. **He went out looking. I think that's when all of the -- you could hear all the sirens, a lot of sirens, and I think at that point --**
Q. You could hear the sirens as he's going out to get Brad?
A. **As he was going out and he was searching for Brad, yeah, that's when you could hear sirens, but I mean they weren't close but you could hear them, and there was a lot of them. So I already knew he went under because I saw him go. So, you know, at that point it kind of all blends together for me as far as time. But, you know, I know I was pretty exhausted. I was kind of sitting**

there.
Q. Well, go back in your mind's eye now and tell us what you can about what you recall happening, what you did, where you went, who you saw, what was said.
A. **Well, when Brandi got up, as I said, with the jet skier, he went back out. At that point, I know a woman came up to me and she said, "Is it okay if we take your kids to find their mother?" Because there was people walking down now from the ocean side. So from where the lifeguards would have been, they're walking now north up the coast --**
Q. Towards you?
A. **-- towards me. I remember seeing my son, my older son, Jett, and that's when I told him, "It was Brad, it was Brad." And I saw my wife.**
Q. She walked up?
A. **Yeah. And she was very stunned, obviously. She didn't know what was going on. I think there was probably emergency vehicles now that were parked all over the beach. They kept asking me to, you know, "Come with me, come with me."**

Q. This is the EMS people?
A. **EMS people, yeah, "Come with me." And I said, "Well, he's out there. He's out there." So I just kept kind of walking down to the beach again.**

At that point, I saw the -- I guess an EMS person got me again, brought me up to where the ambulance was, and he was asking me all these questions, who I was, and I really couldn't even talk at that point. I really thought I was almost having a heart attack because I was so out of breath. So I just told my son Jett, "Give him all my information." So my son was telling him, you know, my name and how we all got there, the whole thing.

That's when I saw the State trooper come back with the jet skier, not the jet skier who saved Brandi, but the jet skier that he went out to rescue that was out, apparently, in the ocean, that his ski went down, ran out of gas, whatever, but he's pulling back, and that was more on the oceanfront side. And no one was going to him, which bothered me.

Q. Going to who?
A. **None of the police officers. The police officers -- it really annoyed me. I was very agitated by the fact that no one was looking for Brad except a boater and the jet skiers.**
Q. Who is the boater?
A. **There was a boat out there. There might have been several boats out there, private boats, that were now just kind of circling around the area. And they were kind of like -- whether it be EMS, whether it be police officers, whatever, they're kind of talking amongst themselves, like little chitchat, and I remember saying, "He's out there, he is out there." And that's when I saw, you know, the State trooper come up in his boat with the jet ski, and he's trying to get the jet ski onto the beach.**

About that same time, the jet skier who saved Brandi is now on the front side in the ocean, and he's trying to get his jet ski back in the water to look for Brad again, because for whatever reason, he must have got -- the current must have pushed him

up against -- you know, the waves must have pushed him up against, and I saw him trying to push out. So I ran down to help him to get back out in the water to look, and then I think in that same time frame that's when I saw the State trooper. I ran down there to where the State trooper was. He had a rope tied to the front of the jet ski that he was towing it with. The jet skier that he rescued was on the boat, I believe. He might have even been on the jet ski. But the State trooper is yelling to me to grab the rope, to pull the jet ski into the shore, and I said, "I'm not going back in there," and he's like, "Just grab the rope." But the rope wasn't on the beach; the rope was in the water. So I go back in and I start sliding down again. So I yelled at him, "I'm not going back in there again," and I said, "He's out there. What are you doing?" Like I was kind of yelling at the State cop. I don't think he had any clue that Brad was out there. I don't think he knew what was going on. I think he thought he was just rescuing this jet skier.

So I kept yelling to him, "He's

out there, he's out there, go get him, go get him," and then I think that's when I ran back up to the EMS and next thing, you know, they're checking me out and they kept asking me, "You need to go to the hospital. You swallowed water. You need to go to the hospital." I said, "We need to find Brad first. We need to find him first."

And then eventually when we were there with the EMS for maybe, I don't know, a half hour, maybe, and then they said, "You need to come to the hospital." And I said okay. So my son and I went, Jett, went in the back of the ambulance and we went to the hospital.

Q. Do you recall speaking to a police officer at the beach?

A. I spoke to -- I mean specifically, no.

Q. All right. There's a document called North Wildwood-8. The date of report is July 31, 2012, but it's recounting what happened on July 27th, 2012, and I'm going to read to you what he wrote about speaking to you.

MR. D'AMATO: Do you want to make

me copies of this?

MR. BARKER: Sure, we can do that.

MR. D'AMATO: Just go off for a minute.

THE VIDEOGRAPHER: Going off the record, 12:21.

(North Wildwood Police Department Supplemental Report was marked for purposes of identification as Exhibit Sunderland-11.)

THE VIDEOGRAPHER: We're back on the record, 12:24.

BY MR. BARKER:

Q. So let's pick up the chronology a little bit and put things in place. Here's a report from a policeman who wrote on Sunderland-11, "On July 27th, 2012 at approximately 17:36, 5:36 p.m. --

MR. D'AMATO: You can read it.

BY MR. BARKER:

Q. Are you with me, sir?

A. Yes.

Q. "I was dispatched to the Hereford Inlet regarding broken-down wave runners in the water. Upon arrival, I immediately noticed people shouting for help in the water,

and upon further notice, I could see swimmers in distress. I immediately called for water rescue over the radio and rendered assistance to parties involved." That's the background of him being there.

A. Okay.

Q. He writes then, after he talks about Sergeant Harkins arriving, "Sergeant Harkins arrived on scene and I advised him there was one male still unaccounted for in the water. I tended aid to the seven-year-old female until lifeguards arrived on scene. I then turned her over to them."

So this policeman has already spoken to someone and learned that there's a gentleman still out in the water.

A. Yeah, that would have been me. He would have spoken to me.

Q. Do you remember this policeman at all?

A. No. It's all --

Q. A blur?

A. Well, there were so many people at that point. A lot of vehicles, too. There were a lot of vehicles.

Q. But you do remember speaking to a

policeman, or maybe not?
A. I remember speaking to a policeman at the hospital.
Q. Okay. But not at the beach?
A. Not that I recall, no.
Q. This scene that's being written about here is at the beach, so let me --
A. No, I don't recall.
Q. You don't recall. Let me ask you this: He then writes in his third paragraph. "I then spoke with a Scott Sunderland who advised me that Brad Smith was still in the water and he lost sight of him."
Do you remember that conversation?
A. No.
Q. He then writes in the next sentence, "Sunderland advised me that he and his daughter, along with Smith and his seven-year-old daughter, were walking along the shoreline when they slipped into the water and were pulled out to sea by the undertow."
Do you remember saying anything like that?
A. No.
Q. The next sentence says, "Sunderland

advised me that he and his daughter were able to make it back to shore but Smith and his daughter was unsuccessful."
Do you remember saying anything like that to a policeman?
A. No, I don't remember.
Q. He next writes, "Sunderland advised that two subjects on wave runners later identified as Daniel O'Connell and Thomas Meenan saved Brad Smith's seven-year-old daughter in the water."
Do you remember saying anything like that?
A. Not to a police officer. I can't recall.
Q. And do you even remember that there was a second person on a wave runner that helped save the girl?
A. Yeah, I had said that.
Q. You said that?
A. I said that earlier in the deposition.
Q. I don't recall that. I only remember you talking about one person on a wave runner.
A. No, there were two jet skiers on two separate jet skis when I waved. They both

came up, but Daniel -- I believe it was Daniel -- he came up first. He was before the other guy.
Q. Daniel was the first to speak to you? You think it was Daniel?
A. Yeah, Daniel was the one who rescued Brandi.
Q. Brandi?
A. Yeah. I mean I'm pretty sure, yeah.
Q. Is Daniel the one -- is Daniel in this photograph?
A. I believe so, yes.
Q. I'm holding up photograph No. Sunderland-8. There's a subject with his hands on a wave runner or a jet ski. Can you identify that subject, that person?
A. Yes, I believe that to be Dan. In other words, I'm not --
Q. Positive?
A. I know that's the person that saved her but, again, name to the person, I'm not exactly sure. It's not like I was hanging out with him and I know his name.
Q. So you identify that person in this photograph as the person who saved Brandi?

A. Yes.
Q. And this is a scene with you in it also, correct?
A. Correct.
Q. And is this a picture taken -- is this a picture taken to demonstrate where you were pointing out the event occurred?
A. That's a picture that was taken when I was down with the investigator.
Q. Lou?
A. With Lou, and that is when I was pointing to the approximation, at that time, to where the jet skier was when -- how far out he was in the water.
Q. When he saved Brandi or when?
A. Yes, but it turned out that that was the person I was pointing to. So in other words, the same person that I was pointing to the investigator and as I was saying, he was out about that far, the jet skier was sitting still, it turned out to be the very jet skier that saved Brandi's life. So he throws his arms up and I'm looking at him like, "I cannot believe what's going on here."
Q. All right. So let me see if I got it

right. Here's a picture of you pointing?
A. Correct.
Q. That's called Sunderland-9, right?
A. Yes.
Q. And that's a photograph taken of you pointing and you're trying to say to the investigator, Lou DiJoseph at that point, the guy on the jet ski was out there; is that right?
A. I believe what I'm pointing to there is the approximate location of where Brad was, about that far from me.
Q. What were you pointing to?
A. I was pointing to this boat.
Q. Oh.
A. There's a boat there. So I was using the boat as distance and I was saying that he was, you know, not that far off from me, from my position.
Q. At what point in time?
A. At one point, yes. He was a little bit closer to me.
Q. That's what I'm asking you. Is that when you first saw him in the water?
A. No, that's the last I saw him. It

would have started here and then it would have went out.
Q. "Started here" meaning further north?
A. Further west.
Q. Further west and moved further east?
A. Moved further east. We're getting it now.
Q. And here's another picture of you pointing called Sunderland-6. Tell us what you were demonstrating there.
A. I don't know.
Q. Well, does Sunderland-7, which I show you, does that help you with Sunderland-6, give you any frame of reference?
A. I have no idea. I don't know what I'm doing here.
Q. Okay. And now I have Sunderland-8, a photograph which was provided to us taken at the same time. This is when you and Mr. DiJoseph were out there, right?
A. Yes.
Q. And does that help you refresh your recollection in any way about what you were pointing to in the other two photographs?
A. No, not really. I know what this

picture is about.
Q. Tell us.
A. Well, that's when we realized, both myself and the jet skier that's in this picture, that it's kind of crazy; we're both on the beach at the same time and I said to Lou, "That's the kid that saved my niece's life," and I walked down and we hugged and I said, "What are you doing here?" He says, "This is the first time I've been back." He said, "What are you doing here?" I said, "First time really I have been back here since that week."
MR. BARKER: We're going to take a break now.
THE VIDEOGRAPHER: We're going off the record, 12:32.
(A lunch recess was taken.)
(Report prepared by North Wildwood Investigator Richard Schmidt was marked for purposes of identification as Exhibit Sunderland-12.)
THE VIDEOGRAPHER: We're back on the record and the time is 1:17.
BY MR. BARKER:

Q. Mr. Sunderland, we're going to continue now, having had our lunch break, and I'm going to be asking you some questions based on a report that was prepared by an Investigator Richard Schmidt, S-C-H-M-I-D-T, badge No. 228. It's a supplemental report. It's North Wildwood Exhibit 16 and 17 and in particular, your part of it, appears on 17. And it's been marked as Sunderland-12, and you have had the opportunity to look at that, right, sir?
A. Yes, yes.
Q. So I'm just going to, by way of background, mention to you that on 16 it leads in as follows, Schmidt writes, "I then advised Mrs. Smith that I was going to talk to Scott Sunderland who was being treated at the hospital. He was the other adult that fell into the water. I advised her that I would stop back and speak with her."
So now on Sunderland-12, he writes, "I then met with Scott Sunderland and asked him what had happened on the beach."
So that's the investigator that you -- remember before you said I spoke to

somebody at the hospital?
A. Yeah, at the hospital, I remember.
Q. So this must be the man that you spoke to, right?
A. Yeah.
Q. And he wrote, "He stated that he was walking along the beach with his son Aidan, daughter Ally, Brad Smith, and his daughter Brandi." All that's correct?
A. Correct.
Q. "He stated that they went for a walk on the beach along Hereford Inlet." That's correct?
A. Correct.
Q. "As they were walking back, they were all walking in knee-deep water along the surf." Is that correct, sir?
A. Yeah, it was a little bit less than that, but yeah.
Q. He then writes, "All of a sudden, Sunderland explained that the ground went out from under them and they fell into the water." Is that correct, sir?
A. Yes.
Q. He continued, "He did explain" --

talking about you. "He did explain that his son Aidan didn't fall in the water." That's correct also?
A. Correct.
Q. He reports about you, "He stated that they walked into a deep gully in the water." Is that correct, sir?
A. Yeah.
Q. "He stated," talking about you, "He stated that when he fell in he was unsure if he was carrying his daughter at the time, but when they were in the water, she was hanging onto him around his neck." That's correct?
A. Correct.
Q. "He stated that while in the water he could feel a strong current pulling him." Is that correct?
A. Yes.
Q. "He stated that he doesn't know how but he was able to dig his hands into the sand and pull him and his daughter onto the beach." Is that correct?
A. Correct.
Q. "Once on the beach, he stated that he looked out into the water and saw Brad and

Brandi being swept out by the current." Is that correct?
A. Yes.
Q. "He said that at this point Brad was hugging and holding onto Brandi." Is that correct?
A. Yeah, that I don't remember.
Q. All right. "He stated" -- strike that. He wrote, "He then stated that while watching the two, they separated and Brandi was treading water and the current continued to carry Brad out further." Was that correct?
A. All but the part -- I don't remember them being together. I don't know if I said that, to be honest.
Q. In the next paragraph, the investigator continues -- and he's reporting things that you said to him. You understand that?
A. I do understand that, yeah. I remember talking to him.
Q. He then reports, "Sunderland stated that Brad was yelling to him and to Brandi and at this point he stated that he entered the water in an attempt to get out to Brandi." Is

that correct?
A. Yes.
Q. "He stated that when he entered the water, again the current was too strong and he exited the water." Was that correct?
A. Yes.
Q. "Sunderland stated that when he exited the water, he was trying to keep eye contact on both Brad and Brandi." Was that correct?
A. Correct.
Q. "As he was watching them, he stated that he was trying to yell and wave down boats that were in the inlet." Was that correct?
A. Correct.
Q. "None of these boats acknowledged him at this time." Was that correct?
A. Correct.
Q. "He then stated that he saw a police boat traveling in the inlet." Was that correct?
A. Correct.
Q. "At this time, he thought that the police boat was going to see Brad and Brandi in the water." Was that correct?
A. Correct.

Q. "He said," talking about you, "He said that the police boat went passed them and continued out into the ocean." Was that correct?
A. **Correct.**
Q. "Sunderland stated that he found out that the police boat was heading out to assist some jet skiers and probably never saw Brad and Brandi in the water." Was that correct?
A. **Correct.**
Q. Next paragraph, "Sunderland stated that he then ran down to a couple of people that had jet skis on the beach and told them what was going on." Is that correct?
A. **No.**
Q. And the correct statement would be?
A. **They saw me waving.**
Q. And then they just left and went off to do the rescue?
A. **They came towards me. I never left the area.**
Q. He wrote next, "He," talking about you, "He pointed them out and these two individuals launched the jet skis into the water." Is that correct?

A. **They were already in the water and, yes, I did point them out and they went to assist them.**
Q. "He stated that one of the jet skis approached Brandi." Was that correct?
A. **Yes.**
Q. "The driver of this jet ski jumped into the water, placed his life jacket on Brandi and put her onto the jet ski." Correct?
A. **I believe so. I don't remember him jumping in the water, but yes, everything else is correct.**
Q. "Sunderland stated that the jet skier, along with Brandi, searched the water for a few minutes. Then Brandi was brought back to shore to be checked by rescue personnel." Correct?
A. **Yes.**
Q. "I asked Sunderland if he was still able to see Brad at that time. He stated that he was watching as Brandi was being picked up and lost sight of Brad." Correct or not?
A. **Yes, correct. I mean, yeah, I saw him after he picked up Brandi, and that's when I**

saw Brad go under. So right after he -- those two come together. I didn't see him actually pick her up out of the water because I was watching Brad at that point.
Q. Talking about you, "He stated that the last time he saw Brad in the water he was being carried out towards the breakers which he thought was a sand bar." Correct?
A. **Yes.**
Q. "After Brandi was brought to shore, Sunderland stated that they were checked by rescue personnel and then transported to the hospital."
A. **Correct.**
Q. And that was the end of his interview with you?
A. **Yes.**
Q. Did you ever get interviewed by that officer again?
A. **I would have no idea. I don't think so.**
Q. Were you ever interviewed by any other law enforcement officials?
A. **Interviewed, no, I don't think so.**
Q. Did you speak to any other law

enforcement people?
A. **They would come to the house and kind of say what was going on, what would happen, what their previous experience was for people who were lost, how they, you know, tried to find them.**
Q. And do you know who you were speaking to?
A. **I don't.**
Q. Do you know what agency they were from?
A. **Not a hundred percent sure, no.**
Q. You were interviewed by Mr. DiJoseph at some point, right?
A. **Yes.**
Q. We have a report of interview by Mr. DiJoseph, a report of interview, August 16th, 2012. Does that sound like the correct date to you?
A. **I believe that was the day we were on the beach together.**
Q. Same one that coincides with the photographs we went through before lunch?
A. **Yes.**
Q. And you had the opportunity before

this deposition began to look over this report of interview, correct?
A. Yes.
Q. In going over the report of interview you marked it up and made corrections?
MR. D'AMATO: Is that Sunderland-5?
MR. BARKER: Yes, it is, and we can place that in front of the witness if you don't mind.
MR. D'AMATO: No.
BY MR. BARKER:
Q. On Sunderland-5, I want you to explain to us, if you will just look at every change you made and tell us "I made that change because" and tell us whatever the reason was.
A. The first change was -- it says, "The Sunderland and Smith families established a position on the beach in the area of Surf Avenue which was protected beach in North Wildwood. Sunderland and Smith and their two daughters decided to take a walk on the beach in the north direction."
The only reason I circled that is because our daughters were out playing and, as

I said before, Brad ran after them to scare them and then I followed him. It's not like we all just decided, "Hey, let's go for a walk."
The next one, it says -- correction says, "Sunderland stated that he and his daughter were walking behind Smith and his daughter," and we were -- I mean at the time of the actual accident when we went in the water, I was in front of Brad.
The next correction was, "Suddenly Smith and his daughter fell into the water simultaneously. Sunderland and his daughter also fell into the water."
Q. You struck through that?
A. I just struck through it and said, "Ally and I fell into the water." I presume that they fell into the water because they were in the water, but I didn't see them fall into the water when I went in.
The next one was "Sunderland's daughter immediately jumped onto his back." She fell onto my back or else I was carrying her prior to falling into the water, but she was on my back when I was in the water. She

didn't climb on my back.
Q. Down at the bottom of the page there's two or three points of change. Take us through them one at a time.
A. Let's see, "Suddenly a jet ski was launched from the beach's north end and the operator came up to Brandi and pulled her from the water. While the jet ski was pulling Brandi from the water, Sunderland spotted a" -- yeah, the New Jersey -- the Marine Unit.
Yeah, I don't -- that was -- it's just timeline as far as what happened. I saw -- the marine boat was before the jet skier came. So the officer was coming down the inlet before the jet skier saw me wave. So he came down and then he passed by them. And then that's when I started waving, kind of frantically. That's when the jet skier saw me. That's when they came up, and then that's when the rescue happened, took place.
Q. So in this case --
A. It's just the timeline.
Q. -- the interviewer has it reversed?
A. Correct, correct.
Q. And there's a change at the bottom,

"Sunderland then told the" --
A. Yeah, I never told them. I just pointed. I mean it's not like I went down to the water's edge and had a conversation with them. You know, I yelled and he went there. That's why I was saying he was out, say, 50 feet or 60 feet out in the water and then he kind of came in a little bit so he could kind of hear me, looking at me, but he never, like, came to the beach, stopped, talked and then went out and rescued Brandi. It was all one motion.
Q. Okay. We're now on page 6 of this report, and at the top of the page you struck some words and you put in some words?
A. Yeah, as far as the trooper was on the boat when he came back with the jet skier that he rescued. We didn't really have a conversation about Brad at all because he had no idea. And when I say that he had no idea, he wasn't talking about Brad at all. He was just talking about the jet skier right here, "Can you, please, take the rope and pull the jet ski up on the beach to help the jet skier right there?" I don't think he had any clue

of Brad whatsoever.
Q. I'm looking at page 7. There's a photograph there where the investigator wrote, "Photograph No. 6 illustrates jet ski rescuer, Rob O'Donnell, and Scott Sunderland standing at the approximate location of the Smith drowning."
So is that where you went in, or is that where you're saying that Brad was offshore and went under when you last saw him?
A. **Well, this picture, I think it's more of not -- I mean we were in the general area because I was telling him what happened. This is more of the surprise that the same jet skier is there now and I was kind of saying to Lou, "This is crazy. This is the same guy." So I think it was that surprise.**
Q. So this photograph doesn't help you demonstrate where you went in the water?
A. **No, not necessarily, no.**
Q. Let's turn to the next page. This is an aerial view. It looks like it's -- I don't know if this is an enlargement of another photograph that we have, but it's on page 8 of this report, and it's referred to as

"Photograph No. 7 illustrates an aerial view of the North Wildwood beach area known as Hereford Inlet and the approximate location of the Smith drowning."
There's an X on there with an SAS on it, right?
A. **Yes.**
Q. And you put that there this morning?
A. **I did that.**
Q. And you did that when you were meeting with Mr. D'Amato?
A. **Yes.**
Q. Before the deposition?
A. **Before, yes.**
Q. Okay. What conversation did you have with Mr. D'Amato about where and how to put this X?
A. **He just asked me, "Do you think the arrow is, you know, pretty accurate?" And I said, "Fairly accurate, from what I remember." And he said, "Can you put an X where you think it happened?" So I put an X.**
Q. Did you ever go back to the scene and point out to any other investigator where you went in the water?

A. **Just Lou. That was it.**
Q. Just on August 12, 2012, that one and only time?
A. **And I think that was the last time I have been there.**
Q. And when you went with Mr. Lou DiJoseph at the scene on August 12, 2012, did you see Mr. DiJoseph turn around and make observation of any landmarks to help mark the spot that you were telling him where you went in the water?
A. **Not that I recall.**
Q. Did you turn around and look at any landmarks up or down the coast or more inland to help you mark the spot where you say you went in the water?
A. **Not that I can recall.**
Q. Okay. So if I can get back to the photograph that you marked when Mr. Hunkins was talking to you, I have a follow-up question about that.
So just go off the record one minute while we get that exhibit.
THE VIDEOGRAPHER: Going off the record and the time is 1:38.

(Discussion off the record.)
THE VIDEOGRAPHER: We're back on the record, 1:39.
BY MR. BARKER:
Q. Remember when you put the circle around on Exhibit 10 there?
A. **Right.**
Q. And that was to kind of show the area of the rock wall and --
A. **The parking lot.**
Q. -- and the parking lot, right?
A. **Um-hum.**
Q. And you referred to the X and you said the X was like halfway between where the ocean was and the inlet was; is that right?
A. **No. I think I was saying as far as our walk goes, I would say that the X -- it's closer to the ocean side, I would say, a little bit more than halfway.**
Q. Back towards where --
A. **Towards east, towards the front.**
Q. Where you had started on your walk?
A. **Yeah, we started more south. We started south, walked north, turned west and then came back along the coast towards the**

east, and then we would eventually head back south again. So we were still traveling east.

Q. All right. The only thing I was trying to clarify in my mind is when you said about where the ocean was. Does that photograph No. 10 show you what you perceive to be the ocean versus the inlet?

MR. D'AMATO: On the day of the accident?

MR. BARKER: Well, even in that photograph, because isn't that a photograph taken -- well, let me just rephrase my question.

BY MR. BARKER:

Q. I'm showing you this Exhibit 10, because I thought the X was in some way put there because you were estimating based on where the inlet was, where the ocean was, and I know that you got the red circle about where the parking lot was and the rock wall, but does that thing show you where the ocean is?

A. Well, I guess this part, that's what I remember being the ocean end. So if you continued it this way, it would just keep going straight down (indicating.)

Q. Can you point an arrow, put a Y, no, some kind of mark on there as to what you are demonstrating to us as the ocean, what you are describing as the ocean?

A. So I mean can I keep coming down?

Q. Sure.

A. So this part, that's --

Q. With the red line straight down?

A. When I look at this, when I look at this picture, I see this being the inlet. This -- correct? This is the parking lot. So I know in reference to the bay is back here. This is the inlet. The rock wall is all along here. And then this is the stretch, and then this is the ocean. So when we originally sat down, we would be up here somewhere (indicating.)

Q. Down there somewhere?

A. At or down there at the guarded beach.

Q. Right. So the beginning of the red line straight down is more or less where you're saying --

A. Oceanfront.

Q. The oceanfront.

A. Yeah, that's the oceanfront. So when

I say the State trooper boat, it would have -- from what I can see in this picture, I would guess it would be in that area where he came, like along this area. So this is where the emergency vehicles would have been, from my recollection. That's what it looks like to me (indicating.)

Q. So the area of where the State trooper came from or --

A. Yeah, he would have been out here to rescue the jet skier. Because the breakers were way out here.

Q. Okay.

A. And then he would have came in, you know -- I didn't see him come in. I see him come up to the shore at approximately this point, but, again, it's --

Q. At the top of the red line?

A. Yeah, in that approximate area, so when you -- I guess looking at it, if there was a big picture, I would say this whole area out here would all be ocean. This would all be ocean out here (indicating.)

Q. Okay. Let's look at this other photograph that's larger.

MR. D'AMATO: Just for the record, the photograph that you were just asking him questions about was taken from Google Earth and just incorporated in the report. So you never really saw this photo before.

MR. BARKER: Who didn't?

MR. D'AMATO: You didn't.

MR. BARKER: Oh, it's different than the March 14th, 2012 one?

MR. D'AMATO: Yes. And I don't have a date on it, but I will get a date as to that particular photograph.

MR. BARKER: Thank you.

BY MR. BARKER:

Q. What's that exhibit number, Mr. Sunderland, the bigger photograph there?

A. 2B.

Q. On that one, does that demonstrate to you where you set up on the beach? Can you tell?

A. No, no, it looks different. I mean I can see the parking lot.

Q. Right. So if you can't tell where you set up on the beach and you can just see the parking lot, any other landmark you can

recognize there?
A. I can see landmarks here, but the beach looks -- it looks different to me.
Q. Than in the --
A. Than in this picture (indicating.)
Q. The number of that is?
A. Number Sunderland-10. Yeah, okay, I'm looking up at the initials, yeah, Sunderland-10.
Q. In looking at this 2B photograph, does it demonstrate to you -- can you see from that where you think you went in the water?
A. On this, 2B?
MR. D'AMATO: In all fairness, isn't 2B exactly the same as Sunderland-2?
MR. BARKER: Yes, 2B is Sunderland-2 --
THE WITNESS: It's just blown up. It's just bigger.
MR. BARKER: -- but it's just an enlargement.
MR. D'AMATO: Okay.
THE WITNESS: Yeah, on 2B it just looks like it's different -- it's kind of like a different shape. It's similar, but I feel

more comfortable with this picture, and I don't know if it's because it's closer, but when I look at this, it doesn't --
BY MR. BARKER:
Q. 2B?
A. Yes, sorry. No, on Sunderland-10. When I look at Sunderland-10, it looks to me more where it was. I don't know if it's the size of the picture. I don't know what it is, the difference, but there I can kind of see how, you know, in a --
Q. "There" meaning on 10?
A. Sunderland-10, you know, I can see the distance, I guess, the scale of it, by the way the buildings are, the size of the cars, about where the accident happened. On 2B, it really doesn't look the same at all, but it just could be, you know, because it's further back, it's showing more of the coast.
Q. So for whatever reason, 2B does not help demonstrate your testimony?
A. No.
Q. Correct?
A. Right, correct.
MR. BARKER: Let's go off the

record a minute.
THE VIDEOGRAPHER: Going off the record, 1:48.
(Discussion off the record.)
THE VIDEOGRAPHER: Back on the record, 1:50.
BY MR. BARKER:
Q. Am I correct, Mr. Sunderland, that you and your family had never been to this particular beach before?
A. Correct, no, we hadn't.
Q. But you and the Smith family had vacationed for years together?
A. Oh, all the time.
Q. Had you ever been to any North Wildwood beaches before?
A. No.
Q. Do you recall the address of the house that you rented or stayed at that year, 2012?
A. No. I know where it is. I probably would be able to point it out, but I don't know the address.
Q. Was it inland but near where you set up on the --
A. It was further down the inlet in the

marina, in the marina.
Q. Oh. Do you recall what the surf conditions were at the time that you started off on this little walk?
A. Out in the ocean where we were, it was really -- I don't know if it was rough, but there was a real bad -- the bigger boys would go out into the water and boogie board and then they would come out, like, really far down the beach because the current was going sideways, I guess, and it was really strong.
Q. From which direction?
A. I think they would have been going south. So they would drift south and they would ride the waves in, because we --
Q. Is south the same as east?
A. No, east is east. South is down the coast, right? That's how I look at it. So south is down the coast. East is straight out to the ocean.
Q. Got you, okay, I'm following you. And who are the bigger boys?
A. Bigger boys would be my son, Jett, and Cole, Sandy and Brad's son.
Q. So you saw them go in the water to

boogie board and then they would --
A. Yeah, they would get, you know, pulled down south along the beach, along the beach, because they were riding waves in. That was at, you know, whatever avenue it was where the lifeguard stands were. But as far as where we were, there was nothing. It was perfectly flat.
Q. When you were walking up?
A. When we were walking. The sun was kind of glistening on the water. It was beautiful.
Q. So walking up towards the rock wall and walking back were the conditions the same?
A. Walking back, walking back. Again, we kind of walked inland, I would say. We walked, you know, in the westerly direction toward the rock wall and we walked along the coast on the way back, so that's really --
Q. What I'm asking is when you are walking on the way back, are you describing those conditions as very slight?
A. Very flat, very slight, yeah.
Q. And did you observe any conditions of current at that time?

A. No, none.
Q. And on the walk back, none?
A. None.
Q. And on the walk up to the rock wall?
A. Again, not that I recall, because I think we were inside, you know, or more on the sand. I guess you would say the upper beach, the upper part of the beach, more towards where the tidal pools form, because the girls were playing in the tidal pools.
Q. Do you remember what the street location was where you set up and you said the lifeguard was there and the boogie boarding was going on?
A. I really -- I don't. I'm bad with directions like that; my wife will be the first one to tell you.
Q. As a result of going in the water, did you suffer any injuries?
A. No.
Q. As a result of going in the water, did your daughter suffer any injuries?
A. No.
Q. Do you recall who from the media you spoke to about this event?

A. I remember we spoke to -- what's the name of the program? I'm not sure. I'm not sure. If I had a picture, I could tell you.
Q. Somebody from the media you remember speaking to?
A. Yes, yes.
Q. Did you speak to more than one person from the media or just one person?
A. No, it was a few people.
Q. At different times, I take it, or not?
A. No, it was pretty much all at the same time and we just recounted what happened.
Q. Was the person's name Sam Wood?
A. Doesn't ring a bell.
Q. Doesn't ring a bell?
A. No.
Q. Did you speak to any female reporter?
A. I remember a female reporter, yes.
Q. Do you know who the female reporter was reporting for?
A. I don't.
Q. Do you know who the gentleman reporter was reporting for?
A. Not off the top of my head, I don't, no. Oh, it was Chasing New Jersey.

Q. Pardon?
A. Chasing New Jersey. I think that was the program.
Q. Is that a newspaper or --
A. I don't know. I'm not really sure.
Q. You don't know. Here's an article that appeared, and on the second page of the article it refers to you giving an account. Let's see if this refreshes your recollection.
MR. D'AMATO: Off the record.
THE VIDEOGRAPHER: Off the record, 1:57.
(Newspaper Article was marked for purposes of identification as Exhibit Sunderland-13.)
THE VIDEOGRAPHER: We are back on the record. The time is 2:02.
BY MR. BARKER:
Q. Mr. Sunderland, I put in front of you an exhibit which we marked as Sunderland-13. It's a media report on an interview with you, and I'm only going to ask you about the things that they recount which you said --
A. Okay.
Q. -- which appears on page 2, it starts.

You'll see in the bottom third of the page it starts, "Scott Sunderland, Smith's best friend, recounted the event. 'The signs said no swimming and we weren't. We were just walking,' Sunderland said." Did you say that to a reporter?
A. Yes.
Q. "I took a step and dropped. All of a sudden there was nothing under my feet." That's in quote marks. Did you say that?
A. Yes.
Q. The next part is not in quotes. It says, "Sunderland's daughter landed on his back and wrapped her arms tightly around his neck." Did you say that?
A. Like I recounted before, either, again, when we were walking, she was on my back, and when I was in the water, she was on my back. As soon as I was in the water, she was on my back.
Q. Next the reporter gives this recount of you making this statement. "'I just started swimming,' Sunderland said. 'It was 30 seconds before I realized how far from the shore I was.'" Did you say that?

A. Yes. I don't remember this conversation, but I mean.
Q. Oh, well, if you don't remember, then --
A. Well, I mean I remember giving the interview, but it was a bunch of people. So I don't remember talking specifically to this person.
Q. Oh, so there's more than one reporter there?
A. Yes.
Q. Oh, and you're just telling me now that what they have reported in this account is something that you would have said; you don't necessarily remember saying it?
A. Exactly, yes, yes, yes.
Q. Okay. The last thing I think we've got here from you, "With his daughter hanging on, Sunderland struggled against a vicious undertow. When he finally touched sand, he fought the rip current to gain his footing. 'It was almost like I was climbing to get onto the beach.'"
A. Again, I don't remember saying those exact words to this exact person, but...

MR. D'AMATO: But what?
THE WITNESS: I mean that's basically what happened. Okay?
BY MR. BARKER:
Q. Okay. That's all I have on that. Just a second.
Did you have any conversations with any lifeguards of North Wildwood or, really, did you have any conversations with any lifeguards about this event?
A. No.
Q. Not from the date of the event until now?
A. I don't think ever. I don't think I ever -- unless, you know -- no, not knowingly.
Q. The only person that you have spoken to that you can remember, let's see, it would be the policeman that we talked about, Schmidt, right?
A. In the hospital.
Q. Right. And then the one policeman before that, you spoke to him, but you don't remember what you said?
A. Right, correct.
Q. And then after that you spoke to Lou

DiJoseph on August 12th?
A. Right.
Q. And then after that you spoke to Mr. D'Amato earlier today, correct?
A. Correct.
Q. Anybody else?
A. Well, I've told a lot of people this story. Everybody I see and I meet I tell this story to. So if I spoke to anybody else, I did not know who they were, other than, you know, casual acquaintance or whatever. So just to be clear.
Q. Apart from the one time that you spoke to the media and we see this article appearing, was there any other time when you spoke to the media like a press conference or people coming by to interview you?
A. We did a press conference here, I guess, which is that time.
Q. Meaning this article?
A. Yes, I think that was all of it, here.
Q. When you say "here," you mean in Mr. D'Amato's office?
A. Yes, yes.
Q. Right in this conference room?

A. I believe, yes.
Q. Was that recorded?
A. I'm sure it was.
Q. Why do you say that?
A. Well, because there was cameras here and, you know, reporters here. That's why I said when you say that reporter, I don't know if it was that reporter, but chances are it probably was because I think there were probably five -- five, six reporters.
Q. Was that press conference something that you arranged?
A. No, no.
Q. Who arranged it?
A. I don't know if it was Mr. D'Amato and Sandy, I believe. Sandy asked me if I would come, so I came with her daughter.
Q. Sandy Smith?
A. Sandy Smith. Sorry.
Q. Other than the -- well, let me ask you this: To your knowledge, have you spoken to any North Wildwood personnel about the happening of this event?
A. Only right after when we were still staying at the house.

Q. And who was that?
A. Again, I'm not sure who it was, but it was -- I believe it was an officer, police officer, and there were two of them, and they would come a couple of times. I don't know if they were the same gentlemen. But they would ask or, you know, we would ask -- would be asking them, what can we expect -- it's mostly on the recovery of Brad and the rescue of Brad. We were asking, you know, what -- how do you investigate it as far as how they find him. You know, they put the strobe in the water; they were explaining all of that. And they had said that other people have been lost here. And we were asking about that as far as how -- were they lost, like, drowned lost, were the bodies recovered, and they told us about, you know, when somebody is lost at sea, not just in this position, but when people drown, how the bodies come up, sometimes they do show up, sometimes they don't show up. It all depends.
Q. Anything else you can remember about the conversations with those two?
A. No, that was mostly it, you know.

They just said that other people have -- it's happened to other people here.
Q. Here where?
A. Here at that location where we went in.
Q. And these people that told you that, you think they were from North Wildwood?
A. Yeah, I'm pretty sure, because they were in the investigation of finding him.
Q. Was any one of them the same that spoke to you on the beach that day?
A. I don't think so. I don't know. I can't say.
Q. Was any one of them the same as the person who spoke to you in the hospital?
A. I can't say with any certainty. It's possible, but I'm not sure.
Q. Do you know what position either one of them held?
A. No, I don't.
Q. That would mean like rank or responsibility. No idea?
A. No, I don't. I know they were in charge of the investigation, so I would think they would be, you know, in that capacity if

they are doing the investigation of finding him.
Q. So they're on the recovery side?
A. I believe so, yeah. But it was really about the whole incident. You know what I mean? So they were speaking to us more of what to expect. They were sounding moreso we could ask the questions and they were responding with this is how we -- this is how the -- whether it's that office that does the recovery or not, but they were explaining how the process works. This is how the rescue effort goes or the recovery effort happens. They put out a beacon. The beacon floats in the water and they, you know, that determines where the water is going to move. So chances are if the water is moving that way, that's where Brad will move. So -- and then we would ask, like I said, "Well, what is the recovery rate?" Because I mean he's out at sea. So is it more likely that he will wash up, or is it more likely that we'll never know and he'll just -- because that was one of Sandy's things. She wanted to know that he was at least recovered.

Q. Had you ever spoken to any personnel from the Coast Guard?
A. **No.**
Q. And I'm asking about this incident.
A. **No, no, no. I've had them on the boat, but that's all good.**
Q. Not about this incident?
A. **No.**
Q. Okay. Have you spoken to any New Jersey State Police officials about this incident?
A. **No.**
Q. Have you spoken to any New Jersey officials about this incident?
A. **No.**
Q. Have you spoken with any witnesses to the incident?
A. **We -- I did speak -- where we were staying, there was a family who owned one of the townhomes, and Brad and I had become friendly with them while we were staying there because they were boaters and they had the jet skis, and we would go down there and talk to them, and after it happened, they, of course, came up and offered anything that they could**

do to help, and the woman had mentioned that -- she said to me just the other night or just the other late afternoon, a group of women were walking along the beach and they fell in.
Q. And who was this person who told you this?
A. **This was the -- I don't know her name, but it was the owner of the townhome that was, you know, maybe four, five doors down from where our rental was.**
Q. And was that person interviewed by anyone, that you know of?
A. **I have no idea.**
Q. You don't think maybe Mr. DiJoseph interviewed her, do you?
A. **I have no idea. I haven't spoken to her since that time.**
Q. Okay. Have you ever spoken to anyone about closing the inlet beach?
A. **As far as an authority or -- the only person I spoke to was the Mayor right -- and it might have been the day after, or, you know, two, after the incident, and I asked him if he would --**

Q. That's what I was going to ask you. What did you say to him and what did he say to you?
A. **Well, when I spoke to him, he -- first thing he said was, "Well, you shouldn't have been swimming." And that got me -- my hair stood up a little bit, because I felt like I needed to defend ourselves a little bit, and that's when I said, "We weren't swimming, we were walking." And, you know, there was silence. And then he was just defensive and it got me defensive.**

So I said, "Well, you need to do something here. You need to put rocks down there. You need to do something to deter people from walking along here." Because it's probably the most beautiful place that I have seen since I have been here, and being down there the next day, there's little kids walking right where we were.

And he said, "We can't close the beach. We can't put rocks there because they will be gone the next year." And I said, "Well, isn't that better than somebody's husband, somebody's daughter, somebody's

five-year-old?" I said, "Because if my son would have fell in that water, it would have been all of us." There was absolutely no question about that, because I never would have left my son. And I swam as soon as I hit the water knowing that my daughter was on my back. I didn't gather her. I didn't take time in doing that. I swam from the very second I hit the water.

MR. BARKER: I have nothing further. Thank you.

MR. HUNKINS: I have a few questions.

* * *

FURTHER EXAMINATION BY MR. HUNKINS:
Q. You have been real patient. Do you need to take a break at all?
A. **No. I'm okay.**
Q. I don't think I'll be too long, and I'll try to be as efficient as I can.
A. **Okay.**
Q. I start with an apology. You mentioned that you are a boater, correct?
A. **Correct.**
Q. But I don't think we've asked you much

about your boating experience; is that correct?
A. No.
Q. What kind of boat did you own back when this incident occurred?
A. The one I still have today. It's a 25-foot center console. It's a Sea Hunt.
Q. Okay. And when you were down in North Wildwood for this vacation when this incident occurred, did you have your boat with you?
A. Correct.
Q. And I think you might have said this. It was at a marina at the time?
A. The marina right where we stayed, the boat was directly in the backyard, behind the house where we stayed.
Q. So looking at the overview picture, Sunderland-2, the marina would have been south of what's shown in that image?
A. Sunderland-2, the marina would have been up here (indicating.)
Q. Okay. It would have been northwest --
MR. D'AMATO: Just twist the photograph.
THE WITNESS: Sorry.

BY MR. HUNKINS:
Q. The marina would have been northwest of what's shown on Sunderland-2?
A. It would have been back here somewhere (indicating.)
Q. Okay. And I may not be using the right term, but to me the inlet is more or less in the northwest of that image, so would the marina have been -- was it located in the inlet?
A. Yes, adjacent to, you know -- I guess an offshoot of the inlet.
Q. Okay. And in the days that you were in North Wildwood before the incident occurred, had you had your boat out?
A. Oh, yes.
Q. Okay. And had you taken your boat through the inlet?
A. We did.
Q. Okay. As a -- how many years had you been boating prior to this?
A. At that time, me, probably -- with my boat, probably two years. Brad had, you know, boats, too, and I had boats a long time ago.
Q. All right. From your knowledge -- you

had known Brad for how long?
A. Oh, since probably '84.
Q. And you were both boaters?
A. Yeah. I mean it was my boat. We were actually going to buy a boat together and then I just ended up buying mine.
Q. Would you say that your knowledge and experience with boating was roughly the same as Brad's?
A. I would say so. I probably had a little bit more because I was captain, I guess.
Q. I assume as a boater you were familiar basically with what an ocean is and what an inlet is?
A. A hundred percent.
Q. You were aware at the time of the incident that an inlet is a body of water where the water comes in and out with the tide?
A. Yes.
Q. Have you boated in any other inlets other than Hereford Inlet?
A. Yes.
Q. Just give me an example of where.

A. Point Pleasant, Belmar, Barnegat.
Q. Okay. Were you familiar from your experience with other inlets at the time of this incident that, generally speaking, inlets involve strong currents?
A. Yes, yeah.
Q. As a boater, are you familiar with the fact that at times it's even difficult to navigate your boat in and out through an inlet depending upon which way the current is going?
A. Well, as soon as we got to the house, we went to the marina and I bought a chart, and I asked the owner of the marina to show us the best way out of the inlet, and he actually drew a line on how to get out. And, you know, I said I just need to know how to get out, because on my boat it has a machine that shows like the bread crumb trail. So once I get out, then I can easily get in and it's just for being shallow, because he said it was shallow.
Q. This conversation you are having and the map that you got, was that before the incident in this case --
A. Yes.

Q. -- or after?
A. **That was before.**
Q. Okay. And do you have that map?
A. **Yes, I do.**
Q. Have you ever given it to anybody, for example, Mr. D'Amato?
A. **No.**
Q. Okay. Is that something you could provide to Mr. D'Amato so he could give us a copy?
A. **Sure.**
Q. What kind of map do you call this?
A. **It's a chart -- it's a chart of the Hereford Inlet.**
Q. And by the time you took your walk on the beach and this incident occurred, you had had this conversation with this person at the marina?
A. **At the marina, yes.**
Q. And you were familiar generally with the fact that the inlet was very shallow?
A. **Yeah. He basically just said, "You want to go out" -- I mean the conversation was, "You basically want to go out this side." And it was the opposite side of where this is.**

This was on the north side.
Q. Okay.
A. **North side.**
Q. Obviously, this is for purposes of getting the boat through without grounding the boat?
A. **We were going fishing in the ocean.**
Q. So if I follow you, the channel or path that he showed you on the map was not along the beach where you were walking?
A. **No, no, it was the opposite side.**
Q. Okay. From looking at that chart, if you had chosen to do so, could you have found the depth of the water along the beach where you ended up walking on the day of the incident?
A. **But at a certain time of day or a certain -- you know, it will have numbers on it that basically tells you depth or whatever.**
Q. And I'm not an ocean person at all, but from what I gather, the depth of water along the beach is going to vary depending on whether the tide is in or out?
A. **Yes.**
Q. And that's the kind of information you

could get from this chart?
A. **Somewhat, somewhat.**
Q. As a boater, by the time the incident occurred, were you just generally already familiar with the fact that the slope of the bottom of an inlet or an ocean or the depth of the water, either one, can vary?
A. **Yeah, yes, yes. I mean this is a little different than what a normal inlet, I would call it -- a normal inlet would be like Belmar or Point Pleasant. It's -- it's a true inlet; it's protected and it's dredged. It's rocks on either side. So there's only one way to get out. There's no swimming. There's no bathing. There's no sand. It's rock.**
Q. But before the incident occurred in this case, were you generally familiar with, whether you're in an inlet or an ocean or a bay, that the contour of the bottom can change as you pass over?
A. **Sure.**
Q. And in other words, the depth of the water can change?
A. **Sure, the depth of the water changes, yes.**

Q. And were you aware, as a boater, that the depth of the water can be affected by the action of current?
A. **Sure.**
Q. Based on your knowledge and experience as a boater as of the time this happened and/or conversations you may have had with other people after this happened, is it your understanding that this drop-off that you and your group stepped into was created by current running along the beach?
A. **I really don't have any idea how. It just seemed to me it was more like an instability or where it just dropped out.**
Q. You have no idea one way or the other?
A. **Oh, I have no -- I really don't have any idea on how. I would imagine it --**
Q. No, I don't want you to guess.
A. **Okay, okay.**
Q. As you were walking along the beach before the incident occurred, were you looking where you were going?
A. **When we were walking down the beach?**
Q. Yes.
A. **Sure.**

Q. Okay. Did you notice anything unusual about the sand or the water?
A. **No.**
Q. Is it fair to say that there was nothing unusual -- withdraw.
I'm going to ask you a question about the sand that's visible above the water line. Do you follow me?
A. **Okay.**
Q. Did you see anything unusual about the sand above the water line before the incident occurred?
A. **No.**
Q. Did you see anything unusual about the sand above the water line after the incident occurred?
A. **No.**
Q. As you were walking along, I think you said roughly calf-deep water?
A. **Um-hum.**
Q. Is that a yes?
A. **Yes, I would say top of my calf.**
Q. This might be a silly question, but were there waves coming in and out at the time?

A. **No, it was very calm.**
Q. Was the tide coming in, going out, or something else?
A. **I don't know if it was -- well, I would know if it was -- because it carried Brad out, so the tide was going out.**
Q. But your answer to me a second ago was that as you were walking there were no waves?
A. **No, no. Waves out further.**
Q. Okay.
A. **But not at the beach, you know, the water side, beach side.**
Q. As you were walking along, I assume, correct me if I'm wrong, that you were not making an attempt to draw a direct beeline from point A to point B?
A. **No, we were just kind of --**
MR. D'AMATO: Objection. What's point A? What's point B?
BY MR. HUNKINS:
Q. Were you making any attempt to walk in an absolute straight path, or were you just ambling along and you fell?
A. **We were just walking along the water.**
Q. Because here's my question. Since you

were not making an attempt to walk in an absolute straight line, is it possible that as you approached the location of the incident you were stepping a little bit to the right here and a little bit to the left there?
A. **Yeah, I mean we could have, but we were never deeper than the top of calf.**
Q. I understand that.
A. **And that would have been me. Because, like I said, my daughter either -- I'm not sure, again, if she was on my back or next to me, but my son was not in the water at all.**
Q. I understand that.
A. **Right.**
Q. And I think you've answered it.
As you remember walking along, it was very likely that with each step you took you might have stepped a little bit to the right with one step and a little bit to the left with another step?
A. **Sure, sure.**
Q. Okay. When you went into the water when the incident occurred, I understand that, again, you started swimming and ultimately you got back onto dry land?

A. **Right.**
Q. When you got out, what was the distance, approximately, between where you got out on dry land and the point where you went into the water?
A. **So I understand the question correctly, is it how far off the beach was I before I could get back?**
Q. No. I'm trying to -- I would like to draw in my mind two points on the beach. One point would be where you went into the water and the other point would be where you crawled out.
A. **I would say roughly in the same 30-foot section.**
Q. Okay, just so I can understand that. My impression is that the current -- and you might have said this, the current was running out of the inlet or generally southeast; is that fair to say?
A. **There was two.**
Q. Okay.
A. **So in other words, what we fell into pulled us out -- pulled us north. So it pulled us into the inlet. So it pulled us**

away from the beach, away from the inlet beach. What Brad got caught in took him out to the ocean. So it was like two different currents, I guess.

Q. Okay. So I'll get back to what I was starting to ask you, the point A and point B, when you went in and got out. I was just imagining that you went in and then the tide took you southeast and you got out at a point 30 feet southeast. Is that not correct?

A. I would not have any idea if it was in either direction. I'm just saying I went in this area and I came back in this general same area I went into.

Q. Okay.

A. It just took me further -- it just took me off the beach and I had to swim back to the beach.

Q. Okay. In the process of being taken off the beach and swimming back to the beach, do you have any impression that you were being taken one way or the other along the beach?

A. I was being pulled out into the inlet. So 90 degrees off the beach. So 90 degrees off of where I went in the water, it was

pulling us -- it kind of, you know -- it could have moved us either way, but in that same direction, that's where I got back.

Q. After the incident happened, for example, later that evening or the next day, when you went back to the location of the incident, did you go into the water?

A. No.

Q. In your boating experience or your experience as a beach-goer before this incident, had you ever seen any other locations anywhere where there was any type of drop-off in the bottom?

A. Nothing like this.

Q. Have you ever seen instances where there was a drop-off but not as drastic?

A. Not -- not like this.

Q. I know that, but have you ever seen a drop-off before?

A. I have seen drop-offs, yes.

Q. Can you describe the type of drop-offs you have experienced in the past?

A. I guess when you walk out into the water and it drops off, you know, as -- it gets deeper fast.

Q. And where had you seen that before the incident in this case?

A. I'm not really sure where it was, to be honest.

Q. Is it fair to say that you had seen that more than once?

A. I probably have, yes.

Q. Okay. And I'm saying "seen that," but I guess what I'm asking you --

A. Feel that.

Q. Yes, you felt that?

A. Feel that.

Q. You have been in the water before and you had the experience of feeling and not as drastic as this incident was --

A. I'm getting deeper in water.

Q. -- but an incident where the bottom drops off suddenly?

A. It all depends on what you say "suddenly" is.

Q. I guess it could be steep or not so steep, but --

A. Well --

Q. Just wait for my question.

A. Okay.

Q. Is it fair to say that before the incident in this case occurred you had experience yourself of walking along in the ocean or at the beach where the bottom dropped off?

A. Again, it depends on what you say "drop-off" means.

Q. Is that a yes but not as drastic?

A. Not as drastic. Yes, but not as drastic.

MR. HUNKINS: Okay. That's all I have. Thanks.

THE VIDEOGRAPHER: This is the end of tape No. 2. Off the record. The time is 2:32.

(Discussion off the record.)

(Twelve Photographs were marked for purposes of identification as Exhibits Sunderland-14 through Sunderland 25.)

THE VIDEOGRAPHER: This is the beginning of tape No. 3. Back on the record. The time is 2:46.

* * *

EXAMINATION BY MR. D'AMATO:

Q. Scott, I'm going to show you a series

of photographs, and they have been marked for identification and I'm going to show them to my colleagues before I hand them to you.

The first one is Sunderland-14. This photograph was taken on June 20, 2014 of what they call the Moore's Inlet or Moore's Beach. Have you heard that phrase?

A. I've heard it, yes.

Q. Okay. Now, let me hand it to you.

In looking at that photograph, can you identify generally the area where you and Brad turned around to walk back to your wives?

A. I would say it was probably around that area, I would imagine (indicating.)

Q. All right. Why don't you get a red marker and make a nice large circle to give us the general area of where that was?

A. (Complies.)

Q. Could you hold that up there? There we go, all right.

Now, you can put that down but keep the photograph in front of you.

A. Okay.

Q. As you walked towards Moore's Beach, did you see people in chairs sunbathing in

that area?

A. Yes.

Q. Did you see children playing in the water of the inlet when you were approaching that area?

A. Yes.

Q. And you also said you saw people that were fishing?

A. Yes.

Q. And were they -- were they standing on the beach or standing in the water when you saw them fishing?

A. A little bit in the water.

Q. Now, I'm going to show you another photograph marked for identification as Sunderland-15. I'm going to hold it up for my colleagues here. Again, this was taken June 20, 2014. And let me hand it to you and can you see the rock wall there on the left-hand side of the photograph?

A. Yes.

Q. And right where your left hand is you can see the steps that people would take to get from the parking lot onto the beach?

A. I don't see the steps.

Q. You know what, you're right, it's the next photograph. Sorry. I apologize.

But in any event, let me hand this to you. As you're about to turn around, you and Brad and the children, does that photograph accurately depict the number of people and bathers that you saw on the beach area?

A. I would say it was probably a little bit less. It wasn't as crowded as this, but I mean I remember seeing a lot of umbrellas.

Q. You can leave it there.

Now let me show you what's been marked for identification as Sunderland-16. This was taken on July 2, 2013, almost a year after Brad's passing. When we have been referring to the rock wall all morning and this afternoon, is this the rock wall that you were referring to?

A. Yes, it seems to be, yes. Part of it anyway.

Q. All right. Now, as you -- you can put that down. As you and Brad are walking with your children, you're just about to turn around, did you see any jet skis like the one

that we see in Sunderland-17?

A. I mean I don't recall, like, when we turned around and all that, but that's kind of how it was when I flagged down the jet skier. It's kind of where they were. I mean as far as the distance from the ocean, it was right -- very shallow water. They were just kind of sitting on them. They were kind of hanging out talking to people on the beach, but as far as walking down, I don't remember seeing any jet skiers, no.

Q. You can put that down.

This was the very first time that you and your family and Brad and his family had come to North Wildwood to vacation?

A. For vacation, yes.

Q. Do you remember what day of the week it is when Brad drowned?

A. Friday.

Q. It was a Friday?

A. Friday, yes.

Q. And you had arrived how many days before that?

A. I think we got there the Saturday before, I believe.

Q. Now, how many times had you gone to the beach before the day that Brad drowned? The beach meaning, excuse me, to be precise, North Wildwood.

A. Right. Maybe two times. I'm not really sure, to be honest.

Q. And the two times that you went to the beach, that's you, your wife, your children, Brad, Sandy and their children --

A. Um-hum.

Q. -- did you always go to a protected beach, meaning there was a lifeguard there?

A. Yes.

Q. And on the day you went to the beach before you decided to take the walk, that was a protected beach, correct?

A. Yes.

Q. And there was a lifeguard there?

A. Yes.

Q. Now, you were shown an interview where it's referenced that you saw a "no swimming" sign. In fact, I put it in front of you. It's right there. It's Sunderland-13. Do you see that there? And if you look at the bottom of the second page, it says almost about a

third down, "The sign said 'no swimming' and we weren't. We were just walking."

Now, here's my question to you: Your children are playing in the tidal water, the tidal pools, correct?

A. Um-hum.

Q. Before you decided to take a walk with your family towards the Moore's Inlet beach, had you seen any signs saying "no swimming"?

A. No, not that I can recall, no.

Q. Did you learn after Brad's drowning that there were some signs up closer to the area where you access the beach that said "no swimming"?

A. Yes.

Q. But before you took the walk and before you fell into the hole, you had not seen any signs that said "no swimming," correct?

A. Yeah, no, I did not see any.

Q. Before Brad drowned, had you ever heard of there being a whirlpool or vortex in the Hereford Inlet at certain points in time during the daytime?

A. No.

Q. When the two police officers came to the residence where you were staying, did they ever talk about any dangers associated with the beach area where you and Brad and your family had been walking?

A. They had said people had fallen in there.

Q. You referenced a telephone conversation with the Mayor of Wildwood, correct?

A. Yes.

Q. And that you said was the second or third day after Brad was missing?

A. Yes.

Q. Did he say anything else about the area where this event took place when you said to him, "We were not swimming, we were walking"?

A. I think he made mention of another incident, I think, where there were two women and they were swimming and, again, that's when I said, "We weren't swimming, we were walking."

Q. Now, you had mentioned when Mr. Barker was asking you questions about Sunderland-12,

specifically, there's a reference in this report from Police Officer Richard Schmidt that says, "He then stated that he saw a police boat traveling in the inlet." I want to ask you about that.

Let me show you Sunderland-20, which is a photograph that was taken on June 20, 2014. Okay? Does this boat that you see in the photograph look like the boat that you are referring to?

A. Yeah. He was actually -- I think that boat was kept in the marina.

Q. Okay.

A. The boat that I saw that day that came out, I had seen the boat previously in the marina before the incident.

Q. You used the term "police boat travelling in the inlet" in Sunderland-12. Here's my question: When you said police boat, can you tell me if you knew it was a North Wildwood police boat or New Jersey State Police Marine police boat?

A. No, I'm not a hundred percent sure.

Q. Okay. Now, I'm going to show you what's been marked for identification as

Sunderland-21. Now, I want to take you back in time on the date of this event. You now just turned around. And you told my colleagues that as you are walking back you're closer to the water this time.

A. Um-hum.

Q. Now, from the time you turned around until the time you fell into the hole, were there times that you were walking on just the beach and not in the water as shown in Sunderland-21 --

A. Yes.

Q. -- where those people are?

A. Yeah.

Q. Okay. After you turned around and you're walking back to the point where you fell in, were there times that all of you were walking in ankle-deep water?

A. Can you repeat that?

Q. Yes. You've now turned around, you Brad and the kids.

A. Heading back.

Q. You are heading back. And were there times as you are walking back before you fell into the hole that all of you or some of you

were walking in ankle-deep water as opposed to mid-calf water?

A. Yes.

Q. Okay. Now, from the time you started walking from the protected beach onto that area that was unprotected -- well, let's go back a little bit.

Going back to the day of the accident, before you decided to take the walk, as you have described many times today, towards Moore's Beach or Moore's Inlet, did you know that the area that you are walking -- about to walk on was unprotected in the sense that there were no lifeguards down there?

A. No, we didn't.

Q. On the day of Brad's drowning, was that the first time that you and Brad had ever walked from the protected beach down towards Moore's Inlet or Moore's Beach?

A. Yes, that was the first time we walked down there.

Q. As you were walking from the protected beach towards Moore's Beach, did you see signs on poles like what is shown in Sunderland-22?

A. No.

Q. Okay. As you are walking from the protected beach to Moore's Beach, did you see any signs like what is shown in Sunderland-23 which says "High risk rip current area"?

A. No.

Q. As you are walking from the protected beach towards Moore's Beach, did you see any signs like Sunderland-24 that say "Danger, unprotected beach"?

A. No.

Q. As you are walking from the protected beach to Moore's Beach, are you seeing any signs like whatever this thing is in Sunderland-25 in the middle of the photograph?

A. No.

Q. As you're walking -- strike that.

Now, as you're walking from the protected beach towards Moore's Beach and after you turned around to walk back to your wives, did you ever see little children like the ones that are shown in Sunderland-18?

A. I mean not that I can recall. I mean I saw people, families.

Q. In the statement that was marked for identification as Sunderland-13, you were

quoted as saying, "It was 30 seconds before I realized how far from the shore I was." Now, my colleagues touched on it a little bit, but I want to get more specific, if you can.

A. Sure.

Q. How far out in the inlet did you go after you had fallen into the hole? Can you estimate for us?

A. Yeah, I would say probably about 30 -- 30 feet.

Q. And that was involuntary, correct? It had pulled you out there?

A. Oh, yes, it had pulled me out, yes.

Q. And during that period of time, is your daughter still on your back?

A. The whole time, yes.

Q. And describe for us the forces in the water that you're experiencing as you're trying to get back on land. What was it like?

A. Well, so the whole time as soon as I go in, I'm swimming, like I said. So it's taking me out as I'm swimming. So as I said at first, I'm just swimming. I'm, you know -- I'm swimming right away, and then after about 30 seconds I look up and I see that I'm

further from shore than I was when I first went in. So now I'm 30 feet from shore and I've been swimming the whole time. So that's when I really start, as I say, digging in. I'm going to get to shore. So I started swimming the hardest I could at that point.

Q. On this day when you lost your friend Brad, how old were you?

A. I guess I was 47.

Q. How would you characterize your ability as a swimmer on that day?

A. I'm an excellent swimmer. I have a pool in my backyard.

Q. And had you ever experienced forces in the water, any body of water, as you did on this day as you are trying to get back to land?

A. No. Not just the current, but the way the water -- it felt like you were swimming through air.

Q. Listen, you have been very patient and we appreciate the amount of time. You are an eyewitness to what happened, so I have to ask you this. What do you mean it was like swimming in air?

A. It just felt like I couldn't get traction. Like, there was nothing to swim against. It felt like it was a rope holding me back or pulling me out, and it just didn't feel like you're in a pool swimming. It felt like there was, like I said, air or something in there that you couldn't, you know, dig against.

Q. Okay. Now, I want to take some time and talk about your friend Brad. You said you met -- was it 1988?

A. I said probably '84, '85. I graduated high school in '84. So I would say about '85.

Q. How did the two of you meet?

A. I bought a car, a '70 GTO, and my dad was desperately trying to talk me out of buying it, so he had me take it to Brad, which he told Brad, "Look at this car that my son bought. Please tell him to take it back." That's how I met Brad.

Q. From the time you first met him, how many years went by before you considered him to be your best friend?

A. It was probably -- probably another six years or so, maybe seven years, and then

he moved his shop and I ended up renting the space off of him. That's when we really became very close.

Q. Did you have any involvement, or your wife, in Brad meeting his wife Sandy?

A. Yes.

Q. Share that with us.

A. I had rented, like I said, space from him for my company, and we were growing and I wanted someone to answer the phones. And Sandy I knew, because it was one of my wife's best friends, and she had worked with her at another job. And Sandy was looking for work and Brad always answered the phones all the time. So I said, "Why don't we hire her? You pay her half, I'll pay her half." And he answered -- she answered the phones for them and answered the phones for me.

Q. Sadly, Brad is not here to tell us about his life before he passed. So let me ask you, what kind of guy was he?

MR. HUNKINS: Objection to form.

MR. D'AMATO: To what kind of guy was he?

MR. HUNKINS: Just the preface to

the question. That's all.

MR. D'AMATO: Okay.

BY MR. D'AMATO:

Q. You can go ahead.

A. What kind of guy he was?

Q. Yes.

A. I mean a great guy, a guy, you know -- I looked up to him. He was a friend of my brother's first. That's what kept him as a family friend. He was just a -- he was a great guy. Everybody looked up to him. He had a loyal customer base, and I think they went to get their cars fixed more because of him than his, you know, mechanical skills. But a great father, great father, with his older kids, great husband. And just a great friend. He was everyone's best friend. He really was. Everybody loved him.

Q. You were close enough to him and Sandy, his wife, to know what kind of relationship they had?

A. Oh, yeah, absolutely.

Q. So tell us about that relationship.

A. It was a great relationship. They were both kind of independent people that they

just -- they just kind of hit it off, and they were very close. I mean we -- my wife and I and them, we were all extremely close. They just joked around with each other all the time. Like you would never get the two on the volleyball court at the same time because they were just competitors to the end. But, no, great couple, great couple.

Q. You had told me about, just briefly, his relationship with his older children. What was Sandy's relationship to Brad's children from the first marriage?

A. Great. Very -- I mean being a step, I can imagine that it can be very difficult, but, no, they loved her then and they love her now. Sandy is very hard to not like. They both are. But Sandy definitely. She's very outgoing and always would, you know, help Kyle and Nicole in whatever they needed. Never really -- it always amazed me that even when she had Cole, Brad and Sandy's first son, that there was never any, "Well, he's my son." She always incorporated the family, meaning his first -- from his first wife, his daughter Nicole, and Kyle.

Q. And what was Brad's relationship with his children that he had with Sandy?

A. Oh, excellent, excellent.

Q. What was Brad's health like on the day of this horrible event?

A. Great. I mean, you know, we were getting older and a lot of softball, a lot of golf, a lot of skiing. We had -- we would have our aches and pains, but no, he was in good health.

Q. How would you characterize Brad's ability to swim?

A. Oh, good swimmer. Pool in his backyard. We got pools together.

Q. When you fell into the hole as you described so many times before, did you ever try to hit bottom so to push yourself up?

A. Yeah.

Q. And were you able to?

A. No. I never felt bottom whatsoever, never.

Q. You were asked questions about the chart that you had received. From the time you arrived in North Wildwood until the day of Brad's drowning, did you have any information,

from whatever source, as to the type of currents that were running through the inlet itself along the beach where you were walking?

A. No.

Q. Now, early today you were asked -- no, I shouldn't say you were asked questions. You told us about this fisherman that you see before you fall. Now, I want to go over that.

You and Brad and the children are walking toward this hole, not knowing that there's a hole there.

A. Right.

Q. And before you fall into the hole you said you saw a fisherman where?

A. I'm not sure when I saw him. When we fell in, it wasn't then because he wasn't there. So it was either on the way down or when we were closer to the rock wall.

Q. On the way back or on the way towards Moore's Beach?

A. I'm not really sure if I saw him on the way towards the rock wall or the way away from the rock wall. I'm not really sure when, you know. I remember seeing him because I mentioned to Brad, "Look at that guy, he looks

like he's walking on water. He's Jesus."

MR. HUNKINS: Just note my objection real quick. Counsel has been using the word "hole" which is really fine with me.

MR. D'AMATO: What would you like me to call it? I'll use your word.

MR. HUNKINS: I just don't know that the witness ever said that. I think the witness has said gully, that kind of thing, but having said that, just let that be a continuing objection to the form.

MR. D'AMATO: No, no, let's see if we can cure this objection.

THE WITNESS: Okay.

MR. D'AMATO: All right?

BY MR. D'AMATO:

Q. None of us were there. What do you call what you fell into?

A. Well, if I call it a gully, then it means it's high on one side, low in the middle and high on another side. Right? I'm a contractor. I can't help it. I would just call it a drop-off.

Q. A drop-off, okay. So now let me try this. Let's say within a couple of seconds

before you fall into the drop-off, can you tell us where this fisherman was standing, whether you saw him before you turned around or on the way back?

A. It was on the way back. I know exactly where he was standing when we went in because that's when I said, Well, that's where it is, out there where he was standing. He wasn't there then.

Q. I understand.

A. Right.

Q. But how far was that -- let me withdraw that question.

Right before you fall into the drop-off, where you had seen the fisherman before, how far was that from that point?

A. I would say it was probably maybe a hundred feet, maybe.

Q. And if you're looking straight ahead, all right, and your eyes are looking at 12 o'clock, 12:00 on a clock, where was he on the clock?

A. If 12 o'clock, he would be out, say, 10:00, 11:00, 10:00, 11:00. Probably 11:00, I would imagine. And I would say probably a

hundred, a hundred and fifty feet ahead of me.

MR. D'AMATO: I want to go off the record for a second.

THE VIDEOGRAPHER: Sure. Going off the record. The time is 3:14.

(Discussion off the record.)

THE VIDEOGRAPHER: We're back on the record, 3:17.

* * *

FURTHER EXAMINATION BY MR. BARKER:

Q. Mr. D'Amato asked you the question after you went in the water whether you ever felt the bottom. Do you remember that?

A. Yes, yes.

Q. He might have asked you whether you tried to do something to feel the bottom. I don't remember. But that's really my question. Like while you're there and you're swimming, swimming, swimming and you got your daughter on your back, what did you do, if you did anything, to try to feel the bottom?

A. Well, we have the pool and I brought my kids and taught them how to swim, and what we would always do is if you ever get in trouble you try to bounce yourself off the

bottom. And during that time I didn't necessarily stop and try to bounce myself off the bottom but I was trying to kick off the bottom. So in other words, you're swimming and you're trying to push off the bottom, too. That's what I was trying to do, and there never was a bottom. I never felt any bottom.

Q. With that motion you could not feel a bottom?

A. No.

Q. Other than that, did you do anything to test to see if there was a bottom that you could feel?

A. No, never.

MR. BARKER: Okay. Thank you.

THE VIDEOGRAPHER: This concludes the videotape deposition. Off the record, 3:18.

* * *

(The deposition concluded at 3:18 p.m.)

CERTIFICATE

I, LISA REAGAN, a Certified Court Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination,

SCOTT SUNDERLAND

was duly sworn by me to testify to the truth, the whole truth and nothing but the truth. I do further certify that the foregoing is a true and accurate transcript of the stenographic notes of testimony taken by me at the time, place and on the date hereinbefore set forth. 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 this action.

Lisa Reagan, CCR

LISA REAGAN, CCR
Certificate No. XI01671
Date: April 1, 2016

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Exhibit 2A

NORTH WILDWOOD
901 Atlantic Ave.
NORTH WILDWOOD, NJ 08260
Phone: (609) 522-2411 Fax: (609) 522-2531

Case Mgmt# : CM-12-000090 Case # : 12-00019472

at the hospital. He was the other adult that fell into the water. I advised her that I would stop back and speak with her.

I then met with Scott Sunderland and I asked him what had happened on the beach. He stated that he was walking along the beach with his son (Alden), daughter (Ally), Brad Smith and his daughter (Brandy). He stated that they went for a walk on the beach along Hereford Inlet. As they were walking back, they all were walking in knee deep water along the surf. All of the sudden, Sunderland explained that the ground went out from under them an they fell into the water. He did explain that his son, Aidan didn't fall into the water. He stated that they walked into a deep gully in the water. He stated that when he fell in, he was unsure if he was carrying his daughter at the time, but when they were in the water she was hanging onto him around his neck. He stated that while in the water, he could feel a strong current pulling him. He stated that he doesn't know how, but he was able to dig his hands into the sand and pull him and his daughter onto the beach. Once on the beach, he stated that he looked out into the water and saw Brad and Brandy being swept out by the current. He said that at this point, Brad was hugging and holding onto Brandy. He then stated that while watching the two, they separated and Brandy was treading water and the current continued to carry Brad out further.

Sunderland stated that Brad was yelling to him and to Brandy and at this point he stated he entered the water in an attempt to get out to Brandy. He stated that when he entered the water, again the current was to strong and he exited the water. Sunderland stated that when he exited the water, he was trying to keep eye contact on both Brad and Brandy. As he was watching them, he stated that he was trying to yell and wave down boats that were in the inlet. None of these boats acknowledge him at this time. He then stated that he saw a police boat traveling in the inlet. At this time he thought that the police boat was going to see Brad and Brandy in the water. He said that the police boat went past them and continued out into the ocean. Sunderland stated that he found out that the police boat was heading out to assist some jet skiers and probably never saw Brad and Brandy in the water.

Sunderland stated that he then ran down to a couple of people that had jet skis on the beach and told them what was going on. He pointed them out and these two individuals lauched the jet skis into the water. He stated that one of the jet skis approached Brandy. The driver of this jet ski jumped into the water, placed his life jacket on Brandy and put her onto the jet ski. Sunderland stated that the jet skier, along with Brandy searched the water for a few minutes, then Brandy was brought back to shore to be checked by Rescue personnel. I asked Sunderland if he was still able to see Brad at that time. He stated that he was watching as Brandy was being picked up and lost sight of Brad. He stated that the last time he saw Brad in the water, he was being carried out towards the breakers, which he thought was a sand bar. After Brandy was brought to shore, Sunderland stated that they were checked by Rescue personnel and then transported to the hospital.

After speaking with Sunderland, I went back and spoke with Mrs. Smith. I advised her that at this time the search for her husband would continue and that I would keep her informed of any information that I received.

I then cleared the hospital and returned to North Wildwood to continue the investigation.

EXHIBIT 40
Sunderland 12
3/22/16 (LC)

Investigator : SCHMIDT,RICHARD-228 Case Report Date : 08/01/2012

Exhibit 2B

North Wildwood Police Department

901 Atlantic Avenue, North Wildwood, NJ 08260
Phone: 609-522-2411 Fax: 609-522-0412 Mun. Code: 0507

Supplemental Report

Incident Details:		Incident Location:	Incident Type:
Case Number	Date of Report	Call Location	Call FBI Code
12-0019472	07/31/12 04:13	1 Herefordav, North Wildwood, Nj	Assist Medical Res

Narrative: Officer Breland, Scott

Supplemental Investigative Report

On 7/27/2012 at approximately 1736 I was dispatched to the Hereford Inlet regarding broken down wave runners in the water. Upon arrival I immediately noticed people shouting for help in the water and upon further notice I could see swimmers in distress. I immediately called for water rescue over the radio and rendered assistance to parties involved.

Sergeant Harkins arrived on scene and I advised him there was one male still unaccounted for in the water. I tended aid to the seven-year old female until lifeguards arrived on scene. I then turned her over to them.

I then spoke with a Scott Sunderland who advised me that Brad Smith was still in the water and that he lost sight of him. Sunderland advised me that he and his daughter along with Smith and his seven-year old daughter were walking along the shoreline when they slipped into the water and were pulled out to sea by the undertow. Sunderland advised that he and his daughter were able to make it back to shore but Smith and his daughter were unsuccessful. Sunderland advised that two subjects on wave runners later identified as Daniel O'Connell and Thomas Meenan saved Brad Smith's seven-year old girl in the water.

I spoke with O'Connell and Meenan who advised me that when they recovered the seven-year old girl they turned back but were unable to locate Smith anymore. They continuously checked the area even after lifeguards and North Wildwood Fire boats were on scene searching the area.

I remained on scene for crowd control keeping persons not involved with the search out of the area. After search teams cleared the area I kept a close watch on the shore line searching for Smith until the end of my shift.

EXHIBIT
Sunderland-11
3/22/16 (CC)

Exhibit 2C

August 16, 2012

On this date Investigator DiJoseph traveled to the Smith drowning scene and met with witness, Scott Sunderland, (215-669-4391). Sunderland was walking along the surf with George Smith and their daughters at the time of the July 27, 2012 drowning. The meeting with Sunderland was coordinated with low tide at 1:50pm which represented a similar tidal condition that existed on the date of the date of the Smith drowning. Scott Sunderland provided the following information regarding his observations that occurred on the day of the Smith drowning:

- Sunderland stated that he and Smith have been friends for several years. Sunderland introduced Smith to his wife and every summer for the past ten years Sunderland and Smith along with their family's vacation together. The families usually vacation in Ocean City, NJ but this year they decided to rent a beach front condominium in North Wildwood, NJ.

- Earlier in the day of July 27, 2012 Sunderland and Smith had been out fishing in Sunderland's boat. Sunderland advised that he docked his boat at the condominium complex marina for the week. After the fishing trip, Sunderland and Smith returned to their condominium in the afternoon then decided to walk to the beach.

- The Sunderland and Smith families established a position on the beach in the area of Surf Avenue which is a protected beach in North Wildwood. Sunderland, Smith and their two daughters decided to take a walk on the beach in a north direction toward the condominiums while the rest of the family members remained at Surf Avenue beach.

EXHIBIT J 9
Sunderland-5
3/22/16 (R)
PENGAD 800-631-6989

- Sunderland stated the four walked almost to the end of the beach where a rock wall meets the Hereford Inlet and turned around proceeded back toward the Surf Avenue beach.

- Sunderland stated that he and his daughter were walking behind Smith and his daughter side by side in ankle deep water. Approximately 100 feet in front of them was a man fishing. The fisherman was standing in knee deep water approximately 25 feet from shore.

- Suddenly ~~Smith and his daughter fell into the water. Simultaneously Sunderland and his daughter also fell into the water~~. Sunderland stated that the current was very strong and quickly pulled all four subjects out further into the ~~ocean from~~ the beach.

- Sunderland's daughter ~~immediately jumped on his back and~~ he was eventually able to swim to shore, but couldn't get back up on the beach due to an extreme drop off between the beach and the collapsed sand. Sunderland eventually reached the beach and began looking for Smith and his daughter.

- Sunderland stated that he observed Brandi (Smith's daughter) swimming so hard in the current that he could see her entire bathing suit top was out of the water. Sunderland also observed Smith swimming approximately 50 yards in front of Brandi.

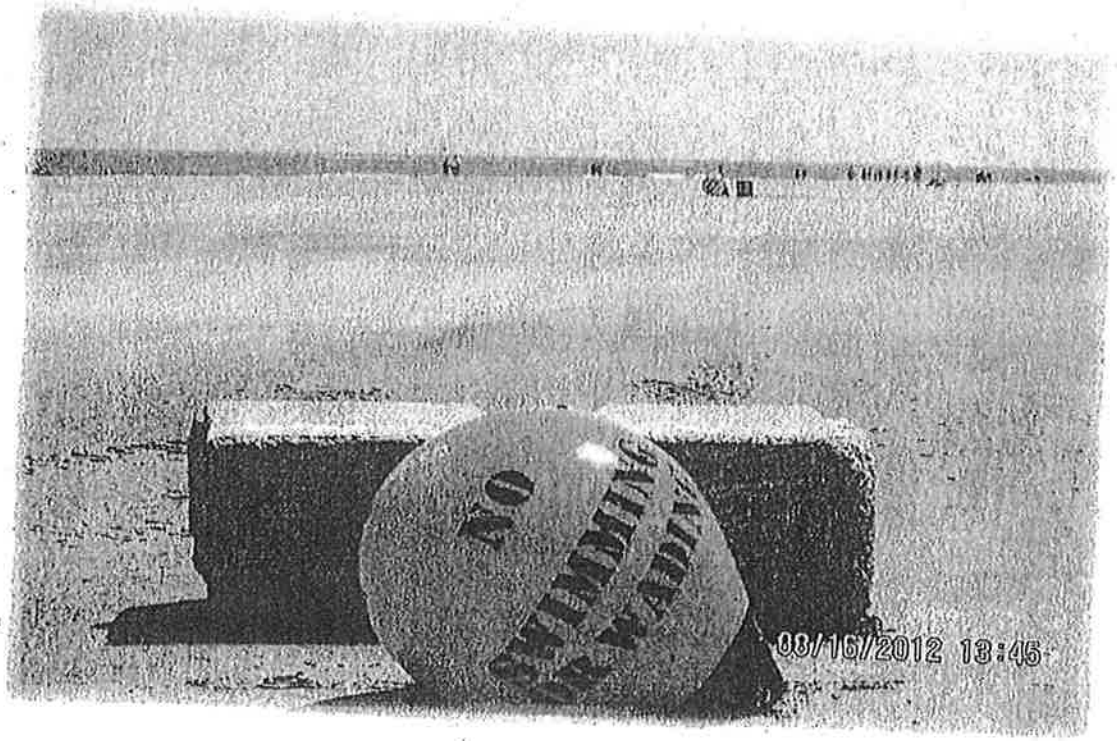
- Sunderland stated he was extremely tired from swimming for approximately five minutes with his daughter on his back. Sunderland began to ~~yell~~ and wave for help but there weren't many people in the immediate area. Suddenly a jet ski was launched from the beach's north end and the operator came up to Brandi and pulled her from the water. While the Jet Ski was pulling Brandi from the water, Sunderland spotted a NJSP Marine Unit boat headed in his direction. Sunderland began yelling and pointing in the area of George Smith to the Trooper. Sunderland thought that the Trooper saw Smith and was going to rescue him. Unbeknown to Sunderland, the NJSP Trooper allegedly received a Jet Ski rescue call in the same vicinity and passed by the area where Smith was swimming. Sunderland then ~~told~~ the Jet Ski operator to go rescue Smith. The Jet Ski operator raced out the area where Smith was last seen but was unable to locate Smith.

- Moments later rescue personnel arrived at the drowning scene and began administering first aid to the two girls and Sunderland. The NJSP Marine Unit boat came back to beach towing a jet ski that apparently was involved in an incident where the operator was separated from his ski in the breakers of Hereford Inlet. The NJSP Trooper told Sunderland ~~he had no idea George Smith was still in the water when he passed by traveling to the Jet Ski rescue assignment.~~ To help him with the Jet Ski,

- Sunderland and Smith's family members arrived on the scene and they began yelling into the water for George Smith. On July 30 at 1:13 AM the body of George Smith was observed in the surf at 21st Street in North Wildwood. George Smith was pronounced dead at the scene.

During the Sunderland interview Investigator DiJoseph noticed that since the City of North Wildwood O.P.R.A. request was filed on August 10, 2012 six (6) large concrete barriers were placed in the area of the Smith drowning. Each concrete barrier had a three foot round red floating mooring ball attached to it with the words "No Swimming or Wading" emblazoned on each side of the ball in bold black letters. The barriers were placed in the water's edge and on the beach.

***Photograph # 5** illustrates the concrete mooring ball with 'No Swimming or Wading' warning.*



While interviewing Sunderland at the proximate area of the Smith drowning, the jet skier that rescued Smith's daughter, Brandi Smith observed Sunderland standing on the beach and stopped to converse. The Jet Ski operator identified himself as Rob O'Donnell a student at Stockton College, Galloway, NJ.

<u>Photograph # 6</u> illustrates Jet Ski rescuer Rob O'Donnell and Scott Sunderland standing at the approximate location of the Smith drowning.



Exhibit 2D

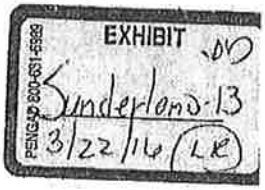
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Family of drowned man wants Shore beach closed

Updated: JULY 24, 2014 — 3:26 PM EDT



Brad Smith, of Horsham, with his daughter.



by **Sam Wood**, Philly.com @SamWoodiii (http://twitter.com/SamWoodiii)

The drowning of a man who was swept out to sea from a beach at the Jersey Shore could have been prevented, his family said, if only the town had posted adequate warnings and prohibited access to the beach.

The family of George Bradley Smith filed suit today, alleging that negligence caused the Montgomery County man's death two years ago. The suit, filed in New Jersey Superior Court, names as defendants North Wildwood, Cape May County, and the state of New Jersey.

The suit, which claims the unprotected beach had a well-known "steep and unobservable drop-off at the area of the accident," asks the court to order the immediate closing of the beach and seeks unspecified damages.

Smith, 54, of Horsham, his young daughter, and another father-daughter pair were strolling along the shoreline in ankle-deep water near Hereford Inlet in North Wildwood about 5:30 p.m. on July 27, 2012. The beach was "unprotected," meaning it was not monitored by lifeguards.

As they walked in the surf near 2nd Street and Ocean Avenue, the sand gave way.

Scott Sunderland, Smith's best friend, recounted the event.

"The signs said 'No Swimming,' and we weren't, we were just walking," Sunderland said. "I took a step and dropped. All of a sudden, there was nothing under my feet."

Sunderland's daughter landed on his back and wrapped her arms tightly around his neck.

"I just started swimming," Sunderland said. "It was 30 seconds before I realized how far from the shore I was."

With his daughter hanging on, Sunderland struggled against a vicious undertow. When he finally touched sand, he fought the rip current to gain his footing. "It was almost like I was climbing to get onto the beach."

Meanwhile, Smith and his daughter had been swept by the current into the inlet. A strong swimmer, Smith reached his daughter and kept her head above water. A boy on a Jet Ski spotted them, pulled the girl onto his personal watercraft, and returned her to dry land.

Minutes later, Smith slipped under the surface and disappeared. His body would not be found for three days.

The unprotected inlet beach long had a reputation for being dangerous, according to the Smith family's attorney, Paul D'Amato of Egg Harbor.

Seven people had drowned there over a nine year period, according to D'Amato.

In a recorded interview, D'Amato said, a lieutenant on the North Wildwood Beach Patrol said the Hereford Inlet beach was "anything but safe to swim" and predicted drownings would happen again.

According to D'Amato, the lieutenant said that "closure, not simply posting warning signs, was necessary, but would not happen due to concerns about the economic impact on local commercial businesses, primarily oceanfront bars."

In a statement, North Wildwood Mayor Patrick T. Rosenello said he could not comment on the specifics of the lawsuit. "The City of North Wildwood takes its beach protection responsibilities quite seriously," Rosenello said. "In fact, there has never been a drowning incident at a protected beach in the City of North Wildwood in its 100+ years of existence."

D'Amato said his efforts to discover if there had been any drownings at the inlet beach since Smith's had been stonewalled by local authorities.

At a morning press conference in Egg Harbor Township, Smith's widow said she had been shocked to learn of the beach's dangerous reputation, which according to local law enforcement officials she spoke to, was well known by the local population.

"Why weren't we - or others - warned before we went to North Wildwood on a family vacation for the first time?" she said. "Why did we have to read news accounts, quoting local authorities, talking about unsafe conditions all after Brad's death."

She said that while her husband was missing, police would come by the house on the marina where they were staying every day and tell them of others who had been saved from drowning in the same area.

"We don't want this to happen to another family," she said, "and we wish that someone that knew of this dangerous area would have done what was right so that we would have never lost Brad in the first place."

Contact Sam Wood at 215-854-2796 or samwood@phillynews.com (mailto:samwood@phillynews.com). Follow @samwoodiii (http://twitter.com/samwoodiii) on Twitter.

Contact the Breaking News Desk at 215-854-2443; BreakingNewsDesk@philly.com (mailto:breakingnewsdesk@philly.com). Follow @phillynews (http://twitter.com/phillynews) on Twitter.

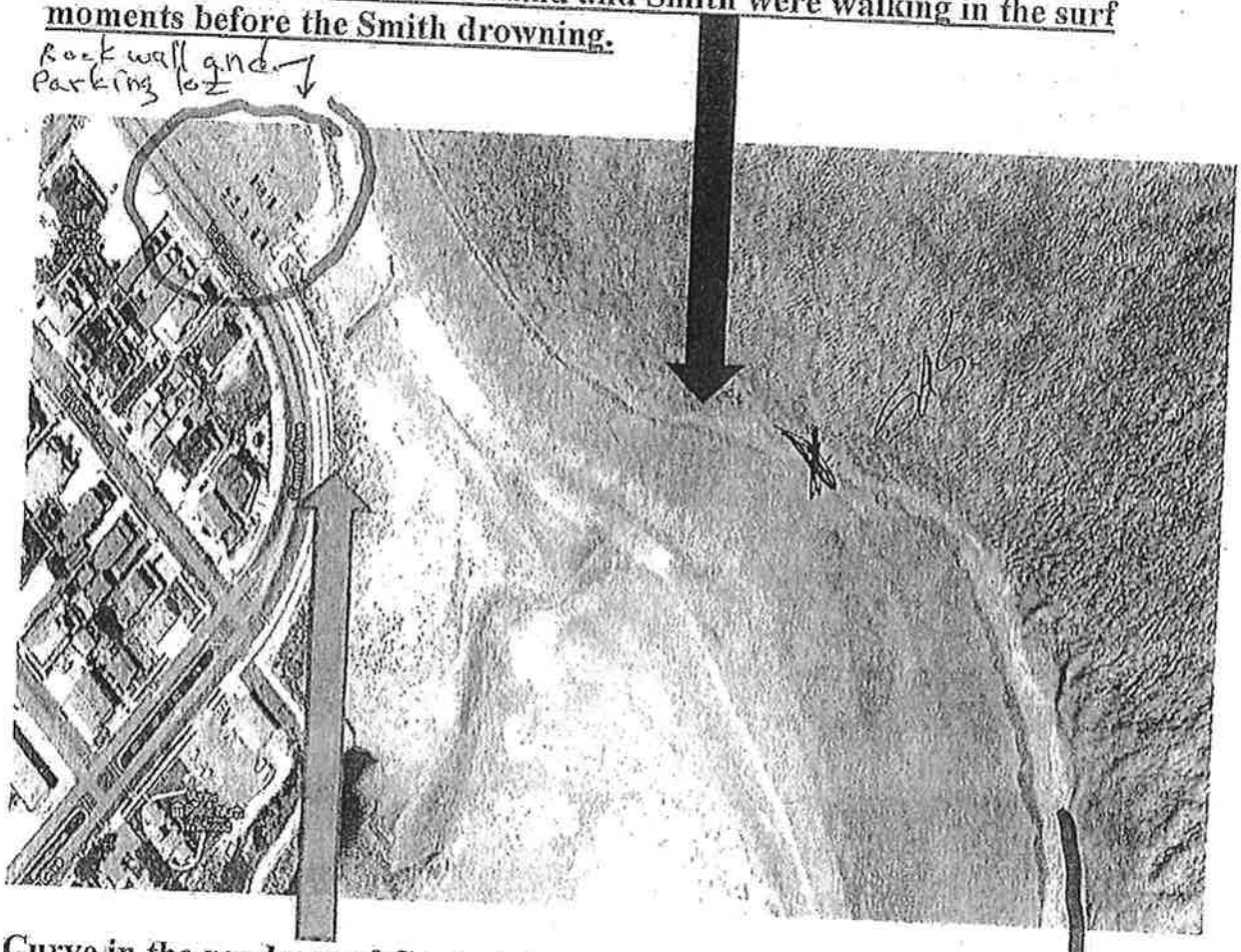
Published: July 24, 2014 — 4:29 PM EDT

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Exhibit 2E

Photograph # 7 illustrates an Aerial View of the North Wildwood NJ beach area known as Hereford Inlet and the approximate location of the Smith drowning.

Estimated area where Sunderland and Smith were walking in the surf moments before the Smith drowning.



Curve in the roadway of Central Avenue between E. Spruce Avenue and E. Walnut Avenue, North Wildwood, Cape May County NJ.

R. Kirvay

C. Atkinson

L. DiJoseph

A & K Investigations of New Jersey

EXHIBIT P-17
Sunderland-10
3/22/16 (LB)

Exhibit 3

COPY

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CAPE MAY COUNTY

* * *

SANDRA SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND, GEORGE BRADLEY SMITH,	:	
Plaintiff	:	DOCKET NO. CPM-L-331-14
vs.	:	
CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE, MARY DOES, ABC PARTNERSHIPS, and XYZ CORPORATIONS,	:	
Defendants	:	
BRANDY SMITH, by her guardian ad litem, SANDRA SMITH,	:	DOCKET NO. CPM-L-324-16
Plaintiff	:	
vs.	:	
CITY OF NORTH WILDWOOD, COUNTY OF CAPE MAY, STATE OF NEW JERSEY, JOHN DOE (1-5) fictitious names, MARY DOE (1-5) fictitious names, ABC PARTNERSHIPS (1-5) fictitious names, and XYZ CORPORATION (1-5) fictitious names,	:	
Defendants		

AIDEN SUNDERLAND

Oral deposition of AIDEN SUNDERLAND, taken at the D'AMATO LAW FIRM, 2900 Fire Road, Suite 200, Egg Harbor Township, NJ, 08234, on Wednesday, August 31, 2016, beginning at approximately 12:35 p.m., before Michele Matteo, RPR, CCR, License Number 30X100171200.

* * *

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APPEARANCES:

PAUL R. D'AMATO, ESQUIRE
D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, NJ 08234
Paul@damatolawfirm.com
-- Representing the Plaintiff, Sandra Smith

JOSEPH C. GRASSI, ESQUIRE
OLIVER T. BARRY, ESQUIRE
BARRY, CORRADO & GRASSI, P.C.
2700 Pacific Avenue
Wildwood, NJ 08260
Jgrassi@capelegal.com
-- Representing the Plaintiff, Brandy Smith

A. MICHAEL BARKER, ESQUIRE
BARKER, GELFAND & JAMES, P.C.
Linwood Greene - Suite 12
210 New Road
Linwood, New Jersey 08221
Ambarker@barkerlawfirm.net
-- Representing the Defendant, City of North Wildwood

THOMAS P. LIHAN, ESQUIRE
STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
R.J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625
-- Representing the Defendant, State of New Jersey

ALSO PRESENT:
Lou DiJoseph
Scott Sunderland

* * *

(It is hereby stipulated by and among counsel for the respective parties that signing, sealing, certification and filing are waived, and that all objections, except as to the form of the question, are reserved until the time of trial.)

* * *

AIDEN SUNDERLAND, after having been first duly sworn or affirmed, was examined and testified as follows:

* * *

EXAMINATION

* * *

BY MR. BARKER:

Q. May I call you Aiden?

A. Yes.

Q. I'm Mike Barker. I'm going to ask you questions today. If at any time I ask you a question which is not clear for any reason, just stop me and let me know that you have a problem with the question.

Here's the main thing. Try not to answer the question until I ask it and try to let me get the whole question out before you start to answer it, even if you think you know what I'm going to say. Just wait. We try to only have one person speaking at a time so that the court reporter gets it down and doesn't have any trouble with two people speaking at the same time. It makes it an easier transcript to read if we can have one person speaking at a time. And I use the word "transcript", because when this is all done, it gets written up into a little booklet. That's what's called a transcript. And that transcript is used in the court to examine and cross-examine other witnesses and you, too, if you ever go to court on this. So it's very important that everything you say be truthful, accurate and complete. If you don't know an answer, just say "I don't know." If you can't remember, just say, "I can't remember." We don't want you to guess about anything. What we're here for is to get facts. That's the evidence that we can have. Those are facts.

If it's just a guess or an assumption, that's not a fact.

Now, if you don't know something but you know somebody else who does know it or you know it's written down somewhere, you can tell us that. That's fine. Say I don't know, but I know my dad knows, or I know someone else might know, just as an example.

Do you understand everything I've said so far?

A. Yes.

Q. Now, when you do answer questions, try to be clear about your answers, speak loudly enough so that we can all hear you. And if the question calls for an answer that's yes or no, just please answer it yes or no. In other words, don't use those common things that we all depend on, like shaking your head or nodding or some gesture like that. The reason we ask you not do that is because the court reporter doesn't want to interpret what you did, said. They want to hear it. So we got that one down, that's easy, right?

A. Yes.

Q. Good. Did I say anything that was confusing?

A. No.

Q. Okay. Do you want to ask me any questions before we get started?

A. No.

Q. What's your full name, Aiden?

A. Aiden John Sunderland.

Q. What was the middle name?

A. John.

Q. J-O-H-N?

A. Uh-huh. Yes.

Q. So instead of saying uh-huh, when it's a yes, say yes, and when it's an uh-uh, that would be a no. Okay?

A. Yes.

Q. Good?

A. Yes.

Q. Thank you. How old are you now?

A. 13.

Q. What is your birthday?

A. July 1st, 2003.

Q. So you just turned 13. Congratulations.

A. Thanks.

Q. You're welcome. Now, the event we're here to talk about is what happened at the beach. It was several years ago now. Do you happen to know what day it was?

A. No. I don't remember.

Q. Well, the date that we have for it is July 27, 2012. So that's about four years ago now. Do you understand that?

A. Yes.

Q. Okay. So at that time you were about nine years old, right?

A. Yeah.

Q. True?

A. Yes.

Q. Actually I suppose you had just turned nine, because it's in July. So July 27, 2012, you went to the beach. Who did you go with?

A. I went with my mom, my dad, my sister, my brother, and then Sandy, Brad, Kole and Brandy.

Q. Okay. Your mom's name is Andrea?

A. Yes.

Q. Did I pronounce it correctly?

A. Yeah.

Q. Okay. And your dad is Scott, right?

A. Yes.

Q. And you went, Aiden. And your sister?

A. Ally.

Q. A-L-L?

A. Y.

Q. Anyone else from your family?

A. Yet, my brother.

Q. What is his name?

A. Jett, J-E-T-T.

Q. So that took care of your whole family, right?

A. Yes.

Q. And then the other people were Brad Smith?

A. Yes.

Q. And Sandy Smith?

A. Yes.

Q. And Brandy Smith?

A. Yes.

Q. And did Brandy's brother go that

day? Did she have a younger brother that went that day?
A. Yeah, she had an older brother, Kole.
Q. Kole was older than her, right, okay, got it. Kole. Was he about your age?
A. No.
Q. How old was he?
A. At that time 13 or 12.
Q. Now, I understand that the day this happened was not the first day that you were at the beach; is that correct?
A. Correct.
Q. You got there the day before?
A. I'm pretty sure, yeah.
Q. Okay. So do you remember where you were staying?
A. No.
Q. Did you stay in the same place as the Smith family? Were you in the same building?
A. Yes.
Q. Yes?
A. Yeah.

Q. Okay. On the day of this event that we're here to talk about, do you remember what time you went to the beach?
A. No.
Q. What grade were you in then?
A. I don't remember.
Q. Nine years old, maybe you'll think about it and you'll let me know later. So do you know what grade you went into after this summer vacation that we're talking about now?
A. I don't remember.
Q. Okay. Do you remember where you went to the beach, what location on the beach you were located in a particular place? Do you remember that?
A. No.
Q. Do you remember whether you had been at the beach for a long time or a short time before this happened?
A. A little bit of time.
Q. A little bit would be how much?
A. Like a half hour, an hour.
Q. Okay. What did you do in that half an hour to an hour that you were at the beach

before this event?
A. I was with my sister and Brandy. We were playing in the sand in the tidal pools.
Q. Okay. You, Ally and Brandy were playing in the tidal pools?
A. Uh-huh. Yes.
Q. And you had been doing that for maybe a half an hour or an hour?
A. Yes.
Q. And then what happened?
A. And then my dad and Brad came down, and we started walking down the beach.
Q. Okay. Do you remember what you were walking toward, if anything?
A. No.
Q. You don't. Just walking?
A. Uh-huh. Yes.
Q. Did you walk a long distance or a short distance?
A. Short.
Q. And how long did you walk for?
A. Only like a few minutes.
Q. And after you had walked a few minutes, did you stop? What happened?

A. We started going into the ocean in this little water.
Q. Started going into the ocean in a little what?
A. It was very shallow water, like foot deep, not even.
Q. Okay. So you mean you continued walking in the water?
A. Yes.
Q. Were you walking in the same direction that you had been walking?
A. No.
Q. Were you walking in some other direction?
A. We just started walking towards the ocean.
Q. Oh, towards the ocean, okay. So what happened after you walked out into the ocean for a little?
A. We just continued walking, and then my dad, my sister, Brad and Brandy fell into the ocean. It dropped down.
Q. Do you know how that happened?
A. No.

Q. Were you walking with them when this happened?
A. Yes.
Q. Okay. Now, were you lined up in a single row or across? How would you describe it as you were walking?
A. I only remember being next to my dad. That's all I remember.
Q. Which side of your dad were you?
A. The left.
Q. Okay. So you were on your dad's left, correct?
A. Yes.
Q. And you and your dad were facing the same direction; is that correct?
A. Yes.
Q. And were you facing toward the ocean or back towards the beach, or how would you describe it?
A. Towards the ocean.
Q. Towards the ocean. And were you the two in front or were other people --
A. I don't remember.
Q. -- behind you? Do you know?

A. I don't remember.
Q. Or in front of you?
A. I think there might be -- Brad would be -- yeah, and Brandy would be behind us.
Q. Brad and Brandy you think were behind you; is that correct?
A. Yes.
Q. Okay. So were there only the four of you walking towards the ocean, then?
A. Yes.
Q. And as the four of you were walking towards the ocean, you could not see Brad and Brandy, could you, they were behind you?
A. I think so.
Q. You think so?
A. Yes.
Q. Were they right behind you, or like a short distance behind you, or far behind you?
A. Right behind us.
Q. So you are basically a group walking towards the ocean?
A. Yeah.
Q. Now, as you're doing that, did something happen?

A. Yes, we were walking in the shallow water, and then it just dropped down into the deep water.
Q. Did you and your dad -- if you were in the front, and Brandy and Brad were behind you, did you and your dad go in the water first?
A. I didn't go in the water. My dad and my sister went in the water and Brad and Brandy did.
Q. Oh. So your sister -- where was she located? Was she on the right side of your dad?
A. I don't remember.
Q. Okay. So who went in the water that you saw?
A. My dad and my sister and then Brandy went in.
Q. So to -- just for accuracy for the record, when your dad went in the water your sister -- whose name is?
A. Ally.
Q. She went in the same time?
A. Yes.

Q. And did you see Brad and Brandy go in the water, also?
A. No, but I know they did go in -- I saw them afterwards.
Q. After they went in?
A. Yes.
Q. Okay. And do you know why you didn't go in?
A. No, I don't remember.
Q. What do you remember happening after you saw them go in the water?
A. My dad get -- my dad and my sister got out of the water, and I took my sister back to the beach, and then we started drawing in the sand.
Q. How did your dad and your sister get out of the water?
A. My dad had my sister on his back, and then he swam -- he tried to swim to the beach -- or to the sand.
Q. Did you see him doing that?
A. Yes.
Q. And did he make it to the sand?
A. Yes.

Q. And then what did he do?
A. He started to try to get help for Brandy and Brad.
Q. What did he do to get out of the water is what I was asking.
A. He climbed out -- he just climbed up -- there was a drop, a wall, and he tried to climb up, and when he did he gave me my sister, and I took her back to the beach.
Q. How big was she?
A. Not that very tall. She was -- I don't remember.
Q. When you say gave her to you, I'm picturing -- what does that mean, like he picked her up and gave her to you?
A. Yeah, and I carried her.
Q. You carried her out to a more sandy place?
A. Yeah.
Q. More like land; is that right?
A. Yes.
Q. And that's where you all sat down and started playing in the sand?
A. Yes.

Q. Did anybody else come over and play with you and your sister at that point?
A. No.
Q. You just waited there and played?
A. Yes.
Q. Do you remember anything else happening there?
A. No.
Q. Okay. Do you remember anything else happening that day?
A. Just my dad trying to get help for Brandy and Brad, because they were going out into the ocean.
Q. And how did you see him try to get help?
A. He was just waving and trying to get someone's attention.
Q. Did he get someone's attention?
A. I don't remember.
Q. Did you see anyone else around there?
A. I don't remember.
Q. Okay. Did you see Brad and Brandy again?

A. No.
Q. So the last time you remember seeing them is when they went into the water?
A. Yeah.
Q. When they had been walking behind you?
A. Yes.
Q. And then whatever happened to you after you were playing on the sand with your sister, what happened next?
A. I don't remember.
Q. Do you remember you got off the beach that day, where you went, who took you or anything along those lines?
A. I remember my mom and Sandy coming to us.
Q. Walking up to you?
A. Yes.
Q. What do you remember them doing or saying when they walked up?
A. I don't remember.
Q. Do you remember where you went from there?
A. No.

Q. Do you remember anything that happened that day but later in the day or the night?
A. We went to the hospital to check to make sure Brandy was okay and my dad and my sister.
Q. Oh, okay. Well, did you see a doctor or anybody at the hospital?
A. No.
Q. Did your dad?
A. Yes.
Q. And did you learn whether your dad was okay or not?
A. Yes.
Q. What did you learn?
A. It was -- I just learned that he was okay, because they were just checking if he swallowed any salt water.
Q. But he was okay?
A. Yes.
Q. And what about your sister?
A. She was also okay.
Q. Okay. And did you see Brandy at the hospital?

A. Yes, I think so.
Q. You think or you --
A. I don't remember.
Q. Okay. Who else do you remember seeing at the hospital?
A. I don't remember.
Q. Okay. Just a minute, please.
After the hospital, after you were at the hospital and you found out that your dad was okay, your sister was okay, you were there with your mother, your father --
A. My brother and my sister.
Q. And your brother. That would be Jett?
A. Yes.
Q. When you went for the walk on the beach, where was Jett?
A. He was with Kole, my mom, and Brandy (sic).
Q. He was with Kole, your mom, and who?
A. Oh, and Sandy.
Q. And Sandy.
Q. Where did you go after the hospital?
A. I don't remember.

Q. Did you go home the next day or that night?
A. I don't remember.
Q. I'm going to show you a photograph. It's been marked before, and it's got on the top of it the words March 14, 2012. Don't worry about that. That's because it's an aerial photograph, and it happened to be taken at that time.
A. Okay.
Q. It doesn't mean that this is exactly the way the place might have looked when you were at the beach. Do you understand?
A. Yes.
Q. But I'm just going to show you this -- Mr. D'Amato will hand it to you -- but the idea is if that refreshes your recollection at all about where you were on the beach or where this happened, if it's helpful at all, you can tell us and maybe point something out, and if it's not helpful, you can tell us that, too. All right?
A. Yes.
MR. D'AMATO: At what point?

MR. BARKER: When they went walking down the beach. Let's start with that. If that helps.
MR. D'AMATO: Mr. Barker is asking you if in looking at this, would you be able to point somewhere on that aerial photograph, I guess, where you were when you first started walking, and then he'll have some follow-up questions.
THE WITNESS: No, I don't recognize. I don't remember.
BY MR. BARKER:
Q. And when you were walking and people were -- or your dad went in the water, does that show up on there at all, if you can remember anything that --
MR. LIHAN: Just objection to the form.
THE WITNESS: No, I don't think so.
BY MR. BARKER:
Q. Okay. Thank you.
MR. D'AMATO: Are we going to

mark this for identification, or should we just say this is the photograph that -- aerial photograph dated March 14?
MR. BARKER: I don't mind if we mark it. You can put it on the --
MR. LIHAN: Or do you want to identify it by its name from a prior deposition?
MR. D'AMATO: What was the marking you have?
MR. LIHAN: I have it -- and I'm pretty sure that it's the same photograph -- Sunderland-2, taken 3/22/16.
MR. D'AMATO: Perfect. Thank you.
MR. BARKER: Is yours blank?
MR. LIHAN: Yes.
MR. D'AMATO: I have no questions at all.
MR. LIHAN: Not here.
MR. BARKER: I have to see if

I do.
MR. D'AMATO: All right.
* * *
(Whereupon, a discussion was held off the record.)
* * *
BY MR. BARKER:
Q. Did you see anyone come out of the water, other than your dad and your sister?
A. No.
Q. Did you ever speak to anyone and tell them what you saw before coming here today and telling us?
A. No.
Q. Did anyone ever ask you questions about what happened?
A. No.
Q. Is this the first time you are telling this information?
A. Yes.
Q. Did you ever speak to anyone else who saw or knew what happened that day?
A. No.
MR. BARKER: That's all I

have.
MR. D'AMATO: Okay. Thank you.
* * *
(Witness excused.)
* * *
(Whereupon, the deposition was concluded at approximately 1:03 p.m.)
* * *

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* * *

WITNESS: AIDEN SUNDERLAND

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EXHIBITS
* * *

NICOLE GAETA DEPOSITION EXHIBITS

NUMBER MK'D

(None marked.)

DEPOSITION SUPPORT INDEX

* * *

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CERTIFICATION

I, Michele Matteo, RPR, CCR, hereby certify that the foregoing is a true and correct transcript of the proceedings held in this matter, as transcribed from the stenographic notes taken by me.

Michele Matteo, RPR, CCR
LICENSE NUMBER: 30X100171200

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Exhibit 4

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

SANDY 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

ORIGINAL

* * *

Videotaped Oral Sworn Deposition of **ALLY SUNDERLAND**, held at the D'Amato Law Offices, 2900 Fire Road, Suite 200, Egg Harbor Township, New Jersey, on Tuesday, March 22, 2016, commencing at 10:37 a.m., before Lisa Reagan, CCR in the State of New Jersey, there being present:

* * *

WORD FOR WORD REPORTING, LLC
CERTIFIED COURT REPORTERS
6 NORTH BROAD STREET
SUITE 202
WOODBURY, NEW JERSEY 08096
PHONE: (856) 384-2770
FAX: (856) 384-2779
email: office@word4word.net

A P P E A R A N C E S:

D'AMATO LAW OFFICES
BY: PAUL R. D'AMATO, ESQUIRE
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
and
BARRY, CORRADO, GRASSI & GIBSON, P.C.
BY: JOSEPH C. GRASSI, ESQUIRE
2700 Pacific Avenue
Wildwood, New Jersey 08260
Attorneys for the Plaintiffs

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
BY: BRIAN HUNKINS, DAG
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
Attorneys for the Defendant
State of New Jersey

BARKER, GELFAND & JAMES
BY: A. MICHAEL BARKER, ESQUIRE
210 New Road
Linwood, New Jersey 08221
Attorneys for the Defendant
City of North Wildwood

Also Present: Tom Zanaras, Videographer
Lou DiJoseph, Investigator
Scott Sunderland

I N D E X

* * *

WITNESS: ALLY SUNDERLAND

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E X H I B I T S

* * *

NUMBER	DESCRIPTION	MK'D
Sunderland-1	DVD	4
Sunderland-2	Photograph dated 3/14/12	4
Sunderland-2A	Photograph	
Sunderland-3	5-Page Statement with Photographs	4
Sunderland-4	Photograph	4
Sunderland-5	5-Page Statement with Photographs	4
Sunderland-6	Photograph	4
Sunderland-7	Photograph	4
Sunderland-8	Photograph	4
Sunderland-9	Photograph	4

(DVD was marked for purposes of identification as Exhibit Sunderland-1.)

(Photograph dated 3/14/12 was marked for purposes of identification as Exhibit Sunderland-2.)

(Photograph was marked for purposes of identification as Exhibit Sunderland-2A.)

(Five-Page Statement with Photographs was marked for purposes of identification as Exhibit Sunderland-3.)

(Photograph was marked for purposes of identification as Exhibit Sunderland-4.)

(Five-Page Statement with Photographs was marked for purposes of identification as Exhibit Sunderland-5.)

(Four Photographs were marked for purposes of identification as Exhibits Sunderland-6 through Sunderland-9.)

THE VIDEOGRAPHER: Today is March 22nd, 2016. This is the videotape deposition of Ally Sunderland. We're going on the record. The time is 10:37 a.m. The appearance of counsel will be noted in the

transcript. Will the court reporter, please, swear in the witness?

ALLY SUNDERLAND, after having been first duly sworn, was examined and testified as follows:

* * *

THE VIDEOGRAPHER: Thank you. You may proceed.

EXAMINATION BY MR. BARKER:

Q. Hi, Ally, I'm Mike Barker. I'm going to ask you some questions today, but before we get started I'll give you a little idea about how we ask the questions. All right?

Just like the court reporter said a minute ago, you have to answer all the questions verbally. So when I ask you a question and you want to answer yes or no, you can't do it just shaking your head. You have to actually tell us yes or no. The reason we say that is because everything that you say here today gets written down by the court reporter, the lady to your left. She makes it into a booklet, a little book, and in there will be all the words that are said here today. So if you just shook your head, we

might miss that or somebody might misinterpret it. So we ask that you answer every question with a verbal response. That means speaking. Okay?

A. Okay.

Q. Good. Now, I'm going to ask you some questions and I'll be very short in most of the questions. They won't be long. And the idea is to keep them really plain, clear. If, for any reason, I ask you a question which is not really clear to you, you don't understand it or you're a little confused, just let me know. I'll be happy to go back and ask it another way. Okay?

A. Okay.

Q. Good, thanks.

Now, we won't be long, but if you do need to take a break at any time, we can take a break. All right?

A. Okay.

Q. Okay, good. And do you know what it means to take an oath to tell the truth?

A. Yeah.

Q. I'm sorry?

A. Yeah.

Q. Yeah, okay. So that's what you did before you started here today, right?
A. Yes.
Q. Okay. So when we do these things for reasons that a Court asks us to do them, it's very important that whatever you say be truthful, accurate and complete. All right? Do you understand all that?
A. Yes.
Q. The reason is because people will look at this one day and they'll see what you are saying and they're going to count on it.
A. Okay.
Q. And the judge may use it for reasons in a courtroom or some of the lawyers may use it to ask other people questions. So we don't -- we don't want to have anything in there that's really just a guess, right, so I'm going to ask you things that happened a good while ago, and if you don't remember something, you can tell us you don't remember. All right?
A. Okay.
Q. That's a perfectly good answer. We all understand that. If you don't know the

answer to something, you can say "I don't know." That's a perfectly good answer. We all understand that. We don't want you to guess. Don't stretch because you're trying to be helpful. Don't worry about that. Just tell us what you know, what you don't know, and don't guess. All right?

A. Okay.

Q. Okay, good. Now, what's your birthday?

A. April 26th, 2005.

Q. And did you say 26?

A. Yes.

MR. D'AMATO: Can we go off both records?

THE VIDEOGRAPHER: Going off the record, 10:42.

(Discussion off the record.)

THE VIDEOGRAPHER: We're back on the record, 10:42.

BY MR. BARKER:

Q. Ally, what's your full name?

A. Ally Amelia Sunderland.

Q. Ally Amelia Sunderland?

A. Yes.

Q. How old are you right now today?
A. Ten.
Q. The event that we're going to talk about today happened on July 27th, 2012. That's just about four years ago. So do you know what we're here to talk about today?
A. Yes.
Q. Do you remember that day a little?
A. Yes.
Q. How old were you then? Ten minus four would be?
A. Six.
Q. Right. So you were about six?
A. Yes.
Q. More or less, right?
A. Yeah.
Q. Where do you go to school now?
A. Poquessing Middle School.

MR. BARKER: How do you spell that, dad?

MR. SUNDERLAND: Really?

MR. BARKER: You don't know?

MR. SUNDERLAND: No, I'm not a great speller.

BY MR. BARKER:

Q. What grade are you in?
A. Fifth.
Q. Sorry?
A. Fifth.
Q. And when this happened about four years ago, what grade were you in, if you were in a grade?
A. First.
Q. And it happened in the summer, so had you already finished the first grade?
A. Yeah.
Q. But you were only six. Did you start school early?
A. I don't know.
Q. You don't know, okay. Just wondering.
Do you remember going to the beach with your family --
A. Yes.
Q. -- that year, right?
A. Yes.
Q. Was that the first time you had ever been to that beach?
A. Yeah.
Q. And who did you go to the beach with?
A. My mom, my dad, my brothers, and my

friend and her family.
Q. Okay. Your mom and your dad and your brothers. There's two of them?
A. Yes.
Q. What are their names?
A. Jett and Aidan.
Q. Aidan is one and Jett's the other?
A. Yes.
Q. And how old were they? How old are they now?
MR. SUNDERLAND: If you don't know, you don't know.
THE WITNESS: Jett is 16.
BY MR. BARKER:
Q. Now, how old is Aidan now?
A. I don't know.
Q. Okay. Well, when you first went to the beach that day, who did you go with? Who was in your family group going down to the beach?
A. My parents and Jett and Aidan and my friend and her parents and her brother.
Q. What was your friend's name?
A. Brandi.
Q. And her parents, right?

A. Yes.
Q. Do you know their names?
A. Sandy and Brad.
Q. And Brad, right. And did your friend have a brother with her that day?
A. Yeah.
Q. Who was that?
A. Cole.
Q. Cole. So did all those people that you just mentioned, your mom, your dad, Aidan, Jett, Brad and -- what's his wife's name?
A. Sandy.
Q. -- Sandy and their two children, Cole and Brandi, right?
A. Yes.
Q. That was the whole group?
A. Yes.
Q. And where did you go on the beach? Do you know?
A. No.
Q. Did you come to the beach in the afternoon or the evening? Do you know?
A. I don't remember.
Q. And did you set up on the beach someplace like with towels and --

A. Yeah.
Q. -- chairs and things like that?
A. Yes.
Q. Yes?
A. Yes.
Q. And did you play on the beach for a while?
A. Yes.
Q. And did you go in the water?
A. Yeah.
Q. And were you near a lifeguard?
A. I don't remember.
Q. And about how long were you there playing?
A. Maybe like three hours.
Q. Okay. And then what happened after about three hours?
A. I don't know.
Q. You don't remember?
A. No.
Q. Did there come a time when everyone was going to leave the beach?
A. Yeah.
Q. Did you leave the beach?
A. Yeah.

Q. Who did you leave with?
A. My mom and Aidan and Jett.
Q. Okay. Before you left the beach with your mom, Aidan and Jett, did anybody go for a walk that day?
A. Yes.
Q. Who went for a walk?
A. Me, Brandi and Brad.
Q. What about your dad?
A. Yeah.
Q. He went, too?
A. Yes.
Q. Okay. So there were four people walking?
A. Yes.
Q. And do you know why you were going for a walk that day?
A. No.
Q. Were you going with your dad?
A. Yeah.
Q. And when you left to go, were you all walking together?
A. Yes.
Q. Were you walking straight across or one behind the other?

A. We were walking straight across.
Q. So one person was closer to the ocean and one person was closer to the land?
A. Yeah.
Q. And as you were walking down the beach -- you were walking down the beach, I guess, right?
A. Yes.
Q. Were you near the water?
A. Yes.
Q. Were you in the water?
A. Yeah.
Q. Who was next to you?
A. Brandi.
Q. Okay. So who is on which side?
A. My dad was on my left side and Brandi was on my right side.
Q. Okay. So who is closer to the ocean?
A. Brandi.
Q. And then you and then your dad?
A. Um-hum.
Q. And then who is on the other side of your dad?
A. Brad.
Q. And is that the way the four of you

just kept walking?
A. Yeah.
Q. Straight across like that?
A. Yes.
Q. And were you talking to anybody while you were walking?
A. No.
Q. And was anybody talking to you?
A. No.
Q. And what were you doing as you were walking? Anything special?
A. No.
Q. Just walking?
A. Yes.
Q. Okay. And did you walk a good distance, like a far way?
A. Yeah.
Q. And then did there come a time when you stopped walking and walked back?
A. Yeah.
Q. Do you know where you walked to before you turned around to come back?
A. We went to the place where the drop-off was.
Q. And then you turned around and walked

back? Do I have it right?
A. I don't really remember.
Q. Okay. So you remember walking on the beach, though, right?
A. Yes.
Q. And you don't really remember whether you got to a point and turned around and came back or not? You don't remember that?
A. Yeah.
Q. So as far as your memory goes, as far as what you can remember, was everybody walking in the same kind of positions, like you said, Brandi, then you, then your dad and then Brad?
A. Yeah.
Q. And were you in those positions when you got to the point where you said there was a drop-off?
A. Yes.
Q. Okay. Now, as you are walking up to the place where you said there was a drop-off, how far in the water were you? That means how deep is the water as you're walking?
A. Not very deep at all.
Q. Do you remember?

A. No.
Q. Do you know how deep the water was for Brandi?
A. No.
Q. Okay. Do you know how deep the water was for your dad?
A. No.
Q. And do you know how deep the water was for Brad?
A. No.
Q. But you say you came to a point where you called it a drop-off, right?
A. Yeah.
Q. Had you ever heard the word drop-off before?
A. No.
Q. Is that your word?
A. Yeah.
Q. So as you are walking, how did you know that there was a drop-off?
A. Well, we just fell in.
Q. You just walked into it?
MR. D'AMATO: She said fell in.
BY MR. BARKER:
Q. Did you fall in?

A. Yes.
Q. So you are walking, right, and then what happens? Do you just like step?
A. Yeah.
Q. And then you were in the water?
A. Yeah.
Q. Okay. As you walked and stepped and walked into the water, did anybody else do that?
A. Yeah, Brandi and Brad did, and I was on my dad's back.
Q. Okay. So everybody kind of walked into the water at once?
A. Yeah.
Q. As far as you remember, everybody goes in at the same time?
A. Yeah.
Q. And as everybody goes in at the same time, you find your dad and get on his back?
A. Yeah.
Q. What else do you remember about being in the water?
A. I don't remember.
Q. Nothing else?
A. No.

Q. Do you know how you got out of the water?
A. Well, my dad was swimming and he got to the land.
Q. Okay. So you're on your dad's back, he swims some and he gets back to where you can get up on the sand again?
A. Yes.
Q. Okay. Do you remember seeing anything else?
A. No.
Q. Were you hurt when you went in the water?
A. No.
Q. When you came out of the water -- and your dad was out of the water, too, right?
A. Yeah.
Q. Okay. So what do you remember doing yourself after you got out of the water?
A. I was playing in the sand.
Q. Playing in the sand?
A. Yes.
Q. And what was your dad doing after you got out of the water?
A. I don't know.

Q. And did you see anybody else do anything after you and your dad were out of the water?
A. Well, Brandi got saved by a jet ski.
Q. Okay. Did you see that happen?
A. Yeah.
Q. Or did you just see the end of it?
A. I saw the end of it.
Q. What did you see?
A. I saw her getting lifted onto the jet ski.
Q. Did you say that you saw her getting lifted onto the jet ski?
A. Yeah.
Q. And who lifted her onto the jet ski?
A. The person who was riding the jet ski.
Q. Do you know who that person was?
A. No.
Q. Did you ever speak to that person again?
A. No.
Q. Well, actually, you never spoke to that person ever, right? Correct?
A. Yes.
Q. Let me show you a picture marked

Sunderland-8. Do you know anybody in that picture?

A. I know my dad.

Q. Which one is your dad?

A. This one (indicating.)

Q. The one with the red shirt?

A. Yeah.

Q. Who is the other person?

A. I guess the person that was riding the jet ski.

Q. But that's a guess. So I'm just asking you if you know if that's the same person or not.

A. No.

Q. You don't know, okay. That's it for that picture.

Did you ever talk to anybody else about this event, this happening?

A. No.

Q. Did you ever talk to your dad about it?

A. Yeah.

Q. When did you talk to dad about it?

A. A little bit ago.

Q. Just this morning, you mean? You can

tell me.
A. Maybe January.
Q. January of this year?
A. Yeah.
Q. So a couple months ago?
A. Yes.
Q. Okay. And what did you tell your dad about it?
A. I told him that I was on his back when it happened.
Q. Anything else?
A. No.
Q. And did your dad ask you anything else?
A. No.
Q. So the whole conversation was -- well, how did it start?
A. He asked me if I remembered if I was on his back.
Q. And you answered him?
A. Yes.
Q. And that was the whole talk?
A. Yeah.
Q. So other than that, have you had any talks with anybody else about what we have

been talking about today?
A. No.
Q. Did anybody else talk to you about what we have been talking about today?
A. No.
Q. Here's a question for you. This might test your memory. It will, but I'll ask it so that I know whether you have a memory of it or not.

Just before it came to the point where you took the step and you walked and went in the water, just before that, how deep was the water on you?
A. Like up to my ankles.
Q. And do you know how deep the water was on Brandi at that time?
A. A little bit higher I think it was.
Q. How do you know that?
A. Because she's taller than me and we were in the same position.
Q. And do you know how deep the water was on your dad?
A. No.
Q. And do you know how deep the water was on Brad?

A. No.
Q. Did any police people come around after this happened?
A. Yeah.
Q. Did you talk to any of them?
A. No.
Q. Did any people come that were rescue people?
A. Yeah.
Q. Did you talk to any of them?
A. No.
Q. No?
A. No.
Q. Just playing in the sand?
A. Yeah.
Q. We have a big photograph that generally shows the beach where we have been told you were walking. It's a large area. And I'm just going to ask you if, when I show you this photograph, if you can show us where you were when you say you went into the water. And if you can, tell us. If you can't, we understand. Okay? So here's the picture.
MR. D'AMATO: When you say "went into the water," you mean where she said she

fell in?

MR. BARKER: No, I mean where she went into the water. That's my question.

MR. D'AMATO: Okay.

THE WITNESS: I don't know.

BY MR. BARKER:

Q. You don't know?

A. No.

MR. BARKER: Thank you. I don't have anything further.

MR. HUNKINS: I think I have one real quick question.

* * *

EXAMINATION BY MR. HUNKINS:

Q. When you all suddenly went into the water, did you hear or see anything that we didn't already talk about today?

A. No.

MR. HUNKINS: Okay. That's all I have. Thanks.

THE VIDEOGRAPHER: This concludes the videotape deposition. Off the record. The time is 11:00 a.m.

(Deposition concluded.)

C E R T I F I C A T E

I, LISA REAGAN, a Certified Court Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination,

ALLY SUNDERLAND

was duly sworn by me to testify to the truth, the whole truth and nothing but the truth. I do further certify that the foregoing is a true and accurate transcript of the stenographic notes of testimony taken by me at the time, place and on the date hereinbefore set forth. 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 this action.

Lisa Reagan, CCR

LISA REAGAN, CCR

Certificate No. XI01671

Date: March 31, 2016

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Exhibit 5

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

SANDY SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND GEORGE BRADLEY SMITH,	:	CIVIL ACTION
Plaintiff,	:	DEPOSITION TESTIMONY OF: BRANDY SMITH
vs.	:	
CITY OF NORTH WILDWOOD, STATE OF NEW JERSEY, JOHN DOE, MARY DOE, ABC PARTNERSHIPS and XYZ CORPORATIONS,	:	
Defendants.	:	

TAKEN BEFORE: LYNN SMITH, a Certified Court Reporter of the State of New Jersey, License No. XI01520, at the D'Amato Law Firm, 2900 Fire Road, Suite 200, Egg Harbor Township, New Jersey 08234, on Tuesday, March 1, 2016, commencing at 10:05 a.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

APPEARANCES:

D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
BY: PAUL R. D'AMATO, ESQUIRE
For the Plaintiffs

BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
BY: A. MICHAEL BARKER, ESQUIRE
For the Defendant, North Wildwood

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
(609) 777-4872
BY: BRIAN HUNKINS, DAG
For the State of New Jersey

Also present: Sandra Smith

Videographer: Tom Zanaras

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Brandy-1	Photograph	13

(Exhibit attached)

VIDEOGRAPHER: Today is March the 1st, 2016. This is the videotaped deposition of Brandy Smith. We are going on the record, the time is 10:05 a.m. The appearance of counsel will be noted in the transcript.

Would the court reporter please swear in the witness.

BRANDY SMITH,

having been first duly sworn, testified as follows:

EXAMINATION BY MR. BARKER:

Q. Hi, Brandy. I'm Mike Barker. I'm going to be asking you some questions today. But before we get started, I'm going to give you some guidelines about how this proceeding will take place, this time with you here, and me asking you questions.

One of the first things we keep in mind is that when I ask you a question, and you're going to answer it, we need you to do that verbally. We need you, for instance, if it's a question that says, Is it daylight today? You would answer yes or no. You wouldn't just shake your head.

A. Okay.

Q. Understand?

A. Um-hum.

Q. The reason we do that is because this lady

sitting to your right is writing down everything that's being said, and, of course, if we just nod our head the way people do, that could be interpreted one of two ways. So, we don't want that to happen. So, we always ask for the answers to be verbal. That means spoken. All right?

A. Um-hum. Okay.

Q. Good. You're catching on right away.

A. Yeah.

Q. Now, you were given what's called an oath before we began today. That's where you raised your hand. Do you remember that just a moment ago?

A. Yes.

Q. Okay. That's very important. That means that everything you're going to say today must be the truth. You understand that?

A. Yes.

Q. Okay. So, I know you wouldn't intentionally tell me something that's not true. But here's the thing: Sometimes people, when the questions are being asked, they try to be helpful, and they search their memory, and they say things that maybe would just be a guess. Well, we can't do that. In this, that we do today, it's all about what you know. And when you don't know something, it's perfectly fine to

say, I don't know.

A. Okay.

Q. All right?

A. Um-hum.

Q. It's also perfectly fine to say, I don't remember. Those are perfectly good answers. We don't want you to guess, we don't want you to give us something out of a dream. We only want to know what you really know.

My objective here today is to get whatever facts you have about this event that occurred back in the year 2012.

Now, we're already up to 2016. So, that means it happened four years ago. So, that's a good long time ago. And you may not remember everything, and that's very understandable. And I may be asking some questions that call you on for areas of information that you -- that is, call on you to tell us about things that you never really even saw, or never really even heard. Because I don't know what you saw or what you heard, I'll be asking the question. And it's up to you to tell me, You know what, I don't know. I didn't see it, I don't know. I didn't see hear it, I don't know. So, that's okay. And then we just move on. Okay?

A. Um-hum.

Q. Now, Mr. D'Amato is here, and he represents your mom, family, and sometimes he might have an objection. If he does, or if any lawyer says the word objection, you just stop talking for a minute, and let the lawyers have a little discussion about whether you should or shouldn't answer the question. And then Mr. D'Amato will tell you, You can go ahead and answer it, I just wanted to put an objection on, or he may tell you, No, you can't answer it. All right?

A. Okay.

Q. But he'll be the one that speaks about that, if there's an objection, and you're looking to know, Well, what do I do now, he objected? Oh, my God. So, what do I do? Well, you wait. Just wait a minute, and then it will get straight. Okay?

A. Okay.

Q. Now, we may be a little while. So, if at any time you need to take a break for any reason, whatsoever, just say, I need to take a break, and we will. All right?

A. Okay.

Q. Okay. Now, since it happened four years ago, it was in July of 2012, that's the month and year

that we're going to be talking about today. And the day was July 27, 2012. That was the date on the calendar.

Do you understand that?

A. Um-hum.

Q. All right. Good. Now, at that time, you were how old?

A. I -- wasn't I -- I think seven.

Q. I think you were seven.

A. Yeah.

Q. Right? And what's your birthday, Brandy?

A. September 20th, 2004.

Q. And I'm going to ask you a question that might be hard. Do you know how tall you were on July 27, 2012, four years ago?

A. I'm not sure. I don't think I know.

Q. Right. And do you know how much you might have weighed when you were seven years old?

A. No, I don't know.

Q. No. Okay. Do you see a doctor called a pediatrician, a doctor for children? Do you see that kind of doctor?

THE WITNESS: Do I?

A. Yes.

Q. Yes. Do you know that doctor's name?

A. I don't know.
Q. Do you know whether you go to that kind of doctor once a year, or more?
A. Yeah, I think so.
Q. All right. And where is the doctor located; do you know?
A. Uht-uht. No.
Q. You don't know. Okay.
Now, I'm going to try to ask you some questions about that summer, first of all. I don't know, so you tell me. Were you staying at the shore that summer?
A. Yes.
Q. Okay. Had you done that in summers before that summer?
A. No.
Q. That was the first summer that you were spending the summer there?
A. Yes.
Q. Okay. And do you know where you stayed when you stayed there at the shore that summer?
A. Where I stayed?
Q. Yes.
A. Can --
Q. The house, the street.

A. No, I don't remember that.
Q. Okay. And you came with your parents to the shore for the summer?
A. Yeah. And some other family friends.
Q. Okay. That -- that July of 2012, were you there for the whole month?
A. I don't think so. I think -- I think we were only there for a couple, like, days, or maybe a week.
Q. Before this happened?
A. Oh, before it happened? I think it was a couple days into it. But I'm not sure.
Q. Okay. Now, before this happened, on that day, about what time did you get to the beach?
A. I don't know.
Q. Were you there in the morning?
A. I -- I don't -- I don't really know what -- like, if it was in the morning or the afternoon.
Q. Do you know if it was before lunch or after lunch that you first came to the beach that day?
A. I think after lunch. Maybe -- yeah, that's what I'm guessing. But I'm not sure either.
Q. Do you remember going down to the beach that day, when you first got there that day, going to the beach, do you remember who you went with?
A. No.

Q. Well, would I be correct in saying that you went to the beach with your mom that day?
A. Well, yeah. I went with my -- I think I went with my mom and her friend. That's what I think. Because my friend was there, too. So, that's all that I remember much, like, who being there.
Q. All right. Who was your mom's friend?
A. Andrea Sunderland.
Q. She's a grownup?
A. Yes.
Q. And she had some children with her that day?
A. Yes.
Q. And her husband, too?
A. Um-hum. Yes.
Q. And you were with your mom?
A. Yes.
Q. And your dad?
A. Yes.
Q. And your brother?
A. Yes.
Q. And anybody else?
A. No.
Q. All right. Did you all go to the beach together when you first got to the beach on that day? Were you all arriving at the same time and place?

A. Yes.
Q. Do you remember where you set up on the beach? That is, was there a place where you put down chairs and towels and that type of thing?
A. Yeah, there was -- it was close to, like, these little -- little, pool thing. Like, they were -- there was sand, and, like, there was little water in it. And then, like, not really big, but it was just little. It was near that.
Q. Well, I'm going to show you a picture. And you tell me if this picture helps you tell me where you and your family and friends went and set up on the beach.
A. Okay.
Q. Can you do that?
A. Yes.
Q. All right. I'm going to ask that the court reporter put a mark on this first. We're going to call it Brandy-1. All right? With today's date.
A. Okay.
SANDRA SMITH: I don't know if she understands what you're asking her, though. She's talking about where they went.
MR. BARKER: Well, we'll find out.
SANDRA SMITH: Okay.

MR. BARKER: Thank you.

(Photograph, received and marked for identification as Exhibit Brandy-1.)

Q. Now, Mr. D'Amato was good enough to give us this picture. It's got a date on it that says March 14, 2012. And it's taken by a satellite, and it's looking down. And that's the date that the satellite took the picture. So, it doesn't begin to -- it doesn't pretend to say that this is what it looked like that day, when you went to the beach in the summer. All right? But it's just generally something that might help us get an idea as to where you were when you're telling me about things that happened.

A. Okay.

Q. Now, the first question I was asking you was where did you go and put your things with your family and friends. And if this helps you remember where everything was put down, that's towels, or a cooler, or a chair, whatever, then, you know, you can mark it on there. And we have different colors, and you can pick any color you want, put an X where it was. If it helps you. I'm not trying to say it will help you. I don't know. All right?

A. Okay.

Q. And here's one more thing. Because your mom said something a minute ago that she didn't think you understood the question that I was asking. And I want to say to you, if you don't understand me, I -- I will ask it a different way. It's -- lawyers ask questions sometimes, and they don't do a good job of asking the question. So, don't feel like you should be shy about telling me you don't understand the question. Okay?

A. Okay.

Q. Okay. Why don't you take a minute and look at this picture. And here's some colors, if we need them. And I'm going to cut this off.

MR. D'AMATO: Did you ask her to mark something?

MR. BARKER: Not yet.

MR. D'AMATO: Yeah.

Q. So, Brandy, that's okay. Do you think now that you've looked at that picture, you would be able to put a dot or a circle at the place where you and the family had set up when you first got to the beach that day?

A. Yes.

Q. Okay. Why don't you put a circle where that is, then.

A. (Witness complies.)

Q. Okay. A little red circle. Right?

A. (Witness nods.)

Q. Okay. Now, we understand that, at some point, you went with your dad for a walk along the beach. Right?

A. Yes.

Q. Okay. Did that happen once, or more than once that day?

A. Taking a walk?

Q. Yes.

A. No. Only once.

Q. One time?

A. (Witness nods.)

Q. And this day that you went to the beach with your family and friends, had you ever been to that beach before?

A. No.

Q. So, on this particular trip to the beach, this summer, this was your first day at the beach?

A. Yes.

Q. And before this visit on this beach on the date -- are you okay?

A. Yeah.

Q. Yeah. Before your visit to this beach on

this particular day, had you ever been to this beach at any time before?

A. I don't think so.

Q. Okay. Now, before you went for your walk with your dad that day, and whoever else you might have been walking with, how long had you been at the beach?

A. I don't remember.

Q. Okay. Were you playing with your friends before?

A. Yes.

Q. What were you and your friends doing before?

A. We were in the little kind of tinier area, with the, like, water in the sand, and we were in that. And we were boogie boarding.

Q. Boogie boarding?

A. Like, on your stomach, and on the --

Q. Oh, we call that body surfing. Right?

A. Yeah.

Q. Okay. You were doing that. And you and your friends had been doing that for awhile before the time came to go for a walk?

A. Yes.

Q. Okay. And who were your friends?

A. Well, yeah, my friend Ally Sunderland, and

Aidan Sunderland.
Q. Now, you had a brother or sister with you that day. Who was that?
A. Kole, Kole Smith, my brother.
Q. He's your brother. Right?
A. Yes.
Q. Did he play in the water with you, Ally, and Aidan?
A. No. He was playing with their older brother, Jett Sunderland.
Q. Jeff?
A. Jett Sunderland.
Q. Jett. Okay.
So, Kole and Jett were playing together?
A. Yes.
Q. And you, Ally, and Aidan were playing together. Right?
A. Yes.
Q. Okay. And you had been at the beach for some time, but you can't say how long?
A. Yes.
Q. And then who came up with the idea, let's take a walk?
A. My dad and Scott Sunderland.

Q. Okay. And who was going to go on the walk?
A. Aidan Sunderland, Ally Sunderland, and my dad, Scott, and me.
Q. Which way were you going to walk? Strike that. That means wait a minute, I want to ask it again.
Which way did you walk? Do you remember which direction you were going? Let me tell you, if you look at that picture, towards the top of the picture, we call that going north. And to the bottom of the picture, we call that going south.
A. We were going north.
Q. North. And did you walk to a place, and then start to turn around and come back?
A. No. We were just -- we were still walking.
Q. North?
A. Yes.
Q. When this happened?
A. Yeah.
Q. Okay. How far had you gone before it happened? And you might say that in terms of distance, or time. You might say, for instance, oh, a football field. Or you might say, five or ten minutes. Whatever number. So, I don't know if you can answer the question. But I was just asking.

A. Maybe five or ten minutes.
Q. Okay. Was there anything along the way that you noticed as you walked north? Anything that you remember, like a landmark?
A. No, I don't remember anything.
Q. Okay. As you and the others in this little group were walking north, who was closest to the shore, who was more -- if I say inland, do you know what I mean?
A. Like, closer to the sand, like, closer to the beach, or closer to the ocean?
Q. Right. One would be closer to, like, if you're looking at the photograph, where the houses are, and one would be closer to the ocean.
A. Um-hum.
Q. So, who was closer to the part where the houses are?
A. The kids. Like, me, Ally, and Aidan, were closer to the houses, over on this side. And then the -- my dad and Scott were closer to the water. We were all, like, near the water, but closer -- we were closer to the houses.
Q. Um-hum.
A. Well, not, like, close to the houses. Just, like, right here. And then -- on -- like, right

here, and then right here, on those two.
Q. You're pointing to, like, where the sand meets the water?
A. Yeah.
Q. Okay. So, everybody's walking in an area where the sand meets the water; is that it?
A. Yes.
Q. Okay. And the children were closer to the part where the sand is, and the grown-ups were closer to the part where the water is?
A. Yes.
Q. Okay. And were you with your dad, like, right next to your dad, or --
A. Yeah.
Q. Or --
A. Yes. I think I was -- yeah, I think I was close to him. And then they were in front of us, just a little bit, like, close to us, but just, like, in front of us.
Q. Who's "they"?
A. Aidan, Ally, and Scott.
Q. So, they were a little bit in front of you?
A. (Witness nods.)
Q. And you were next to your dad, and you were on the side closest to the houses?

A. **Yes.**
Q. And your dad was on the side closest to the ocean?
A. **Yes.**
Q. And were you and your dad at -- walking in the water?
A. **Yes. Like, we -- it was only, like, to our ankles, at first, yeah. It was, like, we were still, like, right here, close to the sand, so you could -- you had your feet on sand for while you were walking.**
Q. Um-hum. And there came a time when you and your dad somehow went into the water. Right?
A. **Yeah.**
Q. How did that happen?
A. **I can't remember much, but, like -- how it happened, I -- my eyes were closed, and I didn't know -- like, I couldn't see anything much. And -- and it just happened. And then we ended up somewhere in the ocean.**
Q. Do you need to take a break? We're going to take a break. Okay?
A. **Okay.**
MR. BARKER: Why don't we go off the record and take a little break.
VIDEOGRAPHER: Okay. Going off the record. The time is 10:27.
(There was a brief recess.)
VIDEOGRAPHER: We're back on the record. The time is 10:33.
BY MR. BARKER:
Q. Before, when we were talking about how you fell into the water, you had told me that you were near your dad, and you were walking along the beach. Right?
A. **Yes.**
Q. I got all that right. Right?
And you recall walking where the water was, like, around your ankles. Right?
A. **Right.**
Q. And the same for your dad. Right?
A. **Right.**
Q. But then when you fell into the water, you fell into water that was deeper than ankle depth. Right?
A. **Yes.**
Q. Okay. So, before you fell into the water, had you and your dad walked more towards the ocean side, like, where it got up to your knees, or --
A. **No.**
Q. -- higher than the ankles?

A. **No.**
Q. It was always just at your ankles, that's all you remember?
A. **Yeah.**
Q. Did you, before you fell into the water, feel like you had stepped into a hole, or a what -- like, a dip, something lower? Did you ever feel that?
A. **I don't remember.**
Q. Okay. After you fell into the water, were you near your dad?
A. **Yes.**
Q. All right. So, you and your dad were in the water, and it was deep enough that you felt like you were, like, in a pool of water?
A. **Yes.**
Q. Okay. Could you feel the bottom?
A. **No.**
Q. All right. And were you close enough to hang on to your dad?
A. **No.**
Q. But then did there come a point in time when you and your dad got closer together?
A. **Yes.**
Q. Okay. Did you ever talk to anybody else, like Ally or Aidan, about whether they went into the water, and what happened to them?
A. **No. But I did talk to my mom before about it, and she said that Scott told her that he did fall into the water, but he grabbed onto the -- like, he held there, and Ally was on his back. Aidan got out. And then they got out. But we were -- but we were still in there.**
Q. You and your dad?
A. **Yes.**
Q. Okay. Did you ever talk to anybody else about what happened?
A. **No.**
Q. Okay. Before coming here today and talking to me, and the other people that are here today about what happened, did you ever tell anybody else what happened?
A. **Yes.**
Q. Who was that?
A. **Her name -- she -- like, her name was Dr. Debbie, I think.**
Q. Dr. Debbie? Where is she from?
A. **She's -- she -- I don't remember -- I don't know where she's from, but she's close to Horsham, in Pennsylvania where I live. I'm not sure where it was.**

Q. Do you remember what you told her?
A. **I told her, like, how I felt, like, what happened, too. And what my dad was telling me when we were in there.**
Q. What I was going to ask you, though, is did you tell her how it happened?
A. **I don't remember how it happened, so I didn't tell her, because I don't remember.**
Q. Okay. So, you're telling me now that you don't remember how it happened?
A. **Yeah. It was all just a -- like, a blur when it happened. But then, like, out of nowhere, I just ended up in the ocean.**
Q. Okay. I understand. Now, this Dr. Debbie, did you see her a long time ago, or just recently?
A. **Last year. But now we stopped going to her.**
Q. Okay. Do you go to anybody else like her?
A. **No. Not anymore.**
Q. Okay. Did you -- because you fell in the water, I know that you -- I know, because I saw it written down, that you swallowed some water. Right?
A. **Yes.**
Q. Yeah. Did that make you sick?
A. **No, not right away. But then -- yeah, not right away.**

Q. Okay. Well, after you were in the water, do you remember how you got out of the water?
A. **Yes. A Jet Ski guy, he came and he got me. And then they were looking for my dad.**
Q. Two Jet Ski guys were looking?
A. **Yes.**
Q. Right. But one, in particular, got you out of the water. Right?
A. **Yes.**
Q. Okay. And did you get hurt when you fell in the water?
A. **No.**
Q. Okay. Other than the fact that you had gotten some water in your mouth, and maybe swallowed some water, did you have any other kind of injury that happened?
A. **No, not that I remember.**
Q. Not that you what, sorry?
A. **Remember.**
Q. Okay. Did you go to the hospital and get checked out?
A. **Yes.**
Q. And did you just get checked out, and you were okay, and then left?
A. **Yes.**

Q. Okay. Did you ever see any kind of doctor after that, other than this Dr. Debbie?
A. **No.**
MR. BARKER: Okay. I'm going to take a break for a minute, please.
VIDEOGRAPHER: Okay. Going off the record, 10:40.
(There was a brief recess.)
VIDEOGRAPHER: We're back on the record, 10:46.
BY MR. BARKER:
Q. So, as you were telling me about walking north on the beach, with this little group, and you were near your dad --
A. **(Witness nods.)**
Q. -- were you looking down at the ground at any time? I call it ground, but it's the sand.
Did you look down at that at any point?
A. **I don't think so.**
Q. Okay. Now, just before you fell in the water, you said something to me along the line of, we were looking, and then I just -- we were in the water. Something like that.
So, I wanted to ask you, when you started to tell me, we were looking, where were you

looking before -- just before this happened, that you fell in the water, where were you looking? What were you seeing?
A. **I think we were -- we were mostly looking at each other, mostly, and then the ocean sometimes, and I think over near the houses.**
Q. Um-hum. And just before you fell in the water, I'm going to test your memory on this one, just before you fell in the water, do you remember what you were looking at?
A. **No. I -- it was just all, like, ocean, the whole time. Like, I think my -- my eyes were closed, and I couldn't see anything.**
Q. When you were walking?
A. **Oh, when we were walking, what were we looking at?**
Q. Yes.
A. **I don't remember.**
Q. All right. You just generally remember that as you were walking, before this happened, you were looking at each other, looking at the houses, looking at the ocean?
A. **Yes.**
Q. Do I have it right?
A. **Yes.**

Q. Okay. And just before you fell in the water, was there any reason that you were looking down at where you were going?
A. **No. I don't think so.**
Q. And just before you fell in the water, did you hear anybody say anything?
A. **No.**
MR. BARKER: And that's all I have for right now. Someone else might have some questions.
THE WITNESS: Okay.
MR. HUNKINS: No questions. Thanks.
MR. D'AMATO: Brandy, I have some questions.
THE WITNESS: Okay.
EXAMINATION BY MR. D'AMATO:
Q. And I -- I spoke to mom, and she told me it was okay to ask you these questions. Okay?
A. **Okay.**
Q. All right. After you fell into the water, okay, do you remember seeing your dad at any time, after you fell into the water?
A. **Yes.**
Q. And do you -- and where was he? How far was he from you?
A. **He was pretty close. Just, like, a little**

bit far away from me, not that far.
Q. Okay. Was he saying anything to you?
A. **Yes. He was saying my name a lot. And then I don't remember much about -- all I remember was him saying my name.**
Q. Okay. And you remember the fellow on the Jet Ski picking you up?
A. **Yes.**
Q. All right. When the fellow on the Jet Ski picked you up, where was your daddy at that point in time?
A. **I didn't see him anymore. I don't know -- I didn't know where he was.**
Q. All right. When you last saw daddy, what was he doing?
A. **Laying on his back.**
Q. Okay. Do you see how long this conference room is here?
A. **Yes.**
Q. Was he as far away from you as the length of this room, or more, or closer?
A. **Closer.**
Q. Okay. And what's the very last words you remember hearing daddy say?
A. **Brandy.**

Q. Okay.
MR. D'AMATO: I have nothing else.
MR. BARKER: Can I talk to you for a minute before we --
MR. D'AMATO: Yeah.
VIDEOGRAPHER: Going off the record, 10:51.
(There was a brief recess.)
VIDEOGRAPHER: We're back on the record. The time is 11:03.
EXAMINATION BY MR. BARKER:
Q. Brandy, during the break, Mr. D'Amato gave me a paper that was written by Dr. Debbie. And I'm going to ask you some questions to just make sure that I have it right about some things that happened, and when they happened.
Remember we said that the date of this event was July 27, 2012. Remember that?
A. **Yes.**
Q. Okay. And Dr. Debbie says that the first time she saw you was two years after that, approximately. Does that sound right to you?
A. **Yes.**
Q. And Dr. Debbie says that from the time of the accident up and time -- up until the time that you

first saw her, you had not spoken to anyone about what you saw and experienced on the date that you and your dad fell in the water. Is that true?
A. **Yes.**
Q. So, the first person you spoke to about your memories of this was when you spoke to Dr. Debbie about it two years after it happened. Is that true?
A. **Yes.**
Q. And after you had this experience on the date of July 27, 2012, which was in the summer, did you go back to school that year?
A. **Yes.**
Q. Okay. So, you would have been still seven, but almost eight when you went back to school. Right?
A. **Yes.**
Q. And what grade did you go into?
A. **I think second. I think -- I was going in -- I was either in third grade, and then I was turning eight -- oh, wait, no. I think I was in second. Yeah.**
Q. But when you went to school after this event at the beach, what grade did you go to?
A. **Second.**
Q. Second grade. Okay. And when you went to

second grade, did you finish second grade okay?
A. **Yes.**
Q. Did you do okay with the school courses?
A. **Yes.**
Q. Did you play at recess?
A. **Yes.**
Q. Did you do the things that the other children do in second grade?
A. **Yes.**
Q. Okay. And in third grade, did you do okay in school in third grade?
A. **Yes.**
Q. Okay. And did you do the things that the other children do in school?
A. **Yes.**
Q. And did you play at recess?
A. **Yes.**
Q. Okay. What grade are you in now?
A. **Fifth.**
Q. Okay. So, in fourth grade, did you go to fourth grade without any problems, moved up okay?
A. **Yes.**
Q. And when you went into fourth grade, did you do okay with your school subjects?
A. **Yes.**

Q. And did you do okay with your friends?
A. **Yes.**
Q. And did you play at recess?
A. **Yes.**
Q. And you did all the things that the other children do?
A. **Yes.**
Q. Okay. That was fourth grade.
Now, you're in fifth grade?
A. **Yes.**
Q. How are you doing in school?
A. **Good.**
Q. Okay. You have friends?
A. **Yes.**
Q. Okay. Do you do well in your school courses?
A. **Yes.**
Q. Okay. And did you do well in your school courses in those other years, like, second, third, and fourth grade?
A. **Yes.**
Q. So, are you a pretty good student?
A. **Yes.**
Q. Oh, that's nice. That's good.
Do you play any sports?
A. **Yes. Gymnastics, basketball, and dance.**

Q. That's a lot.
A. **Yeah.**
Q. Have you done that every year?
A. **Yes.**
Q. So, you did it in the second grade?
A. **Not gymnastics. But dance, and I think basketball, too.**
Q. Um-hum. What about in third grade, what did you do?
A. **I did dance and basketball.**
Q. And what did you do in the fourth grade?
A. **Dance and basketball.**
Q. And now, you're doing three things?
A. **Yes.**
Q. Dance, basketball, and what was --
A. **Gymnastics.**
Q. Gymnastics. That's kind of hard; isn't it?
A. **It's pretty easy now.**
Q. Is it?
A. **Yeah.**
Q. Is it scary?
A. **Sometimes.**
Q. I would think it's scary. Okay. How long have you done that?
A. **I just started gymnastics in the beginning of**

-- well, yeah, the beginning of 2016, and, like, near the end of 2015. And dance, I've been doing, like, for a lot of years. And basketball, I've -- I did that for, like, three years.
Q. I -- I don't know, but it seems to me you might be on the tall side.
A. **Yes, I am.**
Q. Is that true?
A. **Yes.**
Q. Oh, that's an advantage.
What about this: Before this fall, before this accident happened in July of 2012, you would have been in the first grade. Right?
A. **Yes.**
Q. What did you do in the first grade?
A. **I don't think I did much activities at school. But, like, at school, I did regular stuff. But I don't think I did after school activities much. I think I might have been doing dance at the Y.M.C.A., and, like, going to there, and doing camps, and just doing dance there.**
Q. How did you do in school in the first grade?
A. **I did good.**
Q. You did good?
A. **Yeah.**

Q. You've always done good in school?
A. **Yes.**
Q. And you still are doing good?
A. **Yes.**
Q. Very nice. Do you remember when you spoke to Dr. Debbie, if she would write things down when you spoke to her?
A. **Yes. She did write things down.**
Q. Did Dr. Debbie do anything for you, other than talk to you, and listen to you?
A. **No.**
Q. Did Dr. Debbie help you in any way? Did she do anything that helped you?
A. **Yes. She helped me get over, like, worrying, like, of everything, and feel better about myself.**
Q. And is that why you stopped going to see her, because she had made you feel better?
A. **Yeah.**
Q. All right. How far did you have to go to see Dr. Debbie at --
A. **She's pretty -- she was pretty close to us. We just had -- it was only, like, five minutes to get there after school.**
Q. Okay. So, now that you don't see Dr. Debbie, you have more time for your after school activities?

A. **Yes.**
Q. Okay. Do you think now that you have any reason to go back and see Dr. Debbie again?
A. **No, not really. Because I'm -- I don't worry anymore, and I'm way better than I was before.**

MR. BARKER: Thank you.

MR. D'AMATO: I have no follow-up questions.

MR. HUNKINS: I have no questions. Thanks.

MR. BARKER: That's all for today.

VIDEOGRAPHER: This concludes the videotaped deposition. Off the record. The time is 11:12.

(Deposition concludes at 11:12 a.m.)

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, BRANDY SMITH 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.

Lynn Smith, CCR

Certified Court Reporter
License No. XIO1520

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Exhibit 6

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

SANDY 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.	:	CIVIL ACTION DEPOSITION TESTIMONY OF: JEFFREY COLE, SR.

TAKEN BEFORE: LYNN SMITH, a Certified Court Reporter of the State of New Jersey, License No. XI01520, at the North Wildwood City Hall, 901 Atlantic Avenue, North Wildwood, New Jersey, on Thursday, February 25, 2016, commencing at 12:09 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

APPEARANCES:

D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
BY: PAUL R. D'AMATO, ESQUIRE
For the Plaintiffs

BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
BY: A. MICHAEL BARKER, ESQUIRE
For the Defendant, North Wildwood

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
(609) 777-4872
BY: BRIAN HUNKINS, DAG
For the State of New Jersey

Also present: Lou DiJoseph

Videographer: Tom Zanaras

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WITNESS	PAGE
JEFFREY COLE, SR.	
Examination By Mr. D'Amato	4

EXHIBITS

NUMBER	DESCRIPTION	Id.
P-61	Aerial Photograph	7

(Exhibit retained)

VIDEOGRAPHER: Today is February 25th, 2016. This is the videotaped deposition of Fire Chief Jeffrey Cole. Going on the record. The time is 12:09 p.m. The appearance of counsel will be noted in the transcript.

Would the court reporter please swear in the witness.

JEFFREY COLE, SR.,

having been first duly sworn, testified as follows:

EXAMINATION BY MR. D'AMATO:

Q. Chief, thanks for coming here today. The process that we're going through is called a deposition.

Have you ever undergone a deposition?

A. Yes, I've been involved.

Q. All right. When was the last time you had gone through this process?

A. Years, years.

Q. All right. As I told you, and counsel, this is not going to be a very long deposition. When I say that, maybe, hopefully, I can get it done in a half hour.

A. Okay.

Q. If I ask you a question that is not clear, just tell me, say, Paul, I don't understand -- the

question is not clear to me.
A. **Okay.**
Q. All right? Mike and I don't want you answering any questions that you truly don't understand.
Sometimes people are embarrassed to say I don't understand the question for fear that, you know, we're going to think that you're a dumb dumb. I got to tell you, we've heard the most accomplished attorneys ask questions that are just totally incomprehensible, and it's just that they have a lot on their mind.
A. **Right.**
Q. So, I hope you walk out of here thinking, Paul didn't ask me any tricky questions. These were, you know, just the facts.
A. **Okay.**
Q. Okay?
A. **Understood.**
Q. All right. Now, when did you start working for the City of North Wildwood; what year?
A. **I began actually getting a paycheck from the City of North Wildwood, I believe it was 1981, where I started as a part-time position, part-time paid firefighter.**

Q. Okay. And when did you become a full-time firefighter?
A. **For the City of North Wildwood, I became full-time in September of 1988.**
Q. And you're also a lifeguard, too?
A. **No. I had spent five years in the '90s in the Wildwood beach patrol as an EMT on the beach.**
Q. Oh, okay. As of today, your position is chief of the fire department?
A. **Yes, sir.**
Q. All right. Are you an EMT, too?
A. **Yes, sir.**
Q. All right. And do you function as an EMT for the City of North Wildwood?
A. **Yes, sir. When -- when needed. In my command position now, it's a lesser role. But as-needed, yes, sir.**
Q. Okay. Chief, when did you become chief of the fire department?
A. **I took over -- the chief was leaving in May of 2010, at which time I took over operations as deputy chief. And then I was appointed chief in September of 2010.**
Q. Okay. And if you had to explain to a bunch of first graders what your duties and

responsibilities are as chief of the North Wildwood Police Department, what would be your answer?
A. **Fire department.**
Q. Fire department, I'm sorry, excuse me.
A. **Basically, that I oversee the -- the operation of the fire department, the -- the areas of responsibility, I assign duties to subordinates. There's policy making. I oversee the budget. I oversee -- we're a combination department, paid and volunteer, so I oversee the entire part of the department. So, it's -- it's operations and administration.**
(Aerial Photograph is received and marked for identification as Exhibit P-61.)
Q. Okay. We're going to focus on a part of the North Wildwood beaches. And for all of the witnesses so far, the Chief Cavalier, the chief of the police department, I took an aerial photograph that we obtained from the Cape May County Engineer's Office.
A. **Okay.**
Q. For you, I've marked it as Exhibit 61. And I've kind of just very loosely circulated the area that I'm talking about.
A. **Okay.**
Q. Now, terminology is important. Doing the

research and investigation for this case, we have seen the area that's in red here -- okay?
A. **Okay.**
Q. -- referred to as Moore's Beach, Moore's Inlet Beach, and The Inlet Beach, and candidly, the police chief just added a new term that he uses, which is the Second Avenue Beach.
Now, with respect -- and everybody's a little bit different, but somewhat consistent.
What I just circled. All right?
A. **Um-hum.**
Q. If you could take the green marker, and where would you circle is Moore's Beach?
A. **Okay. Well, Moore's was -- was traditionally referred to as Moore's Beach, because there was an establishment there named Moore's Inlet. And that was -- that's kind of right off between Spruce Avenue and down towards the Central Avenue curve, which stops in the area of the lighthouse, so.**
Q. Okay. Could you then use that green marker.
A. **Yeah, I'll do my best. Because I can't see what streets are which. But I assume -- I'm going to say -- okay. I think I'm good here.**
I'm going to say that this is the curve here. So, I would say in --

Q. Okay.
A. **In that area.**
Q. Fine.
A. **Is what I determine to be Moore's Beach.**
Q. All right. Now, you can put the cap back on. All right?
What do you refer to the rest of the beach area that's in the red circle that I put on that Exhibit 61?
A. **There's the -- what I refer to it personally?**
Q. Yes.
A. **Lighthouse -- the lighthouse area beach, which is directly behind the lighthouse. And then beyond that is -- we normally call it like the First Avenue Beach, Surf Avenue beach. It's --**
Q. Okay. Here's what I want you to do.
A. **Okay.**
Q. Take the red marker, and, if you can mark for us what you call the Lighthouse Beach.
MR. BARKER: Excuse me. You already have a red marker on there.
MR. D'AMATO: Oh, I'm sorry. Excuse me.
MR. BARKER: Could you pick a different color?

A. **Blue?**
Q. Use the blue, yeah, thank you.
A. **No problem.**
Q. Thank you.
A. **Okay. Your question was, again, where I considered the Lighthouse Beach?**
Q. Lighthouse Beach, yeah.
A. **It's -- it's adjacent to the Moore's Beach. It's -- it's -- it's a smaller area.**
Q. Okay. You circled that in blue.
A. **Yes, sir.**
Q. All right. Now, then you, with respect to the remaining part of the beach on Exhibit 61, you used two street references. Correct?
A. **Yeah.**
Q. Okay. So, now, the next beach would be what?
A. **It's -- it's either the First Avenue Beach, or the Surf Avenue Beach. First, Second, or Surf. I mean, really, that's the designation. I --**
Q. All right. Just, if you could, circle that in black.
A. **Okay. I'd say the rest of this is pretty much --**
Q. Okay. Let me see that. All right.
All right. Now, with respect to

Exhibit 61, I -- I'm the one responsible for the red marking on here.
A. **Okay.**
Q. You did the green, the blue, and the black?
A. **Correct, sir.**
Q. Now, south of the black circle that you put on Exhibit 61, what do you call that beach area?
A. **That is the -- that's -- that's the Second Avenue Beach, The Inlet Beach.**
Q. Okay.
A. **It's kind of what we refer to it as.**
Q. Okay.
A. **It's sectorized, but each person kind of has their own --**
Q. Yeah. We've learned that. Okay?
A. **Yeah, yeah, yeah.**
Q. That's all right.
Now, let's take you to a specific time period.
A. **Okay.**
Q. 1981 up until Brad Smith's drowning in July of 2012.
A. **Okay.**
Q. '81 to 2012.
A. **Okay.**

Q. All right. Now, with respect to your employment in North Wildwood Fire Department, can you slowly give me a list of any and all activities that the North Wildwood Fire Department would have with respect to the beach area that has been circled in red by myself on Exhibit 61.
A. **We did not get involved in ocean/beach response for a long time in my initial career. Probably didn't happen until maybe 2010 or so. So, there was not -- not -- I can't recall, you know, a whole lot back through the years.**
Q. Maybe -- okay. You've narrowed it for me. And that's good.
So, now that you've narrowed it, let's just real quickly go over 1981 to 2010.
A. **Okay.**
Q. All right? If there was a drowning during that time period, what involvement, if any, would the North Wildwood Fire Department have in rendering services?
A. **Up -- up until that point, our -- we began EMS in 1995. So, our ambulance would have responded for patient care. Other than that, the actual fire department operation would have been, for instance, if it was at nighttime, to provide lighting. I do**

recall -- I don't remember what year it was, an instance in which I was working nighttime, a vehicle drove off the beach on Second Street. It was during September, during firemen's convention. And we provided a vehicle with lighting to assist in the operation.

Other than, you know, dune fires and things like that, that was pretty much it.

Q. Okay. During this time period, 1981 to 2010, was -- were EMS services part of the North Wildwood Fire Department?

A. From 1995. Prior to that, there was a separate volunteer rescue squad.

Q. Okay. And were the records that were maintained by the EMS in this -- you said private rescue squad?

A. Yes, sir.

Q. Was it a volunteer rescue squad?

A. Yes, sir.

Q. All right. If we wanted to look at those records relative to services rendered by EMS before 1995, do they exist?

A. I don't believe so. We have no records for them.

Q. All right. All right. I just want to stick

up to 2010.

A. Okay.

Q. We read something about a boat or boats that the fire -- that the fire department has that patrols the inlet area. Is that correct?

A. The volunteer fire department has two boats -- three boats, actually, I'm sorry. There's two separate companies, two separate stations of volunteer fire companies in the City of North Wildwood. And they both are -- though, they're under my direction, they're the responders with the boat. There is a boat assigned to Anglesea Fire Company, in which, periodically, there is -- they're out on the water.

Q. Okay. And where is the other boat? You said there's two boats.

A. The -- I said, actually, three. The boats are -- one of them's normally kept at the -- the -- they're out of water, obviously, in the wintertime. Anglesea's boat, the one I just mentioned, is kept in the fire station, it's trailered. It has a configuration, where it has wheels on it, so it can go over land; and then the wheels are retracted, so it can go in the water. The other two boats belonging to the 15th Street Fire Company are kept at

the North Wildwood Marina on Fifth and -- and New York Avenue, which is the bay.

Q. Now, let's narrow this. And I'm talking about before 2010. Okay?

A. Um-hum.

Q. These boats that -- they're owned by the City of North Wildwood, or the volunteer squad?

A. They were owned and -- or they're purchased by the volunteer fire companies. And I'd say that probably around -- it was before I was chief, but not that much more that they were purchased, I'm going to say the first one, maybe 2008, 2009, something like that.

Q. And before 2010, what involvement would you have relative to assigning duties to the operators of these boats that belong to the volunteer fire department?

A. None.

Q. Okay. How about now?

A. Let's -- the volunteers actually operate the boats on themselves. When there's a water emergency, there's -- there's a whole process that's involved. The boats are staffed by members of each of the volunteer fire companies. And they go to a position. Anglesea would go to the station to begin trailering

their boat, the 15th Street Station would go to the marinas to get the boats ready. And upon direction, start heading to where the incident is.

Q. Okay. You're familiar with where Champagne Island is?

A. Yes, sir.

Q. Okay. It comes and goes, doesn't it?

A. It does.

Q. Right. I have read a report that Mr. Barker gave me where a North Wildwood firefighter was in a Jet Ski or some boat, I think it was a boat, along with a member of the North Wildwood Beach Patrol, and they were doing patrols in the inlet area between the beach area that we see in 61 and Champagne Island.

Does that sound familiar to you?

A. No, sir.

Q. No. Do you know of any situations before Brad Smith's drowning where there would be a joint participation between the North Wildwood Fire Department and now the volunteer fire departments with the North Wildwood Beach Patrol in providing services in the inlet area near the beaches in Exhibit 61?

A. Not to my knowledge.

Q. Okay.

A. **No, sir.**
Q. All right. What are the names of these volunteer --
A. **Organizations?**
Q. Yes.
A. **Officially, it's the North Wildwood Volunteer Fire Company No. 1.**
Q. Say that -- North Wildwood --
A. **North Wildwood Volunteer Fire Company No. 1, which is referred to as the 15th Street Station, or officially, Station 2-1, because we're District 2.**
And the other one is Anglesea Volunteer Fire Company, which is Station 2-2.
Q. Okay. Now, if we were to go to the 15th Street building.
A. **Um-hum.**
Q. Where the North Wildwood Volunteer No. 1 is located, who would be there now, if anybody?
A. **Most likely, nobody.**
Q. Okay. How about the Anglesea?
A. **Most likely, nobody.**
Q. All right. Now, how about starting, let's say, in May to the end of September, okay, if we do the same thing, if we went to those two firehouses, would there be anybody there?

A. **No. There's -- they're volunteer. They're not staffed.**
Q. Okay. So, the only -- just equipment is kept at these two places.
A. **Correct.**
Q. Okay. Now, as the fire chief, are -- do you supervise the activities of these two volunteer fire organizations?
A. **I do.**
Q. You do?
A. **Operationally, not when it comes to social membership, or, you know, company business, so to speak.**
Q. Okay. You became the deputy chief in -- on May 20 --
A. **May 2010.**
Q. May 2010?
A. **Yes, sir.**
Q. So, from that point, up until Brad Smith's drowning, you were supervising the operational activities of these two volunteer --
A. **Yes, sir.**
Q. -- organizations?
A. **Yes, sir.**
Q. Okay. All right. Now, what exactly would

these volunteers do in the summer months with respect to the boats that we were talking about 10, 15 minutes ago?
A. **Elaborate a little bit more.**
Q. Yeah. Well, there's three boats. Okay? What do these three boats do in the summertime?
A. **Again --**
Q. No, you know what?
A. **Okay.**
Q. That was a bad question.
A. **Okay.**
Q. Because you've already kind of answered it.
Would these boats, in the summertime, the three boats, would they patrol, just routine patrols?
A. **No, sir.**
Q. No?
A. **No, sir.**
Q. Okay. So, they would only be involved in some sort of an emergency?
A. **As called.**
Q. Okay. All right.
Now, in the very beginning of your deposition, we were talking about activities that the North Wildwood Fire Department would assist the

members of the North Wildwood Beach Patrol. Okay? And I just -- before we finish your deposition, I want to make sure that I truly understand this.
A. **Okay.**
Q. The -- in your experience, from the time you started, up until July of 2012, again, explain to me everything potential -- not potentially, everything that the fire department did as it relates to the activities of the North Wildwood Beach Department, or North Wildwood beaches.
A. **Okay. Again, up until -- it was before I took over as deputy chief. Maybe a year or so prior. The outgoing chief began a program with one of our members, in conjunction with the New Jersey State Police, what was called an Open Water -- the New Jersey State Police Open Water Rescue Course. And recognizing that, you know, our departments' responsibilities were growing, along with most other fire departments, you know, we began training people in this form of water rescue. And it kind of been up and down the coast. It was -- it's Wildwood, Crest is getting into it, but some of the northern beaches. And it's a program of a continuity of response, is the best way to put it. Because the fire department does have certain resources, and we have people on**

duty. So, the idea being, in an off-hours incident, any way we can help the beach patrol, our members are trained, but they're not trained to the standard of a lifeguard. There's a -- it's a different operation, in that they use different safety equipment, so to speak, because they're not going to be in the massive numbers, say, as maybe the lifeguards are. So, it's more of a -- more of a first responder program for, you know, when the beaches are closed, or so to speak, since the guards aren't on duty.

So, we started that, I'm going to say -- started the training around '08, '09. And now, the training is become mandatory.

Q. And this is training for all North Wildwood firefighters?

A. Yes, sir. For -- for career, and part-time employees.

Q. Right.

A. Volunteers can take it at their discretion.

Q. And you call this open water training?

A. It's called, yeah, I believe it's called specifically the New Jersey Open Water Rescue Training Course. And there's various levels to it.

Q. Okay. We are just sliding into the final area that I wanted to talk to you about. Because we

have all these records from the North Wildwood Beach Patrol, and you see references to the North Wildwood Fire Department.

A. Right.

Q. All right. So, let's focus now. Before July of 2012, give me some specific instances of where the North Wildwood Fire Department and its personnel would be providing services, as it relates to the North Wildwood beaches.

A. It would be an -- outside of EMS.

Q. Yes.

A. Okay. It would be a case where the lifeguards are -- have completed their tour of duty, and a water emergency is reported. And again, the fire department would be dispatched, along with the off-duty lifeguards. They have a way of notifying their folks, as well.

Q. Right.

A. And our department would respond with -- with the -- for EMS, and with EMS, again, the boats would be notified, and our personnel would go down there. At that time, we had some primitive equipment, but they would go down there with -- with whatever equipment they had. Command post would be set up. And normally, the lifeguards are in the water. If

they need our assistance, they would tap into our assistance.

Q. Yeah. But what assistance would the fire department offer the North Wildwood Beach Patrol in the instance that you just described?

A. Our guys -- our personnel are trained -- there's an awareness level, which they can go in and, to a certain extent and assist in the search. We got paddle boards. Everybody goes in in a floatation device. But it -- it's as a lifeguard backup, basically.

Q. Okay.

A. First response, lifeguard backup.

Q. Okay. If we wanted to see records of where the North Wildwood Fire Department provided lifeguard backup to the North Wildwood Beach Patrol, how would you -- where would you go to get those records?

A. They're generated in our normal standard reporting system.

Q. And what -- is there a particular name for those type of reports or records?

A. You know what, it's really how it's entered. It could be entered as a water rescue, agency assist, you know, beach patrol assist. But it's usually, where our guys -- if our guys are directly involved,

it's water rescue.

Q. Was the -- was the North Wildwood Fire Department in any respect involved in searching for Brad Smith?

A. I -- I remember setting up the command post, our boats were launched. And in addition, on a water rescue, the Wildwood City Fire Department is also notified at the same time. They are covered under the same standard of training.

I don't believe, at that point, we had -- I don't think we had enough people there on scene. We were not in the water. I believe it was the lifeguards that were in the water.

Q. Okay. And the services that the North Wildwood Fire Department provided to the North Wildwood Beach Patrol involved the beach area that was circled in red on Exhibit 61?

A. Yeah. It was -- yes, it was somewhere in there. We -- we -- we set up the command post there, which was a unified command, with the police and the beach patrol. Our beach -- the vehicle we used at that time that carried our water rescue equipment was dispatched to that area. And at one point, I do believe they were dispatched to the area of the lighthouse, or Moore's Beach, depending upon the

terminology, where I think one of the victims was brought to. That's where our ambulance was.

But the command was all sectorized. I had somebody in charge of that area, and.

Q. Right. Before July 2012, with Brad Smith's drowning, before that time, how far back would the North Wildwood Fire Department, time-wise, go in providing back up to the North Wildwood Beach Patrol?

A. Again, very -- not far back in. I'm going to say -- so, I took over in 2010. Maybe '8 or '9 is when the initial training started. So, we really didn't get involved with any type of actual water rescue type backup, other than sending an ambulance. That was --

Q. Until what time?

A. I can't really quantify the time on that. I'd have to say 2010, some point.

Q. Okay. Now, we were just talking to Chief Gallagher about SOPs for the police department, standard operating procedures. And he explained there's a time when they had SOPs, and general orders, and then they merged everything into general orders.

Let's talk about the North Wildwood Fire Department.

A. Okay.

Q. Does it have SOPs?

A. We have SOPs. And the entire inventory of SOPs are being rewritten as we speak.

Q. Okay. Does the fire department also have general orders or orders?

A. Yes.

Q. Okay. Now, I'm going to write to Mr. Barker for a copy of all North Wildwood Fire Department SOPs and orders that relate to the North Wildwood beaches. How would you, or you would direct somebody, what assignment would you give them? What would you say?

A. To -- if I received that order?

Q. Yeah. That request, yeah.

A. Just pull the -- pull the -- pull the policy.

Q. Okay.

A. It's that simple.

Q. The policy is all the SOPs. No?

A. The policy for water rescue. If you asked me for the policy for water rescue, I would give you the policy for water rescue, for response to water rescue emergencies.

Q. Got you.

A. Let me clarify that.

Q. Response to water --

A. Water rescue emergencies.

Q. Got you.

Okay. Oh, yeah, yeah, yeah.

What did you read or review to prepare for this deposition?

A. Really --

Q. Nothing?

A. No.

Q. I took the deposition of Chief Cavalier. When that deposition is finished, they prepare a transcript.

Did you read the transcript of his deposition?

A. No.

Q. All right. We were all there when we took the chief's deposition, and he was talking about a condition that exists at times in the water inlet, when the back bays are going into the ocean, the ebb tide, and that a vortex or whirlpool is created that you can actually visually see.

Are you familiar with that?

A. No, not really.

Q. Okay. If -- I'm the grandfather of nine grandchildren, and a grandson on the way.

A. Congratulations.

Q. Yeah. It's good stuff. Especially when you have seven grandsons, and you have no sons. So, it's good stuff.

A. I have none yet, and I can't wait, so.

Q. And it's all true what they say. It's all true.

A. Okay.

Q. If I said to you that I was -- before Brad Smith's drowning -- this is not a tricky question, this is a really important question.

A. Okay.

Q. If I said to you, I'm going to bring my grandchildren to come swimming off of Moore's Beach and The Inlet Beach here, it's unprotected, and -- what would you tell me? It would be safe for my grandchildren?

A. It's unprotected.

Q. Okay. Are you familiar -- unprotected, meaning no lifeguards?

A. Meaning, correct, no lifeguards.

Q. All right. Are you familiar with the depth of the inlet along the beach that we see in Exhibit 81?

A. No, sir, not really.

Q. Okay. Do you own a boat?

A. I've had two Waverunners and one boat, to which I've had no successes with.

Q. Okay.

A. My boat delaminated in the water last year.

Q. Have you ever had to negotiate on either of those vehicles this inlet?

A. No. We always -- I always go out towards the back, towards Stone Harbor. I'm a bay person.

MR. D'AMATO: Okay. All right. We're going to go off the record. I think I'm finished. It's 10 of 1.

VIDEOGRAPHER: Going off the record, 12:41.

(Discussion off the record.)

VIDEOGRAPHER: We're back on the record, 12:43.

BY MR. D'AMATO:

Q. As of July 2012, the three boats that we were referring to that were purchased by the volunteer organizations, okay, as of July 2012, who owned those boats?

A. The individual volunteer fire companies.

Q. Okay. And who paid for the maintenance on those boats?

A. The individual volunteer fire companies.

Q. And who paid for the insurance for those boats?

A. I believe the City of North Wildwood.

Q. Okay. And if there came a situation where the North Wildwood Fire Department, before and back in July 2012, was going to assist the North Wildwood Beach Patrol in a water rescue, would you, as the fire chief, be the ultimate supervisor over any involvement in that water rescue with the boats by the members of the volunteer organizations?

A. Yes, I would. But normally, the way the command system works is, I would -- it's always the first arriving officer that takes command. And, you know, in my absence, it would have to be somebody else. But I would establish incident command over the entire operation, and I always assign one of the subordinate officers, such as a volunteer battalion chief, to coordinate the boat operation with people that are more familiar with navigational terms and things of that nature.

Q. Okay. You told us very early in your deposition that you only supervise the -- I think you said, I'm involved in operational control, is that what you said, regarding the volunteer organization?

A. Correct, correct.

Q. Okay. If we want to find anything that write -- in writing that says -- that addresses that whole operational control, what do Mike and I ask for?

A. Policies. Any policies that the volunteer fire companies may have over their boats. What I do is -- my policies are just that they direct that the boats will respond, and it's up to the individual volunteer fire companies as to, you know, how they respond. In other words, they have certain personnel that -- they have to have boating licenses, you know, that are -- that are capable of operating the boats and such.

Q. Okay. I'll ask for that. But what I was talking about is, like if somebody in the North Wildwood volunteer, say, the Anglesea organization, says to you, as chief, You can't tell me to do that, and you would go someplace and say, Here, in writing, it says I can. What do you call that?

A. I call it insubordination.

Q. Yeah.

A. I call it conflict. What are you getting at, like?

Q. No, no, no. Is there anything in writing that says that the chief of the North Wildwood Fire Department has the following --

A. There is -- there is, in writing, I believe, in the city charter, or city code, that the municipal fire chief is in charge of operations.

Q. Got you. So, that's probably an ordinance. Right? Is that what you're saying?

A. I believe so, yes, sir.

MR. D'AMATO: Okay. All right. Thanks, Chief.

THE WITNESS: Okay.

MR. D'AMATO: Enjoy your trip to Italy.

VIDEOGRAPHER: This concludes the videotape deposition. Off the record, 12:47.

(Deposition concludes at 12:47 p.m.)

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, JEFFREY COLE, SR. 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.

Lynn Smith, CCR.

Certified Court Reporter
License No. XIO1520

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Exhibit 7

NORTH WILDWOOD
901 Atlantic Ave.
NORTH WILDWOOD, NJ 08260
Phone: (609) 522-2411 Fax: (609) 522-2531

Case Number: CM-12-000090 Case # : 12-0019472

Re

Supplementary Report

Incident:
Victim: Geo. B. [illegible] Rd., Horsham PA

On July 30th, 20[illegible] at approximately 0113 hours, I received a phone call from Sgt. Caranannte from the boardwalk squad advising that two of his officers that where assigned to the beach came across a body floating in the water at 21st Ave. He advised me that he had his 2 officers pull the body from the water.

I then contacted Sgt. McGra[illegible] To[illegible] advised them of what the officers on the beach had found. We then responded to 21st and the beach. Upon arrival, Officer Kramer and Officer Lobue where standing next to a white male wearing blue/green floral printed shorts. I was then able to determine from the photographs, personal [illegible] clothing description, that this was the missing person, George B. Smith. Smith was found in the water in Hereford Inlet on July 27th, 2012.

I then informed dispatch to contact the Office[illegible] the "on duty" CMC Prosecutors Office Detective notified. I then received a phone call from Det. McLaughlin and I informed him of the incident. Det. McLaughlin advised me that he would contact the Forensic Nurse that was on call. I advised Det. McLaughlin that the Medical Examiners Office had been notified and that they were going to respond once the death pronouncement was made.

I then received a phone call from the on call Forensic Nurse, Anne Wiggins. She was advised of the incident and she stated that she would be en route to our location. I advised her that when she arrived at 15th and the beach to call and I would have and officer pick her up and bring her to the scene.

After speaking with the Forensic Nurse, I received another phone call from Libby Owens of the Medical Examiners Office. I advised her that the Forensic Nurse was en route from Mays Landing. Ms. Owens stated that she was also going to be en route at this time.

At approximately 0210 hours, Anne Wiggins arrived on scene and began her investigation of George Smith. Ms. Wiggins then advised that the pronouncement date was 07/30/2012 at 0225 hours. After completing her investigation, she cleared the scene.

Libby Owens then arrived on scene begin her investigation for the Medical Examiners Office. After completing he on scene investigation, a John Moratelli and a Heather Maderia arrive on scene to transport Smith's body.

Smith's body was then transported from the beach, by the NWPD police vehicle and then transferred over to the Medical Examiners transport vehicle.

NORTH WILDWOOD
901 Atlantic Ave.
NORTH WILDWOOD, NJ 08260
Phone: (609) 522-2411 Fax: (609) 522-2531

Case/Incident#: CM-12-000090 **Case #:** 12-0019472

Investigating Officer: MP RICHARD-228 **Case Report Date:** 08/17/2012

DSG [signature] 228 8/17/12

Signature of Officer **Date**

Exhibit 8

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

SANDY SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND GEORGE BRADLEY SMITH,	:	CIVIL ACTION
Plaintiff,	:	DEPOSITION TESTIMONY OF: PATRICK ROSENELLO
vs.	:	
CITY OF NORTH WILDWOOD, STATE OF NEW JERSEY, JOHN DOE, MARY DOE, ABC PARTNERSHIPS and XYZ CORPORATIONS,	:	
Defendants.	:	

TAKEN BEFORE: LYNN SMITH, a Certified Court Reporter of the State of New Jersey, License No. XI01520, at the D'Amato Law Firm, 2900 Fire Road, Suite 200, Egg Harbor Township, New Jersey 08234, on Tuesday, March 1, 2016, commencing at 2:28 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

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APPEARANCES:

D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
BY: PAUL R. D'AMATO, ESQUIRE
For the Plaintiffs

BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
BY: A. MICHAEL BARKER, ESQUIRE
For the Defendant, North Wildwood

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
(609) 777-4872
BY: BRIAN HUNKINS, DAG
For the State of New Jersey

Videographer: Tom Zanaras

VIDEOGRAPHER: Today's March the 1st, 2016. This is the videotaped deposition of Patrick Rosenello. Going on the record. The time is 2:28 p.m. The appearance of counsel will be noted in the transcript.

Would the court reporter please swear in the witness.

PATRICK ROSENELLO,
having been first duly sworn, testified as follows:

EXAMINATION BY MR. D'AMATO:

Q. Mayor, have you gone through this process before of a deposition?

A. One -- one other time, yes.

Q. Did it relate to the City of North Wildwood?

A. No.

Q. Oh, okay. You have sitting next to you one of the most competent attorneys I know. He has a right, after I ask you a question, to say that he objects to the form of the question. I doubt he's ever going to say to you, do not answer the question.

A. Okay.

Q. It could happen, it could happen. The reason I'm telling you that is, you have to pause for a second after I finish the question to give Mike the opportunity, or Brian, who represents the State of

New Jersey, to say they object to the form of the question.

A. Okay.

Q. I'm not going to ask them what their objection is. And unless they instruct you otherwise, you just go ahead and answer the question.

A. Okay.

Q. I know you're the mayor, and I know about your background, because I went to the website. And as I told you, I've spoken to others about you. Just because you're the mayor doesn't mean that you're necessarily going to know the answer to each and every question.

For the benefit of all of us, if you don't know the answer, just say you don't know.

A. Okay.

Q. Okay? And what I'll probably do is ask you who, in your judgement, would know the answer to a question.

A. Right.

Q. Okay? So, let's get started.

As I understand it, you grew up in North Wildwood?

A. That's correct.

Q. Right. And you moved there in 1977?

A. Correct.

Q. Right. And how old were you?

A. Four.

Q. Okay. Okay. And have you resided in North Wildwood from the time, say, 1977, up until the present, other than going to college or living in Washington or something?

A. Right. So, I went to school in Washington, and I lived there for two years after graduation.

Q. Right. Okay.

A. Other than that, I've lived in North Wildwood.

Q. Fine. The -- you went to what I call Bob Sandman School, Wildwood Catholic. Right?

A. Correct.

Q. I say that, because he acts as if he's the only guy that ever went there, you know? I think I told you that.

And then you graduated from Catholic University in 1995 with a degree in what?

A. American government and philosophy.

Q. Okay. And then you decided to stay in Washington to do good, and you were a legislative aide to Congresswoman Sue Kelly?

A. Correct.

Q. From what district was she from?

A. The 19th district of New York.

Q. Okay. All right. And for how long did you serve as a communications director for Senator Nick Asselta?

A. Approximately two years. And then I went part-time for his campaign.

Q. Okay. You were elected to North Wildwood City Council in 2004?

A. That's -- I believe I was elected in '3 and sworn in in '4, if I'm not mistaken.

Q. Got it. And you -- you were there for 10 years on council?

A. Correct.

Q. All right. Let's stop right there.

The -- I understand that the form of government for North Wildwood is what I call a weak mayor, nothing personal, strong council. Correct?

A. That's incorrect.

Q. Incorrect. Go ahead.

A. City of North Wildwood has the city form of government.

Q. What does that mean in terms of the powers of the mayor?

A. I don't know in detail. It's a pre-Faulkner

Act form of government.

Q. Okay.

A. I don't know -- as far as the exact powers, I don't know that I could enumerate them all right now.

Q. Do you vote on resolutions?

A. No.

Q. And I gather you don't vote on the passing of an ordinance?

A. No.

Q. Okay.

A. The mayor only votes in the event of a tie.

Q. All right. When you were on council, for 10 years, were there certain departments that you were assigned to that you were your responsibility?

A. They had liaisons, but they're not your direct responsibility.

Q. Okay. Can you explain that?

A. Sure. So, in our form of government, the council is, I think the easiest description for me is, it's the legislative body. So, the mayor is the executor or administrative body, the council is the legislative body. And so, the council has no direct authority over any city employees. And so, what they had previously were liaisons, where, because there's seven members of council, they would make each member

a liaison to different departments in the city. And that was simply, really, a means of communication, so that a department had had one person that they could go to, and speak with, if they wanted to, and that person could carry information back to council.

Q. Okay. So, I understand -- I want to be really clear on this. A particular councilperson did not have the responsibility of running the particular department?

A. They did not.

Q. Did not. Okay.

During the time that you were city administrator, was there a city -- excuse me. Let me rephrase that.

I'm trying to get you out of here --

A. That's fine.

Q. -- quickly, and I'm going too quick, so I got to slow down.

During the time that you were on council, was there a city administrator?

A. There was, yes.

Q. And who was that?

A. When I was first elected, it was Ray Townsend. And then, after he left, it was a gentleman by the name of Lou Belasco. And then

during my last year on council, prior to becoming mayor, it was Kevin Yecco.

Q. Okay. Okay. And you became mayor, it says here, on January 7, 2014, you were sworn in?

A. That's correct.

Q. All right. Now, since becoming mayor, are there particular departments that you're responsible for?

A. Technically, the only department that reports directly to the mayor is the police department.

Q. Okay.

A. The other departments report to the city administrator.

Q. Got it. Okay.

Now, I don't know if you were there for that part of the deposition of Chief Cavalier of the beach patrol, but I started off by telling him that, when you do your homework to try to understand how this event took place involving Mr. Smith, you see various names, such as Moore's Beach, Moore's Inlet Beach, the inlet. All right. I am going to hand to you an exhibit marked as 63.

(Aerial Photograph, received and marked for identification as Exhibit P-63.)

Q. It's an aerial photograph that was taken by

the Engineer's Office of Cape May County on March 14, 2012. And do you -- before coming here today, have you used the phrase Moore's Beach?

A. Yes.

Q. All right. If you were to get that red marker, could you, on that aerial, delineate what you refer to as Moore's Beach.

A. (Witness complies.)

Q. All right. Now, I think practically every city employee whose deposition we've taken, we've had them mark this aerial photograph. Now, could you mark for us what is the inlet beach, if you use that phrase? And why don't you use the orange marker.

A. I'm going to do a starting point and an ending point.

Q. May I see that?

A. Sure.

Q. Okay. So, in other words, Moore's Beach is part of the inlet beach, as far as you're concerned?

A. Yes.

Q. Okay. Here.

MR. HUNKINS: Thank you.

MR. D'AMATO: He went like that.

MR. HUNKINS: Yeah.

MR. D'AMATO: Mike, are these yours?

MR. BARKER: Thank you.

BY MR. D'AMATO:

Q. Is there any other phrase that you, personally, have used to describe any of the beaches, or the beach area that you bracketed off as the inlet beach? In other words, you have Moore's Beach, you have inlet beach. Any other phrases?

A. Some -- some people may refer to it as Secon Street. Which it's kind of a strange geographic designation. Because Second Street runs parallel to the southern end of it. So, some people will refer to that as Second Street.

Q. Okay. So then, here, why don't you get the green marker, and -- yeah, use blue, and delineate what some people refer to as the Second Street beach.

(Dominic Speziali enters the room.)

A. I just have to get my --

And then it wraps out of this picture, as well.

Q. All right.

A. So.

Q. Now, given your personal experience with this inlet beach area, and then your experience as a city official, my question to you is, any of the beach area that you have delineated as the inlet beach, or

the Second Avenue Beach --
A. Second Street Beach.
Q. -- were any beach replenishment projects ever done for those beaches?
A. No.
Q. Okay. And is the reason that there was no beach replenishment is that the understructure of the actual inlet, the water inlet, is such that it is always changing, because of the currents?
A. I think -- no. My understanding of why we've never done beach replenishment there is because when we first went for a beach replenishment -- I shouldn't say first, the most recent one when I was involved was in 2006. And as part of the permitting for the 2006 beach replenishment, which was really the first complete engineered beach in North Wildwood, we were prohibited from doing any replenishment on that area, because of piping plovers, and other endangered species.
Q. Okay. When you talk about the piping plover. Right? I read an article about your predecessor, Mayor Henfey. Right?
A. Yes, correct.
Q. How closely did you work with Mayor Henfey when you were on city council?

A. Fairly closely.
Q. Okay. I could be wrong with this, but someone said that he was like a mentor to you --
A. Yeah.
Q. -- in terms -- is that correct?
A. That is correct.
Q. All right. Did you ever have any conversations with Mayor Henfey about any hazardous conditions that existed on what you have referred to as the inlet beach on Exhibit 63?
A. Only one that I recall was after the Smith drowning. Discussions about -- about the Smith drowning.
Q. Okay. And this was you and the -- Mayor Henfey?
A. I don't know that it was exclusively us. But I do recall being in his presence during conversations after that drowning regarding what had occurred, and if -- if -- what, if anything, the city could do moving forward.
Q. Okay. I believe that you were sitting in for part of Chief Cavalier's deposition when he was talking about the vortex or the whirlpool. Were you sitting in on that?
A. I don't recall that.

Q. Okay. Do you recall -- were you sitting in on the part of his deposition where he was describing how the vortex located in the inlet, that is, the body of water, eats away at the beach?
MR. HUNKINS: Object to the form.
A. I don't recall being there for that part.
Q. Okay. I had asked the chief, and I'm referring to page 41 of his deposition, and I said, "If I said to you what is your understanding of what happened to Mr. Smith, do you have one?"
And he said -- actually, I said to him -- he said, yes, he has an opinion. I'm trying to do this quickly. He said, yes, he has an opinion. And I said, What -- What do you base that opinion on? And he said, Being down there all the time.
And here's what he said. "At certain times of the day, when the tide is in or out, there's a drop off along that section of the beach.
"What do you mean by a drop off?
"It literally drops off.
"And how long has that particular condition existed, as far as you know?
"The inlet's changing all the time. Every year, it changes."
Then I said to him, "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?
"Answer: Yes."
And here's the last thing I asked him.
"And I know you're not a research scientist, but what is your understanding what causes the whirlpool or vortex?
"Answer: I believe it's the bay hitting the ocean at that point."
Then here's one more.
"How large is this whirlpool or vortex that you have seen in the past in the inlet?
"Twenty-five yards.
"And does it appear circular?
"Yes."
Were you there for that part of it?
A. I --
Q. Okay.
A. I don't --
Q. You don't remember. Okay?
A. I don't remember that.
Q. All right. Putting that aside. Before coming here today, had you ever heard of a whirlpool or a vortex existing at certain points in time in the

body of water that is called the inlet?
MR. HUNKINS: Object to the form.
MR. BARKER: Objection.
A. I -- a whirlpool or a vortex, no.
Q. Okay. What have you heard as to what this condition of water is referred to?
A. A current.
MR. HUNKINS: Object to the form.
A. I'm sorry. A current.
Q. Okay. And could you be more descriptive as to what type of current?
A. When the tide is coming in, there's a current coming from the ocean, pulling -- pushing you into the back bay. And when the tide is -- and interestingly, at high tide, for a period, there is -- the current's very little, because it's called a slack tide. And then on the outgoing current, the current's running from the bay out towards the ocean, and again, at dead low tide, there's another period of what's called slack tide where there's very little current.
Q. Okay. Were you involved in any way relative to the rescue of Mr. Smith?
A. No.
Q. Okay. Did you go to the beach when you

became aware that he was missing?
A. Yes.
Q. Was it on the day that he was --
A. Yes.
Q. -- that it was known that he was missing?
A. Yes, yes.
Q. Okay. And what role, if any, did you have, or to say, better yet, why were you there?
A. I knew that they were conducting a -- a search, and I just went down to check -- I'm not sure if the mayor was there or not. I don't recall. But I just went down to check in with the mayor, to see if, you know, what was happening.
Q. Okay. Since the drowning of Mr. Smith, do you have a better understanding of what he and his daughter and Mr. Smith's friend, Scott Sunderland and his daughter, were doing at the time that Mr. Smith went into the water?
A. I've heard various things. Some from -- in the media, and the little bit, I think, during your deposition of Chief Tony Cavalier. So, I've heard various explanations of what they were doing immediately prior to that occurring.
Q. Okay. And what are those explanations?
A. One explanation I had heard was that the sand

had -- they were walking on dry sand, the sand had actually given way underneath them. Another explanation I believe I had heard was that they -- some -- some number of them were walking in the water, ankle deep. I've also heard something along the lines of, they were walking at knee deep. And again, I'm not exactly sure how big or small the group was. I'm not sure of any of those things. But those were the different scenarios that I've heard.
Q. Okay. Did anyone tell you that Brad Smith and his daughter were actually swimming in the inlet at the time that he -- he was not able to return to land?
A. When you say swimming, do -- could you --
Q. That is, you know, in water that is up to your neck, and you're moving your arms, and --
A. No, I did not hear that.
Q. Okay. Would you agree that walking -- well, first of all, do you have an understanding of where this event took place?
A. I believe -- I'm not sure if the dot on the map is representative of that or not.
Q. Well --
MR. HUNKINS: Let me just object. Yeah, the basis of what he's about to say is my

objection.
MR. D'AMATO: Yes.
Q. Just looking at that aerial photograph that you marked up, do you have just a general idea of where it took place?
A. I do. I believe it was somewhere between Moore's Beach and Second Street, where the guarded area down here. So, somewhere in front of the lagoo and the wilderness area.
Q. Got it. Okay. Good.
And on the date of this incident, July 27, 2012, that beach, which you just described as the area where, I'll call it, the Smith event took place, that was an unguarded area?
A. That is correct.
Q. Okay. Was it a violation of any ordinance for a person to be walking in ankle deep water in the area that you have indicated was where -- is where you think the Smith event took place?
MR. BARKER: Objection. You may answer the question, however.
A. I don't know the answer to that question.
Q. Okay. All right. Now, let's talk about the particular activities that take place on that beach.
We supplied Mr. Barker with certain

photographs showing police officers walking on what you would call Moore's Beach, okay, in the summertime. And there's some testimony that you instituted -- was it you or Mayor Henfey that instituted that procedure?

A. The walking beats?

Q. Yeah.

A. That was something that I instituted.

Q. Okay. And that would have been the summer of what season; '14, '13?

A. '14.

Q. Okay. And why did you institute these patrols, if you will?

A. We instituted walking patrols on our entire beach, primarily to address the issue of the open display of alcoholic beverages.

Q. Okay.

A. And --

Q. Okay. Before July 27, 2012, did you, personally, ever observe police officers of the North Wildwood Police Department patrolling the beaches of North Wildwood? Just walking?

A. Not walking.

Q. Okay.

A. No.

Q. Were they on quads?

A. They were usually in some type of a vehicle, yes.

Q. Okay. And was it customarily one officer, or two officers?

A. Customarily -- I would say it would be two.

Q. Okay. And would they patrol on quads to what you have called the inlet beach area on that exhibit?

A. I witnessed police officers on quads in this guarded area. I can't definitively say that I saw them anywhere else prior to that.

Q. Okay. And when you're saying the guarded area, you're referring to the Second Avenue --

A. Correct. Between --

Q. Right. All right. Now, you're aware that North Wildwood issues mercantile licenses to ice cream vendors. Correct?

A. Yes.

Q. All right. And what person or persons within city government are responsible for administering the issuance of those mercantile license for the ice cream vendors?

A. The city clerk.

Q. Okay. Have you had any involvement with these licenses as councilman, as mayor?

A. We changed the policy -- previously, when a license became vacant, if a person moved out of the area, or passed away, they maintained a list in the city clerk's office, and they would automatically offer the license to the next person on the list. We stopped that after I became mayor, with the intent long term of looking at possibly bidding these licenses out.

Q. Has that been done yet?

A. It has not.

Q. Okay. The persons to whom mercantile licenses are issued, as ice cream vendors, they're allowed to sell ice cream on all of the beaches of North Wildwood?

A. That is correct.

Q. Okay. Now, if I want to go fishing on the beaches of North Wildwood, do I have to get a permit?

A. You don't have to get a local permit. But I believe the state may require a salt water fishing permit now. I -- but I --

Q. Okay.

A. I'm pretty sure they do, actually. But North Wildwood does not.

Q. Okay. As a councilman and as a mayor, have you had any interaction with the Public Works

Department?

A. Yes.

Q. Okay. Would you agree that the Public Works Department, before July 27, 2012, cleaned what you have referred to as the Moore's Beach and the Inlet beach?

A. They -- so, our public works rakes the beach every morning with large mechanical rakes. We are prohibited from going -- I'm just going to use north and west, so, even though it's not technically.

The mechanical equipment is not allowed west of the guarded area, again, due to the permitting and restrictions in the permit that we have.

Q. All right.

A. So. And we also, to my knowledge, do not place any -- to put it in context. So on the guarded areas of the beach, we have trash containers, recycling containers, things of that nature. So, the Public Works Department will come down, rake the beach. They also have a machine that goes down and empties the trash cans. Those are mechanicals. We don't have any mechan -- we don't have any trash can on this beach. We're not allowed to rake it. But occasionally, guys will go down and clean up, and

it's primarily sea grass and stuff like that, that accumulates in large -- and starts to -- starts to smell.

Q. Right. Did you see any of the photographs that I provided Mr. Barker with as part of what we lawyers call discovery?

A. I think I saw them during Chief Cavalier's, yes.

Q. Okay. Okay. I'll show you some of these before we finish. There are public works people working down there at Moore's Beach.

What involvement as a councilman did you have, if any, with the North Wildwood Beach Patrol?

A. I was, as we spoke about earlier, I was the counsel liaison to the beach patrol during most of the time I was on city council.

Q. Okay. Now, did you ever have any discussion with Chief Cavalier when you were the liaison person about any hazardous conditions existing along what we have called, or what you have called the inlet beach because of the body of water referred to as the inlet?

A. Not that I recall.

Q. Okay. Did you have any discussion with Chief

Cavalier, before July 27, 2012, about the posting of lifeguards in the area which you have referred to as Moore's Beach and the inlet beach, before Second Avenue?

A. No. Any -- any of that discussion would have been precluded in 2006 by the permit. We were not allowed to place any lifeguards in that area.

Q. Okay. Now, when you say that area, does that include Moore's Beach?

A. I don't know the answer to that question. I always took it as any area what I'm calling west of where Surf Avenue comes in to the inlet. We were not -- that was my understanding was, we were not allowed -- we're not allowed to do any guarding or raking or anything mechanical west of that area.

Q. You had your pen over a blue line there.

A. Um-hum.

Q. So, your pen was over -- you were trying to --

A. I believe -- yeah, so that's -- this street coming in here is Surf Avenue. So, if you -- and there's a beach entrance at Surf Avenue. If you go straight out that beach entrance, immediately to your left, the -- it's either the state or the federal fish and wildlife, fairly shortly, usually it's from

about early March until about late August, will erect either a snow fence or rope fencing immediately to your left. And they'll take that out almost to the high tide line. And so, we don't do anything with mechanical cleaning or guarding when you -- when you enter on Surf Avenue, to the left. So, the last lifeguard stand is straight ahead a little bit to the right. And that's where the guarded and clean -- protected beaches end.

Q. Okay. I've seen the area that has been cordoned off for the birds. Can you take the black marker, and could you define for us where that designated area is for the birds?

A. Sorry.

Q. That's okay. That's all right.

A. This. Roughly.

Q. Okay. Now, is there a diagram, a piece of paper in city hall that we could look at that would support your opinion as to where this designated area is?

A. I believe there is a document called Beach -- Beach Management, perhaps. It was a document that was, as I understand it, agreed to -- signed by North Wildwood, the state, and the federal government, as a condition of our 2006 beach replenishment permit.

And I believe that document spells out this area, what can and can't be done there. Among many other things.

Q. Okay. Who's the person Mr. Barker could ask in city hall to get that document for us, the complete document?

A. Mr. Jett, the city clerk.

MR. BARKER: We did send it to you. If I'm not mistaken, I'm almost sure, within the last month, I think we sent it to you.

MR. D'AMATO: Yeah, I think you did. I think you did. So, I stand corrected. I'm not sure, though. Let's see. I'll be honest with you, I read it, and I didn't see anything about what could or could not be done in that area, but I could have missed it. That's okay.

Q. Were you involved in the installation of any safety measures, such as the installation of warning signs, after the Smith incident?

A. Me, personally?

Q. Yeah.

A. I was not, no.

Q. Okay. Was that handled by Mayor Henfey?

A. Pri -- I would assume it would have been, yes. Or the Public Works Department.

Q. Okay. Let me show you an exhibit that was marked for identification on February 9, 2016, as Exhibit 1. And this was actually marked up by the chief. And this is an aerial photograph which shows the body of water that I'm going to call the inlet. All right?

Now, I've said that -- I've used that phrase several times today. I said the body of water referred to as the inlet.

Is that what you call it, too?

A. Yes.

Q. All right. This is kind of a follow-up question to something I asked you about 15 minutes ago: Looking at that body of water called the inlet, and given the fact that you started living in North Wildwood at age four. Right? Up until July 27, 2012, the drowning of Mr. Smith, what have you, personally, observed about the inlet, itself, the body of water, relative to the -- I'll be a little bit more specific -- relative to how the actual channel moves?

A. Right. It changes on an almost daily basis. There are what I call shoals or sand bars that come and go. This large piece of sand you see up here coming off the bottom of Stone Harbor didn't exist

five years ago, and it might not exist tomorrow. The inlet beach that we're talking of didn't exist until probably the late '80s, maybe, mid to late '80s. There was no sand accumulated there. So, it -- it -- the whole -- the whole area changes on a -- I say on a daily basis. I still live in an area where I can see the inlet. And literally on a daily basis.

Q. Yeah. We all know the sea wall that was built.

A. Um-hum.

Q. I have the date someplace here. What year was that?

A. I think it was around 2006.

Q. Yeah. 2006. Right. Why was that sea wall built?

A. There was a sea wall in some way, shape, or form almost the entire area where the current sea wall is. But it was built in pieces. Some in different stages, over -- over many, many years. I don't know how -- when the first piece was built. So, that sea wall was part of a U.S. Army Corps of Engineer project to basically protect the northeast side of the island from storms.

Q. Okay. Did the building of that sea wall have any effect on changing the channel in the inlet?

MR. HUNKINS: Objection.

A. Not to my --

MR. BARKER: Join.

A. Not to my knowledge.

Q. Okay. You know what, can I have that back?

A. Sure. Both of them, Paul?

Q. Yeah.

A. Okay.

Q. Okay. Now, let me show you what's been marked for identification as Exhibit 3 on February 9, 2016. That's a photograph that was made by a drone.

As you're getting your orientation in that photograph --

MR. BARKER: When did you say it was, Paul?

A. "Indicating."

MR. BARKER: That's when it's marked. But did you say when it was taken? I'm sorry, if you didn't. I'm just -- oh, yes, it's -- no, I don't know. There's a date at the bottom, says July 31, 2000 -- 2014.

MR. D'AMATO: That's when it was taken.

MR. BARKER: Okay.

BY MR. D'AMATO:

Q. You see the beach there?

A. Yes.

Q. All right. Is any of that beach, in your judgement, the protected beach relative to what was established by the -- is it New Jersey Department of Wildlife?

A. The agreement that I've referenced?

Q. Yeah.

A. I believe it was between the city and the state DEP. I -- but I don't want to --

Q. All right. But does -- does that --

A. No. This isn't -- this is not a protected area.

Q. Okay. When we say protected, we're not talking about lifeguards, we're talking about --

A. I'm sorry. Sorry. I thought you meant lifeguards.

Q. No.

A. So, yes, a piece of this, I believe, would be in the restricted environmental area.

Q. Okay. With the black marker, could you delineate that.

MR. BARKER: Okay. Wait one second. If he writes on this now, this is already Exhibit 3 from 2/9/2016.

MR. D'AMATO: Okay. We'll go off the

record, we'll get a clean copy.

VIDEOGRAPHER: Going off the record, 3:05.

(Discussion off the record.)

VIDEOGRAPHER: We're back on the record, 3:07.

BY MR. D'AMATO:

Q. Okay. As was noted on the record, this is Exhibit 3, marked for identification on February 9, 2016. And as Michael has suggested, I'm going to remark it as Exhibit 64 with today's date, and ask you, with the black marker, if you could delineate the area that's supposed to be protected relative to the birds.

(Photograph, received and marked for identification as Exhibit P-64.)

A. I don't want to digress too much.

Q. Okay. Go ahead.

A. But --

Q. No. Go ahead.

A. There is a physical fenced off area, where they don't want pedestrians, or anybody to access. However, my understanding is that the nature of the piping plover is that it goes down to the ocean. And so, I believe the entire area is protected. But what

I depicted on that was my recollection of the fenced area. Is that what you want me to --

Q. Okay.

A. Because I believe that the area mentioned in the agreement, I don't know if there's a map, or if it's just verbally stated.

Q. Okay. It's helpful what you just said. Let me tell you what I'm struggling with.

In all the times I went down there, and I saw that fenced off area, it wasn't, candidly, as large as you have made it on Exhibit 63. The fenced off portion, I'm talking about, for the birds. And that's why I'm -- I'm trying to explore with you --

A. Yeah.

Q. -- the basis of how you arrived at this --

A. Can I -- may I see that again? I want to make sure I got the landmarks proper. My -- my --

Q. Yeah. Would it help if I showed you some photographs that were taken that show the fence? Would that help you?

A. You can, if you'd like. My recollection is that when you come down the stairs from this Moore's Inlet parking lot --

Q. All right.

A. -- there's a fence almost 10 or 15 feet in

front of you, and that fence line kind of goes out towards the ocean, and then turns, which is what I believe I depicted on this photograph here.

MR. BARKER: 63?

THE WITNESS: Yeah.

A. And the only -- the only reason I'm second guessing myself on that, is because I'm looking at where the outfall pipe is now, and I can't recollect what side of the -- so I may have went a little bit too far over here.

MR. BARKER: On 63.

THE WITNESS: On 63. I'm sorry.

MR. D'AMATO: Hold on.

Dominic --

A. And I believe -- I believe that 64 is actually showing, if I'm not mistaken, the -- in the bottom left-hand corner there, I believe they may be the posts that I was trying to -- so, I may have gone a little bit too far on this one here --

MR. BARKER: 63.

A. -- 63. Maybe I should have come in a little closer.

MR. D'AMATO: There are two or three more of these, numbered one, two, three. Okay?

Q. I'm going to get you the photographs that we

have that show the wooden fence. So, let's -- I'll move on from this point.

A. Sure.

Q. Okay. Before Mr. Smith's drowning, were you aware that people would get married on what is referred to as Moore's Beach?

A. I don't know that I have any specific recollection of that, or knowledge of -- or witness, or seeing that. I have -- and so, no, I do not recall that.

Q. Okay. We obtained a series of aerial photographs of Hereford's Inlet that goes from 1920 up to February 22, 2013. Did you ever see these?

A. I believe I have. Well, I don't -- I don't know that I've seen your pictures. I have seen aerial photographs going back quite awhile, though, on Hereford Inlet.

Q. And those photographs would be located in city hall?

A. I believe that we -- I saw them courtesy of Dr. Stewart Farrell, from the Stockton coastal research --

Q. Okay.

A. -- I believe.

Q. All right. And when did Dr. Farrell show you

these photographs?
MR. D'AMATO: Just leave them right there. You can leave them right there. Yeah.
Q. When -- when did he show you these photographs?
A. I believe that he provided me with those photographs since I have been mayor, is my best recollection.
Q. Okay. And did he give those photographs to you?
A. I believe it was an e-mail.
Q. Okay. Could you e-mail those photographs to Mr. Barker, so he can e-mail them to us?
A. I'll probably ask Dr. Farrell to send them.
Q. Okay.
MR. HUNKINS: Before you do that, please consult with your attorney. Reason is, he's account acting as an expert in the case, so.
THE WITNESS: Okay.
MR. HUNKINS: And just so I'm clear, these are photos he'll be looking for are what?
MR. D'AMATO: Photos that Dr. Farrell e-mailed him of the Hereford Inlet.
MR. HUNKINS: And specifically what of the inlet do they show?

MR. D'AMATO: They're just aerial photographs like the ones we obtained from the county.
MR. HUNKINS: Okay.
BY MR. D'AMATO:
Q. Take a look at the ones that we obtained from the county. And you'll see at the top, it gives the date.
A. I think this is the same -- these are the same ones I've seen in the past.
Q. Okay.
A. Yeah.
Q. All right.
A. I think this is the same set of pictures that Dr. Farrell provided me.
Q. Okay. As you're going through those photographs that have the different years at the top of them --
A. Um-hum.
Q. -- is the changing of the actual Hereford Inlet consistent with what you observed over the years, as you see in those aerial photographs?
A. My perspective, obviously, starts about 10 pages in.
Q. Okay.

A. So, there's a big -- so, again, there's a big gap here from 1970 to 1995, which is what I would have observed most of Hereford Inlet, because we moved here in 1977. So, from a personal standpoint, I would be familiar with, basically, the pictures from 1995 on.
Q. Yeah. Did you ever operate a boat through the Hereford Inlet?
A. Yes.
Q. Do you own a boat?
A. Yes.
Q. All right. And before July of 2012, what type of boat or boats have you owned?
A. I -- same one. I have a 20-foot outboard.
Q. Okay. Is the Hereford Inlet -- strike that.
You know that strike that means I'm going to start over again.
A. Okay.
Q. Has the Hereford Inlet ever been marked by the United States Coast Guard, the New Jersey State Marine Police, to delineate those areas where boats should, in fact, operate?
A. It was, many years ago, when I was younger, it -- there were buoys that would take you in -- you would follow those buoys to get in and out of the

inlet, yes.
Q. And when you say -- because you're still young, when did that practice stop?
A. Oh, I would have to say it was at least 25 years ago.
Q. Why did it stop?
A. I don't know. I don't know the answer to that question.
Q. Okay. Okay. I'll take those back from you.
A. Sure.
Q. And for the record, I just -- I showed the mayor Exhibit 4, marked at a deposition on February 9, 2016. And it was also marked as Exhibit 5 at the deposition of the county engineer on July 23, 2015.
Okay. Let me show you Exhibit 7, marked for identification on February 9, 2016. This photograph came from a -- I'll call it blog, or blog/website of -- that you can go on line, and it's Moore's Beach. And you'll see chairs that are set up there for a wedding.
Have you ever seen chairs like that before July 2012?
A. The only reason I'm hesitating is because I have seen a wedding set up. I'm not sure what this location is. It's hard for me to tell by the view.

I have seen chairs set up in the -- in the guarded area of the inlet beach. But I believe it was after 2012. I want to say it was probably -- it wasn't last summer. Maybe '13 or '14, as I recall.

Q. Okay. Before July 27, 2012, do you know of any law that prevented a person from standing in ankle deep water in the area that you have called Moore's Beach?

A. I don't know the answer --

MR. BARKER: Objection.

A. Oh, I'm sorry. I don't know the answer to that. I'm not aware of -- of such a law.

Q. Okay. Before July 27, 2012, did you have any understanding as to the depth of the channel, which we call Hereford Inlet, as shown in Exhibit 2?

A. Yes.

Q. Okay. So, why don't you share with me what that understanding was.

A. Well, from being in the channel on my boat, I have a depth finder, so it varies from one or two feet to maybe 28 feet, I believe, I want to say is -- 28 to 35, perhaps, in certain spots.

Q. Okay. I can show you an article where Dr. Farrell says that there are certain parts of that Hereford Inlet that are 50, 60 feet deep.

A. I don't think my depth finder goes that deep.

Q. Oh.

A. I don't doubt that. I don't doubt that. But from my personal experience, that's what I've witnessed.

Q. Oh, all right. Now, let me show you a photograph that's been marked for identification as Exhibit 9 that was taken the -- by Lou DiJoseph, who was that licensed private investigator --

A. Yes.

Q. -- I think you met at the deposition, of people in the water adjacent to Moore's Beach. This is Exhibit 9.

And my question is, before July 2012, did you ever see people wading in the water off of Moore's Beach?

A. Yes.

Q. Okay. Now, were those individuals that you saw in violation of any city ordinance?

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

A. I don't know.

Q. Okay. When you saw those people wading off the Moore's Beach, before July 2012, did you call the North Wildwood Police Department, or the North

Wildwood Beach Patrol?

A. No.

Q. Okay. When you saw those people wading in the water off of Moore's Beach before July 2012, did you think that they were exposing themselves to any hazardous conditions existing in the water that constitutes Hereford Inlet?

MR. HUNKINS: Object to the form.

A. I believe that if you're not swimming in front of a lifeguard, you are subjecting yourself to a hazardous condition in the ocean.

Q. Okay.

A. So, the answer is yes.

Q. I'll take that back.

Okay. All right. I'm going to have marked for identification as Exhibit 65 what I'm going to call a tourism brochure for 2016 for North Wildwood that comes off of the city's website. And I want to direct you to page 8.

(2016 Tourism Brochure is received and marked for identification as Exhibit P-65.)

Q. Okay. And for the benefit of my colleagues, you will -- I just want to tell them what we're looking at. It says at the top, on page 8, Beach and Fishing Information.

MR. BARKER: Yes.

Q. Then it talks about handicap surf chairs. You see that part? And --

A. Yes.

Q. -- before you get to accessible restrooms, it says "three are located on the inlet beach." Do you see that?

A. Yes.

Q. Now, were you aware of this entry in this document before I showed it to you?

A. I -- I did review this document. I can't guarantee that I saw that particular line item.

Q. Okay. So, when did the city, North Wildwood, that is, offer handicap surf chairs to persons using the North Wildwood beach?

A. Many years. I can't tell you exactly how many years, but for many years.

Q. Okay. Now, given your definition of the inlet beach, it says "three are located on the inlet beach." What beach?

A. The guard -- that -- the guarded beach.

Q. The guarded beach?

A. Yes.

Q. Okay.

A. They are provided by the lifeguards at

guarded beaches.
Q. Okay. All right. I'll take that back. Thank you.
A. Sure.
Q. Now, let me show you what's been marked for identification as Exhibit 29. All right? I'm going to hand this to you.
As you look at it, the beach that we're looking at, and you can use the buildings as landmarks, is covering what area?
A. I would refer to this to the Moore's Inlet Beach, because it's directly adjacent to the Moore's Inlet parking lot.
MR. HUNKINS: And can we get a date that that was taken?
MR. BARKER: 2/9 --
THE WITNESS: No.
MR. BARKER: I don't know the date it's taken. It's Exhibit 29 marked 2/9/16. That's all we know.
MR. D'AMATO: I could tell you, it was taken the September after the -- September 2012, I'm pretty sure.
MR. HUNKINS: Thank you.
MR. D'AMATO: Okay.

Q. All right. I have some other photographs I want to show you in a moment.
With respect to the area that you call the inlet beach, excluding the Second Avenue beach, all right, have you witnessed, growing up, and after you came back here, after, you know, working in Washington, D.C., parts of that inlet beach, including Moore's Beach, just falling away?
MR. HUNKINS: Object to the form.
A. I have not -- I have seen what this picture describes. I have seen what this picture depicts, which is, in my belief, the result of a storm event that scarped -- we call it scarping, when you have those types of -- like, a drop off like that. We had a lot of them after Jonas, we have this scarping, where this -- where a violent storm takes away a lot of sand at one time; as opposed to a gentle slope, you'll have something like this.
Q. Okay. I'll take that back.
A. Sure.
Q. Okay. We established earlier in your deposition that no one had told you that Mr. Smith and his daughter were actually swimming at an unprotected beach. Right?
A. I don't --

Q. Or maybe -- I'm sorry, I didn't mean to misstate your testimony. I --
A. No.
Q. Go ahead.
A. What -- my -- my -- the three different scenarios that I had heard about Mr. Smith and the other folks involved were that they were in ankle deep water, that they were in knee deep water, or that they were walking on dry land.
Q. Okay.
A. I don't know -- again, we had discussed a little bit -- I had asked you the definition of -- your definition of swimming, and my definition of swimming are not the same.
Q. Okay.
A. So, I want to be clear on that.
Q. Okay. Well, what's your definition of swimming?
A. As it relates to my children, if I tell my kids don't go swimming in the ocean, and they're knee deep in water, they're in trouble.
Q. Okay.
A. So, I mean, very rarely do you see people doing what you described as swimming in the ocean. People rarely -- first of all, the lifeguards don't

let you go out neck deep. And rarely do people go out there and do free style and breast stroke. I mean, to me, once you're calf, knee deep, you know, you're swimming in the ocean.
Q. Okay. Now, using your definition, do you have any personal evidence that Mr. Smith and his daughter were swimming as the mayor uses the term?
A. I've -- I have no personal knowledge of what they were doing prior to the incident. Only what I've heard in the media, or heard through some of these depositions.
Q. Okay. Good.
Was it at any time before July 2012 part of your responsibilities as a councilperson to ensure that any signs warning of dangers associated with the beach and the water were in good order, so that persons could understand what the warning was?
A. As a council member?
Q. Yeah.
A. No.
Q. Okay. When you were the liaison to the beach patrol, was that part of your responsibility?
A. No, no.
Q. This would have been strictly the responsibility of the beach patrol and the chief?

A. Signs are typically made by the Public Works Department. And different departments can request signs be made.

Q. Okay.

A. And they would typically be installed by the Public Works Department.

Q. Let me show you what's been marked for identification as Exhibit 12. You're going to see some white poles with signs.

Okay? Before Mr. Smith's drowning, did you ever see white poles with signs like that?

A. Yes.

Q. Okay. And they were posted at what beaches?

A. These are very -- these are standard -- the lifeguards use these at a variety of locations on the beach to demark the end of a guarded section of beach.

So, for instance, at that Surf Avenue, where the last chair is, you'll see some of these right at the wet line, so people know -- the red sign is a person swimming with an arrow through it.

Q. All right.

A. So, these are used pretty frequently around outfall pipes, or any other area where it's not designated for swimming.

Q. Okay. Brian and Mike heard the testimony of Mrs. Smith, that they had gone to the first protected beach, where I'm going to say Surf.

A. Yes, that would be Surf Avenue.

Q. And that -- and that her husband and daughter and Scott Sunderland, who is Mr. Smith's best friend, and his daughter, decided to take a walk towards Moore's Beach.

A. Okay.

Q. Do you know if, on the date of this incident, there were any signs that Mr. Smith and Mr. Sunderland would have had the opportunity to observe relative to any dangers associated with walking on the beach?

A. If they were there during the guarded hours, which I'm not sure if they were or not, they would have encountered those signs that you just showed me in that last exhibit at the water's edge, during guarded hours. However, lifeguards would usually remove them at the end of the guarded hours, because they wouldn't make it through a tide cycle.

Q. Okay. Given your history as a resident, as a councilman, and a mayor, have you ever seen any signs on the area that you delineated as the inlet beach, warning anyone about the dangers of walking on -- in

ankle deep water?

A. Not specifically referencing ankle deep water, no.

Q. Okay. Now, let me show you Exhibit 14. We took testimony about that.

Was the establishment of these concrete boulders and the balls with the warning the idea of Mayor Henfey?

A. I don't know.

Q. Okay. Do you know how many seasons these boulders and no swimming balls were used?

A. To my knowledge, they were placed there after the Smith drowning, and they didn't -- I don't think they made it until the end of that summer. I think just natural forces removed them.

Q. Okay. Now, let me show you Exhibit 16. And I want you to get your orientation. And you could see the date's in the right-hand lower corner there. Do you see that?

A. (Witness nods.)

Q. And what's the date for the record?

A. August 16th, 2012.

Q. Now, looking at the homes and the landmarks there, can you describe for us the beach that we're looking at?

A. You would be heading, again, what I call west from -- and again, I don't know what -- I don't know how far away this was taken. But you'd be heading west towards the Moore's Beach from this picture.

Q. Okay. Would you agree that the people that we see on the beach and those people in the water, that that is -- that they are at what you call Moore's Beach?

A. Yes.

Q. Okay. Prior to July 2012, were you involved in any conversation, or any discussion, or any communication about closing Moore's Beach?

A. No.

Q. Okay. Now, let me show you what's been marked for identification as Exhibit 19. And for the benefit of my colleagues, there -- one of the signs is no dogs, cats, or any other domestic animals on beach. No animals on boardwalk.

Okay. Now, given your involvement with city government, you were aware of that ordinance, generally. Correct?

A. The animals on the beach?

Q. Yes.

A. Yes.

Q. All right. Now, again, going back to your

definition of the inlet beach, which includes Moore's Beach, but stops at the Second Avenue Beach, were animals allowed on the inlet beach, as defined by you?

A. I would think that they were allowed -- they're not allowed on the guarded sections. I mean, I've never thought about the question before. But as I think of it now, I would connect that with the guarded beach. So, in other words, when the lifeguards are there, and the area that's raked, those are the areas that the animals -- that we would not allow animals to be.

Q. Okay. So --

A. Or for lack of a -- again, just for definitions, a managed beach, which is an area that we clean, provide trash receptacles, lifeguards, things of that nature. So, I never thought about the question before. But if you're asking me now, I would think that an unguarded, unprotected area, we probably wouldn't necessarily prohibit animals.

Q. Okay. You can leave that there. Okay.

Now, let me show you Exhibit 23. And as you look at that particular photograph, do you have your orientation?

A. Yes.

Q. Okay. So, what would you call the beach that is shown in that photograph?

A. You are standing more out on the inlet beach, looking towards Moore's -- Moore's Beach over here.

Q. Okay. But this is an unguarded, unprotected beach. Correct?

A. Correct.

Q. And would you agree that we see a -- we see public works employees on a quad?

A. Yes.

Q. In that area?

A. Yes.

Q. Okay. Have you ever seen, before July 2012, public works employees on that type of vehicle in that area?

A. Yes.

Q. Okay. And what were they doing when you saw them?

A. I have seen, as recently as last summer, public works employees -- if you see, there's a set of stairs over here, and sometimes what will happen is a tide will come in and all this grass type of material would gather at the bottom of the stairs, making the stairs impassable. And so, they'll go in and move that material off the stairs.

Q. Okay. Now, let me show you, I'll call it an adjunct photograph to the one you just saw, Exhibit 24. And would you agree that that is one of the unguarded beaches that is part of what you call the inlet beach, which includes Moore's Beach?

A. I would, yes.

Q. All right. And do you know the gentleman that's operating that machine?

A. I do not.

Q. Okay. Do you -- can you tell by looking at that photograph what activity he and the coemployee are involved in?

A. If I were to take a guess, it looks like there is a high trash bag in the cart. So, my guess is that they emptied a full trash can down on the guarded beach, and were heading down towards the Moore's Inlet Beach.

Q. Okay. And why would they be heading to the Moore's Inlet Beach?

A. Again, I don't know. To -- I don't know. Other than to maybe get some debris off the stairs. That would be a reason.

Q. Okay. All right. Now, let me show you what's been marked for identification as Exhibit 25 and 26. These photographs were taken on May 21,

2014. You'll see a front end loader. I think the next one's bigger. You can see it better.

A. Yes.

Q. Okay. Now, would you agree that that's what we call the unguarded, unprotected beach --

A. I would.

Q. -- of the inlet beach?

A. Yes.

Q. Okay. Have you ever seen that before July 2012?

A. Yes.

Q. Okay. And were you able to determine, before July 2012, why the -- why was the front end loader down there?

A. Yes. He would have been -- he would have just dug out the outfall line that's located adjacent to the Moore's Inlet parking lot, and taken the material to move it somewhere else, probably put it up against a dune somewhere.

Q. Okay. You can put those down. Thank you.

I'm going to show you an exhibit marked for identification as 28 on February 9, 2016. This is an interview of Patricia Posey, which my colleagues have. And I want -- I want you to tell me if you've ever seen that interview before.

A. I don't believe I've ever seen this document.
Q. Okay. Can you -- would you please read the interview, and tell me when you're finished.
A. Sure.
MR. BARKER: Can I take a five-minute break? Okay.
MR. D'AMATO: Okay, sure. Can he read that while he's doing that?
MR. BARKER: Sure, he can.
MR. D'AMATO: Okay.
VIDEOGRAPHER: This is the end of tape number 1. Off the record. 3:37.
(There was a brief recess.)
VIDEOGRAPHER: This is the beginning tape of number 2. Back on the record, 3:46.
BY MR. D'AMATO:
Q. Mayor, did you read Exhibit 28, which is the interview of Patricia Posey, P-O-S-E-Y?
A. I did, yes.
Q. All right. Let me show you a photograph that was made from the video that she references, which was posted on the Internet on May 27, 2012, a couple months before the Smith drowning. And when you look at that particular photograph, have you ever seen the condition of the beach and water as shown in that

particular photograph at what you have defined as the inlet beach, including Moore's Beach, and excluding the Second Avenue Beach?
MR. HUNKINS: Object to the form.
A. I --
MR. BARKER: No, I -- you may answer.
A. I saw this after this aired, in whatever year that was, on -- on the news. I went down and looked and saw this.
Q. Okay. Did you ever have occasion, when you saw it on the Internet, to go to the beach and see if the condition still existed?
A. I did. I -- I went down there the day -- I believe the day it aired.
Q. Okay. And did you see the condition that's shown in that particular exhibit?
A. I don't -- it looked very similar, yes.
Q. Okay.
MR. HUNKINS: What's that exhibit number? I'm sorry.
THE WITNESS: I'm sorry. 27.
MR. BARKER: Just -- 27. And the statement itself was 28, I think.
MR. HUNKINS: Oh, okay.
MR. BARKER: Is that right, Paul?

MR. D'AMATO: Yes.
(Photograph is received and marked for identification as Exhibit P-66.)
Q. Okay. Now, let me show you what I've had marked for identification as Exhibit 66, which is a photograph that was taken of the beach in North Wildwood on July 2, 2013. It would be the summer after the drowning of Mr. Smith. And I want to hand that to you, and ask you to get your orientation. Okay.
Do you see those signs that are --
A. Yes.
Q. -- posted in the ground?
It's my understanding that those signs are -- in fact, here, better yet, I can show you a close-up of the sign. Exhibit 30.
That the signs that you see in the photograph that you're holding in your left hand, which is exhibit?
A. 66.
Q. 66.
MR. BARKER: And Exhibit --
A. 20.
MR. BARKER: -- 20 is in his right hand, not 30.

MR. D'AMATO: Oh, wait. Yes. I'm sorry. You're right. Okay.
Q. Here's my point: What's in your right hand is Exhibit 20. The sign that you see there is the sign that's on those posts delineating the endangered bird area. Correct?
A. I believe that to be the case, yes.
Q. Okay. Now, have you seen where this delin -- this area that is delineated, you know, relative to endangered birds, doesn't have the snow fence around it?
A. Not at this location, it does not, no.
Q. Okay. And the location that you're looking at in the exhibit in your left hand is -- what would you describe that as?
A. It's -- I don't know. I think -- I don't know. I think -- I don't know. I think it could possibly be coming down the stairs from the Moore's Inlet parking lot.
Q. Okay.
A. Looking in a northerly, northeasterly direction.
Q. The people that you see in the photograph there, okay, you would agree that they're not sitting or standing in the endangered bird area. Correct?

A. I agree.
Q. All right. But where they're standing is an unguarded beach.
A. **I agree.**
(Photograph is received and marked for identification as Exhibit P-67.)
Q. Okay. Now, let me hand you what I'm going to have marked for identification as Exhibit 67. Okay. And this is a photograph where the photographer is standing back more, and the photograph that you now have in your hand includes the photograph that was in Exhibit 66. Correct?
A. **I'm sorry. Can you repeat that question?**
Q. Yeah. Exhibit --
A. **67.**
Q. -- 67 shows the area that is in Exhibit 66, in part?
A. **I can't be sure. It looks like, perhaps, 66 was taken further down here and out. But I can't say for sure. But that's my assumption.**
Q. Okay. All right. Hand me those two for a second.
A. **Sure.**
Q. Because I don't want to confuse this. Okay.
In looking at Exhibit 67, do you see

the area for the endangered birds?
A. **Yes, I believe I do.**
Q. You see the signs there sticking up. Correct?
A. **Yes, um-hum.**
Q. And nobody's standing or sitting behind those signs?
A. **That is correct.**
Q. Okay. So, that would lead you to believe that's the endangered bird area. Correct?
A. **That's the roped off area, yes.**
Q. Okay. Is it -- before we leave today, I need to nail this thing down. Are you absolutely sure that you have a clear understanding of the dimensions of that endangered bird area?
A. **I -- I think that is a good point of clarification. So, the -- as I understand it, according to our agreement with the state and the federal environmental folks, the entire area west of Surf Avenue, down to the water's edge, is an area -- well, piping plover area.**
My further understanding is a piping plover -- and I'm not a wildlife expert. Piping plovers nest up beach, and they spend the day running from their nest down to the water's edge to feed.

So, the area that's roped off is the nesting area. They don't want people stepping on the nests.
The entire area, though, is -- that's why we're not allowed to rake that beach front, that's why they don't want heavy vehicles down there, because they don't want vehicular traffic to hit a piping plover as it goes down to the ocean.
So, I -- I believe the entire area down to the water's edge is a -- is an environmentally sensitive area.
Again, I'm not the expert on that. And I can't quote directly from that agreement -- from that permit.
Q. We asked you to delineate with a marker where this endangered bird area was, but let's do this by words now. At what street does the endangered bird area begin, and where does it end? And if you want, you could go north to south, or south to north, whatever's easier.
A. **So, let me go east to west.**
Q. Okay.
A. **So, to the east --**
MR. BARKER: You know what, Mayor, rather than point to this aerial photograph of March 14, 2012 to describe your testimony, it's going to be

helpful if you mark that document up, which you may. That's a photocopy. You can create a document to help you in your --
MR. D'AMATO: So, we'll mark it for identification.
(Photograph is received and marked for identification as Exhibit P-68.)
MR. BARKER: He'll mark on it whatever he's going to say, I think.
MR. D'AMATO: Yeah.
MR. BARKER: He can put east, west, north, south.
MR. D'AMATO: Yeah.
MR. BARKER: Anything else he wants on it.
MR. D'AMATO: That's fine.
BY MR. D'AMATO:
Q. I just wanted you to verbalize --
A. **Yeah.**
Q. -- in terms of street addresses, and not a configuration.
A. **So --**
Q. And that exhibit that you're going to be using is exhibit number?
A. **68.**

Q. Right.
A. **So, my understanding, there are two components of the endangered bird area. One component is a physically fenced off area that has, sometimes there's a snow fence, and then it turns into posts with strings. There is a physically fenced off area, where I believe they feel that the piping plovers may nest.**
Q. All right.
A. **My understanding, however, from the city's standpoint, as far as an area where we are restricted from conducting any activities with heavy machinery, raking, guarding, things of that nature, is the area west of Surf Avenue.**
Q. Okay.
A. **So, would you like me to --**
Q. Ending where?
A. **I'm not sure about that.**
Q. Okay.
A. **I -- from a practical standpoint, there is no other access, as you go west. The only vehicular access is at Surf Avenue. So, from a practical standpoint, my understanding is that we are restricted from heavy equipment, raking, any of those activities west of Surf -- Surf Avenue entrance to**

the beach.
Q. Okay.
A. **During -- let me further clarify that. There is a certain window of time in that agreement, as well. And again, I would -- I can't give you the exact dates off the top of my head.**
MR. BARKER: If there's no objection, may I have the mayor mark on this exhibit what he is pointing to as west?
THE WITNESS: That's a good point.
Q. Sure.
A. **So -- well, it's --**
MR. BARKER: That arrow designates west.
THE WITNESS: Yes, for the purposes of this picture.
Q. Okay. Let me see. There we go. Now, I'm going to have three photographs marked for identification. The first one will be Exhibit 69. It was taken on May 21, 2014. Just get your orientation on that one. Then the next one will be Exhibit 70. And the next one will be 71.
(Photographs are received and marked for identification as Exhibits P-69, P-70 and P-71.)
A. **Okay.**

Q. And here, I represent to you, and I'm sure you would agree, that all three photographs are showing the same activity.
A. **I would --**
Q. Now, given -- given your personal and governmental experience with this -- the beaches that we've been talking about, do you know what those men are doing?
A. **Looks like they are constructing a small protective dune in front of the vehicle access at either Ocean Avenue or Surf Avenue.**
Q. Okay.
A. **There are two entrances -- there are two vehicular accesses to the inlet beach, one's at Ocean Avenue, one's at Surf, and it's hard -- I believe, because of where the picture is taken from, it's most likely the Ocean Avenue access to the inlet beach is what that is a picture being taken of.**
(Photograph is received and marked for identification as Exhibit P-72.)
Q. Let me show you what's been marked for identification as Exhibit 72. And you would agree that this is the parking lot that's located near the sea wall near Moore's Beach?
A. **Yes.**

Q. Okay. When was that parking lot built?
A. **It was there my whole life. So, from at least 1977. I don't -- before that, I don't know.**
Q. Okay. Given your governmental experience, why was a parking lot built there?
A. **Primarily, it was to service what is known as the entertainment district, which is a couple blocks of bars and restaurants in that area.**
Q. Okay. Let me show you what's been marked for identification as Exhibit 72, a photograph taken on June 16, 2014.
Would you agree that the beach shown in there, that photograph, is all of it is Moore's Beach?
A. **Yes.**
Q. We took the deposition of Lieutenant -- Lieutenant Lindsay, who's retired from the North Wildwood Beach Patrol. Michael and Brian and Dominic were there, Tom was there, Lynn was there. And he recited to us, in his opinion, the dangers with Hereford Inlet with the currents and the tides.
If I had gone up to you before Brad Smith's drowning on July 27, 2012, and asked you if you think Moore's Beach, for whatever reason, should be closed, in the sense that nobody should be

permitted to go on the beach, winter and summer, what would you have said to me?

MR. BARKER: Objection. But you may answer the question.

A. I wouldn't have agreed with you.

Q. Okay. And why not?

A. Exhibit 72 is probably the best depiction. I mean, people fish, they sit, they relax on the beach, they play games on the beach. You know, and I -- I think keeping the beaches open to the public is important for --

Q. Okay. If that's being the -- if that's the case, just in light of what you testified, why wasn't there a lifeguard on Moore's Beach before July 27, 2012?

MR. BARKER: Objection.

A. There's still not a -- I'm sorry.

MR. BARKER: I just want to enter an objection. But you can answer the question.

A. We have a -- North Wildwood's an island, literally, and we have many areas of tidal areas that aren't guarded by lifeguards. As a matter of fact, if you go further west, there's areas where small beaches develop along the sea wall frequently. And we don't guard them all. We have a certain number of

designated guarded lifeguard beaches that we guard, and we -- it would simply be impossible to place a lifeguard at every place where the public has access to the ocean or bay.

Q. Okay. When we took the deposition of Chief Cavalier of the North Wildwood Beach Patrol, I asked him why he hadn't posted lifeguards, with lifeguard stands, on what you call the inlet beach, excluding the Second Avenue Beach, Moore's and the other area.

A. Right.

Q. And he said -- he simply said that we don't -- we didn't have the manpower.

Would you be adverse now, in light of anything that you learned as a result of the Smith drowning, about posting lifeguards in what you call the inlet beach, minus Second Avenue, because it does -- at Second Avenue, there is a guard?

MR. BARKER: Objection. But you may answer the question.

A. I believe that we are prohibited from doing that, under our permit with the state and federal government.

Q. Okay. Now, what's that belief based on?

A. My understanding is that we are not allowed to add any recreational beach or swimming beach past

Surf Avenue. Again, I don't -- I can't testify to the exact language of that agreement. But my understanding is that agreement says, you cannot place any more lifeguards west, for lack of a better direction, of the Surf Avenue lifeguard stand.

Q. And what you read is in that agreement with the state?

A. I believe it is. And again, that agreement, to my recollection, was signed in 2006. So, it's a significant number of years ago, since I've had the opportunity to --

Q. Okay.

A. But that was my -- that's been my understanding since then, which is why we don't guard it, we can't rake it, we don't have trash cans down there, or anything of that nature.

Q. Before you leave, I'm going to show you what Mr. Barker says he sent to me, and I didn't see any reference --

A. All right.

Q. -- in that document. It may be an exhibit that wasn't attached --

A. All right.

Q. -- for what that's worth. All right?

But given what you know, as you sit

here today, if that document that you're referring to does not say that you can't post a lifeguard past Surf Avenue, would you post a lifeguard or lifeguards in that inlet beach area that we've been talking about?

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

A. I would have to ask the -- the beach patrol chief makes recommendations on that. However, it's a -- depending on the year, it's a very, very large area. It's probably, from our last lifeguard stand, to the sea wall at Moore's Beach, might be another half a mile or more.

Q. Right.

A. And then again, there's areas further west down the sea wall where small in front of some of the Anglesea beach colonies, where beaches develop, and I don't think I would. I think that we have a pretty well established guarded beach inventory. And I think that it suits the needs of -- of our vacationers and residents. So, I wouldn't necessarily advocate trying to guard any additional waterways in the city.

Q. Okay. Let me see if I understand the answer. Because you have enough beaches that are guarded, is

that what you're saying?
A. Because we have enough beaches that are guarded.
Q. Yeah.
A. And I think it's simply impossible to guard every public access to tidal waters in the city. And that's --
Q. Okay. I thought you said that. I'm not talking about all of the tidal waters in North Wildwood. I'm talking about what you, as the mayor, have defined as the inlet beach, which includes Moore's Beach and stops at Surf and First Avenue there.
A. Right, um-hum.
Q. I'm just talking about that area.
A. Right.
Q. So, can you just tell me what your reason or reasons are, in your mind, as the mayor of the city, why lifeguards should be posted in that specific area?
A. Why they should not?
MR. BARKER: Objection, objection.
Q. Should not -- why they should not.
MR. BARKER: Yeah. That, okay. I'm glad you clarified that. Because I didn't hear it

either.
A. Right.
MR. BARKER: Also, I object to the question, and you may answer it, if you're able.
A. That area is a large expanse, and it would probably require upwards of 10 additional lifeguard stands, which during the summer would be at least 20 additional lifeguards, plus supervision, which would be a very large increase to the size of our beach patrol. So, it would be from -- from a resource standpoint, and a recruitment standpoint of getting qualified guards, that would be a very large increase in our -- in our -- in our enforce -- in our beach patrol.
Q. Okay. Before July 27, 2012, is it your position, based upon your experience as a governmental official, that North Wildwood simply didn't have the money to put those additional lifeguards posted in the area that you have defined as the inlet beach, which includes Moore's Beach?
MR. BARKER: Objection. But you may answer the question.
A. No. I think the city, if we chose to allocate resources there, we could have -- we could certainly afford to put lifeguard stands there. But

another -- another reason, and I only think of it, because I looked at this, we also want to provide people with areas where they can fish, and engage in other things that do not involve lifeguarding. And you can't have guarded -- you can't allow people to fish at guarded areas. That's a very popular fishing area, as well. And so, that would be another reason why I would not support that. Because, again, we try to accommodate swimmers, surfers, fishermen, a lot of different activities that happen on the beach.
Q. Well --
A. Or the ocean.
Q. Okay. Let's define those activities. Again, I'm just using your definition of the inlet beach. Moore's to First and Surf.
A. Um-hum.
Q. Right?
So, people are permitted to fish in that area?
A. Yes.
Q. All right.
A. They're -- I'm sorry. People are pretty much permitted to fish anywhere in the city where it's an unguarded beach, including -- we have a couple spots down around Second and Kennedy, where we don't guard

because of a groin there, and again, people are allowed to fish in that area.
Q. Okay. People use Jet Skis to depart from that -- that beach area, and that's permissible; isn't it?
A. I don't know that it's permissible or not. We're not quite sure. A lot of times, those Jet Skis don't act -- sometimes they do come up onto the dry land. The majority of them stay in the water, or they anchor up in shallow water, and so that is -- and also on Champagne Island across the way. So, I am not sure whether that would be for us, on an unguarded beach, to permit or not permit.
But since it is an unguarded beach, we don't interfere with that activity.
Q. I see. Okay. Let me get rid of this one here. Just give me a second.
Who would be the most knowledgeable person that works in city hall to be able to provide us with the area that has been designated as the endangered bird area?
A. I believe it would be in the -- in that permit document that I've referenced. I don't know that there would be an individual at city hall who would have that knowledge.

Q. Okay. Got you. Okay.
Were you -- do you remember if when you were sitting in on Chief Cavalier's deposition, when I was asking him about a recorded statement of Lieutenant Lindsay, which we had marked for identification as Exhibit 31 on February 9, 2016. Does that ring a bell?
A. It does not.
Q. Okay. Let me -- I'm going to hand this to you. And I've highlighted the portions that I would like you to look at. It's -- it goes from pages 4 -- you can read the entire page. I don't care. But the ones I'm going to ask you about go from 4 to 7.
A. Sure.
VIDEOGRAPHER: Going off the record, 4:12.
MR. D'AMATO: Let me just put this on the steno record. When I showed the mayor the photograph of the parking lot, I did not put a sticker on it. So, I'm going to put a sticker on it now as Exhibit 73.
(Photograph is received and marked for identification as Exhibit P-73.)
(Discussion off the record.)
VIDEOGRAPHER: We're back on the

record, 4:15.
BY MR. D'AMATO:
Q. You read portions of this interview of Lieutenant Lindsay. Correct?
A. I did.
Q. Did you ever meet with Lieutenant Lindsay, or were you ever in a room where someone was discussing with him what he had said in this interview?
A. No.
Q. Okay. Before coming here today, had you been apprised of what was said by Lieutenant Lindsay in this interview?
A. I -- I don't -- I don't remember that.
Q. Okay. How well did you know Lieutenant Lindsay before he retired from the North Wildwood Beach Patrol?
A. I knew him to say hello to, talk to casually. We didn't spend any, you know -- I wouldn't have met with him in my elected capacity, or we didn't really spend any time together socially. But we have -- my oldest son and his son are about the same age, so we've, you know, seen quite a bit of each other.
Q. Your oldest son?
A. My oldest son is twelve. My youngest is eight.

Q. Okay. And his son --
A. His son is around 12 or 13.
Q. Oh, okay. I got it.
A. They're about the same age.
Q. Okay. Let's get this out of the way here.
Okay. Good. Thank you. Thanks.
Here we go, thanks, Lynn. I was looking for this.
(Cape May County Herald Article, is received and marked for identification as Exhibit P-74.)
Let me show you what's been marked for identification as Exhibit 74. And this is an article that appeared in the Cape May County Herald on September 26, 2012. And I've highlighted certain portions of that in yellow. And just tell me when you're finished reading that article, which was written by Deborah McGuire.
A. I've finished the highlighted pieces. Is that what you had asked me to read?
Q. Well, you know, you can read the entire article. Just, you know --
MR. BARKER: May I see?
THE WITNESS: Sure.
BY MR. D'AMATO:

Q. Okay. Do you recall reading this particular article that came out on September 26, 2012?
A. I do not.
Q. Okay. I want to reference a quote of Mayor William Henfey. "There's a vortex that's created in our inlet. We have competing inlets coming out of Hereford Inlet, and it's causing a whirlpool effect there."
Did you ever hear the mayor say that?
A. I did not.
Q. Okay. You can leave it there. That's good.
(Press of Atlantic City Article, is received and marked for identification as Exhibit P-75.)
Q. Okay. Now, let me show you what's been marked for identification as Exhibit 75. One for you, and one for Mr. Barker. And this is an article that we obtained off the Internet.
Are you familiar with Staff Writer Michael Miller?
A. I am.
Q. And what paper or papers does he work for?
A. The Press of Atlantic City.
Q. Correct. Do you remember reading this particular article?

A. Could you tell me when this article was from? I don't see a date on it.

Q. My recollection is it was with -- at the time that the lawsuit was filed.

A. Last summer --

MR. BARKER: When was that?

Oh, hold on. I'll tell you.

MR. D'AMATO: No, in 2014.

(Discussion off the record.)

A. Paul, I believe this was from the summer of 2015. Because it talks about the police officers who were hurt, which was at an incident that occurred last year.

Q. Okay. I stand corrected. Sorry.

Now, having had the opportunity to scan it, do you remember this article?

A. I remember the incident. I -- so, yes, I will say -- I mean, I certainly remember the incident. I don't specifically remember this article, but.

Q. Okay. You can see on page 2 it refers to Sandra Smith?

A. Yes.

Q. Okay. The first sentence I've highlighted says, "North Wildwood Mayor Patrick Rosenello said

closing the inlet beach to beachgoers would send the wrong message to the public when all unguarded beaches can be dangerous."

Do you stand by that?

A. Yes.

Q. Okay. Okay. The second sentence I've highlighted says, "'There's no gray area. If there's not a lifeguard on duty, you should not be in the ocean,' he said. 'It's such a dynamic environment, to say you were only so deep, that's not the issue. There's no room for equivocation.'"

Do you stand by that?

A. Yes.

Q. All right. As it relates to the activity of Mr. Smith and his daughter, and Scott Sunderland and his daughter, in walking in ankle deep water, would you say -- would you agree with me that this quote that I just referenced does not apply to that activity?

A. I would say that the ocean is a wilderness, and if I were not familiar with the area I'm in, and there was no lifeguards there, I would not advise someone to be -- to go into that water.

Q. Even in ankle deep water?

A. Even in ankle deep water.

Q. Okay. And were you aware -- no, no. Excuse me. You've established earlier that you were not aware of the vortex that Chief Cavalier talked about. Correct?

MR. HUNKINS: Object to the form.

MR. BARKER: Objection. Objection. I think -- were you talking about Cavalier, or that quote from Henfey?

MR. D'AMATO: No, no. Cavalier.

MR. BARKER: Okay. Well, anyway, I object.

MR. D'AMATO: Go ahead.

MR. BARKER: You can answer, though.

A. I mean, I had never heard the terminology vortex or whirlpool.

Q. Okay.

A. What I had -- in my mind, it's a current. Tide or current.

Q. Okay.

A. Now, it could -- it could merely be a play or -- you know, a difference of wording. I'm not sure exactly what they're referring -- whirlpool seems to denote something entirely different to me.

Q. All right. The next quote, "'If you choose to enter the water on an unguarded beach, you do so

at great risk to yourself,' he said, 'no swimming, swimming, if there's no lifeguards, you should not be wet. It's very simple.'"

So, is it your position, again, in light of this particular statement, that Mr. Smith and his daughter were exposing themselves to hazardous conditions by walking in ankle deep water at a beach that there was no lifeguard?

MR. BARKER: Objection. You may answer the question, if you're able.

A. Again, I think it's incredibly unfortunate what happened to Mr. Smith. I think that people have the mistaken impression that the ocean is similar to their neighborhood pool, and they're not familiar with currents and tides and things of that nature. And I think, in this context, now, at this time, I'm the mayor of North Wildwood, I'm the Director of Public Safety, I think it's very important for me to very, very clearly take the public position that if there is not a lifeguard, you should not be wet. And I stand by that answer.

Q. Okay. I'd just like the stenographer to read back the question. I'd like you to listen carefully.

A. Sure.

(Record read.)

Q. Can you answer that yes or no?
MR. BARKER: And I object.
A. Is it my position they were exposing themselves to hazardous conditions? I think -- I think the best answer I can give you is that, being interviewed for this newspaper article, as the spokesperson for the City of North Wildwood, an article that's coming out in the middle of the summer, I believe it was my obligation to make a statement that, do not go in the water at an unguarded beach. That's what -- that's the message I was trying to send with that quote. So that there -- and again, I stand by that, that I don't think that there is room for, well, I was ankle deep, I was knee deep, I was thigh deep. You should not enter the ocean unless there is a lifeguard on duty on that beach.
Q. Okay. I'm going to ask you this: And I'll only read back the question, if you want me to.
The question that I'm asking you, I've asked you twice, is, can you, and you could say no, if you want, that's perfectly fine. Can you answer yes or no to the question that I posed to you? You want it read back one more time?
A. I don't think it's a yes or no question.

Q. Okay. So, you can't answer yes or no?
A. Correct.
Q. That's what you're saying?
A. Yes.
Q. Okay. All right. One second.
(E-mail, is received and marked for identification as Exhibit P-76.)
Q. Now, the next exhibit will be 76. I'm going to hand you a copy. Here, for Mr. Barker, and one for Brian.
MR. HUNKINS: Thank you. Off the record real quick.
MR. D'AMATO: Yeah.
MR. HUNKINS: Do you have a guesstimate of how long you might be?
MR. D'AMATO: I would say five minutes, ten minutes, I'll be finished.
BY MR. D'AMATO:
Q. This is an e-mail that was sent to me on February 29, 2016. Candidly, I didn't see it until this morning.
And this is from Lou DiJoseph, formerly of the intelligence bureau of the New Jersey State Police, and now a licensed private investigator. And I'd like you to read along with me as to what he

says.
"Counsel, I interviewed Harry Wozunk, III today. He is the former North Wildwood Director of Public Works. He was asked to leave North Wildwood, or be terminated in December 2015, and did not provide a reason. He currently holds the same position in the Borough of Runnemede, Camden County, New Jersey. Wozunk has not spoken to anyone regarding the Smith drowning, and is not represented by counsel. Wozunk was a good interview, and he doesn't come off as a bitter and former employee. Wozunk recalled the Smith drowning and the remedial actions that followed. He also knew of Dr. Farrell, and the vortex. And said that the outgoing tides that come off the rock jetty near Moore's Beach once caused a 12-foot deep shelf collapse at the beach near the rock wall steps. He was required to have his men with machinery repair and knock down the cliff, so it wouldn't be dangerous to patrons. This occurred in early summer 2010, a few years prior to the Brad Smith drowning. He also said an older white male, who lives directly across from the rock wall steps, told him he saw the vortex prior to the beach collapse, and usually described it as boiling water."
MR. HUNKINS: "Visually described it."

MR. D'AMATO: "Visually described it," thank you very much, "as boiling water."
Q. Wozunk believes the area of the inlet beach is dangerous, and recalls discussions with now deceased Mayor Henfey, who called the area of inlet Moore's Beach an attractive nuisance. Henfey told Wozunk that the Moore's Beach and inlet beach was New Jersey state property.
"Wozunk also recalls conversations between himself, the State of New Jersey Fish and Game agents, Mayor Henfey, and the former City Administrator Lasco regarding closing the inlet beach area. Wozunk claims that the State of New Jersey wanted the beach closed when the piping plovers were mating during the summer, and they didn't want beach patrons walking near the nesting area or consuming alcoholic beverages. Mayor Henfey told the State of New Jersey representatives that if they wanted to patrol the beach, then they can send their own police to do it.
"Mayor Henfey had everyone convinced that the inlet beach and Moore's Beach were owned by the State of New Jersey. Wozunk puts the city line of jurisdiction at the rock wall. This doesn't make sense, because the police officers wouldn't be able

to write summonses on state land. They all have to be deputized as county sheriffs or state wildlife agents.

"I will compile a work product report as soon as possible."

And that's the end of that. Now, I gave you what he sent me, which I found this morning.

Why was Harry Wozunk terminated?

A. He had met -- well, let me rephrase that. He was not terminated. He chose to resign -- to resign.

Q. Okay. Do you know why he resigned?

A. When I took over as mayor, his management style did not match what I thought the management style of that position should be as it related to his interpersonal skills with employees and contractors.

Q. Okay.

A. And I think he realized that it wasn't a good fit anymore for him.

Q. Do you recall this incident about the 12-foot deep shelf collapse?

A. The only one I recall is the one that we referenced earlier from the NBC story.

Q. Okay. Do you remember having any conversations with merry -- Mayor Henfey about the beach that is referred to in this statement as being

an attractive nuisance?

A. I don't.

Q. Okay. Is there anything in this interview with Harry Wozunk by licensed Private Investigator DiJoseph that you have heard before; anything?

A. No. I never -- never heard a discussion of this -- about that being state property, or any of those other issues.

Q. Okay.

A. I believe there's a -- not a typo. But that City Administrator Lasco, I'm sure, is Belasco.

Q. All right. Were you aware, before July 27, 2012, of the time that no one was permitted to be on the beaches of North Wildwood at night?

A. I believe it's ten p.m. until six a.m.

Q. Okay.

A. That's my best recollection.

Q. I'm sorry. I didn't mean to speak over you.

A. That's all right.

Q. Were you aware, before July 27, 2012, that North Wildwood police officers in the summertime would patrol the beach to make sure that no one was violating the curfew of ten p.m. until six a.m.?

A. Yes.

Q. Okay. Were you aware that it's been

testified that they also patrolled what you call the inlet beach, including Moore's Beach?

A. That, I cannot specifically say I was aware of.

Q. Okay. Let me just check my notes. I'm almost done.

A. Can I make a -- just a -- it may be important, it may not be.

Q. Go ahead.

A. In the guarded area of the inlet beach, because of the way it sets up, there's actually street lights that cast lights onto the beach there. A lot of times, people from motels will be playing volleyball and things of that nature at that location in the evening. And I don't know that the police would kick them off the beach at 10 o'clock. Because that area's up by the sea wall.

That's -- the only reason I mention that is because that's the only recollection I have of people being on that beach later in the evening.

MR. D'AMATO: Let me just check one thing. I think I'm finished.

(Discussion off the record.)

MR. D'AMATO: I have nothing further.

MR. HUNKINS: I think I just have one.

EXAMINATION BY MR. HUNKINS:

Q. And you probably already said this, and I apologize if I'm re-asking it.

But before this lawsuit was filed, what was your best understanding of where the Smiths were walking when the incident occurred?

A. I -- I was never quite sure of that. I -- for some reason, I had initially thought that they had been at the Moore's Beach, and were heading through the inlet beach toward the guarded beach. And then I believe it was during the Cavalier deposition. And then, today, Mr. D'Amato mentione that they were actually heading in the opposite direction.

So, my -- I -- I never really had a clear understanding of exactly where they were.

Q. And regardless of which direction they were heading, in terms of the location where they were when it happened, you're unclear on that, as well?

A. The -- yes, I'm not exactly sure where that occurred.

Q. Okay.

MR. HUNKINS: Thanks. That's all I have.

THE WITNESS: Sure.

VIDEOGRAPHER: That's it.
MR. D'AMATO: That's it.
VIDEOGRAPHER: This concludes the videotaped deposition. Off the record, 4:35.
(Deposition concludes at 4:35 p.m.)

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, PATRICK ROSENELLO 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.

Lynn Smith, CCR
Certified Court Reporter
License No. XIO1520

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Exhibit 9

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

SANDY SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND GEORGE BRADLEY SMITH,	:	CIVIL ACTION VIDEOTAPED DEPOSITION TESTIMONY OF: HARRY WOZUNK
Plaintiff,	:	
vs.	:	
CITY OF NORTH WILDWOOD, STATE OF NEW JERSEY, JOHN DOE, MARY DOE, ABC PARTNERSHIPS and XYZ CORPORATIONS,	:	
Defendants.	:	

TAKEN BEFORE: LYNN SMITH, a Certified Court Reporter of the State of New Jersey, License No. XI01520, at the North Wildwood City Hall, 901 Atlantic Avenue, North Wildwood, New Jersey, on Tuesday, May 17, 2016, commencing at 1:01 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

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APPEARANCES:

D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
609-926-3300
BY: PAUL R. D'AMATO, ESQUIRE
For the Plaintiffs

BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
BY: WILL ROZELL, ESQUIRE
For the Defendant, North Wildwood

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
(609) 777-4872
BY: BRIAN HUNKINS, DAG
For the State of New Jersey

Also present: Lou DiJoseph

Videographer: Tom Zanaras

(Statement, received and marked for identification as Exhibit Wozunk-1.)

VIDEOGRAPHER: Today is May 17th, 2016. This is the videotaped deposition of Harry Wozunk. Going on the record, and the time is 1:01 p.m. The appearance of counsel will be noted in the transcript.

Would the court reporter please swear in the witness.

HARRY WOZUNK,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. D'AMATO:

Q. Sir, thank you for coming here. My name's Paul D'Amato. I represent Brad Smith's wife and his four children. And my colleagues have a copy of your interview that was contacted -- that was conducted by Louis DiJoseph, who's retired from the Intelligence Bureau of the New Jersey State Police, and now is a licensed private investigator. And we're just going to be asking you questions about what you know and the statement that you gave.

If I and my colleagues ask you a question that's not clear, just tell us.

A. Okay.

Q. All right? And we'll move on.
Before we get to this statement, let's get some background information.
When did you start working for the City of North Wildwood?
A. February, 10, 11 years ago.
Q. Okay. And what was your position when you started working for the city?
A. I was hired as superintendent of Public Works.
Q. Okay. And there came a time that you stopped working for the city. And when was that?
A. This past December, 2015.
Q. Okay. Before you started working for North Wildwood, had you worked for any other municipality or township?
A. Yes. I worked for 17 years for the Borough of Stone Harbor.
Q. Oh, okay. And when you retired from that position in Stone Harbor, what was your title?
A. I was supervisor water, sewer, beaches and streets.
Q. Okay. Before Mr. DiJoseph contacted you, had you heard about the drowning of Brad Smith, back on July 27, 2012?

A. I was aware of the drowning. Wasn't particular about the names, what the circumstances was. I wasn't in town when it took place. But I did -- was aware of it through newspaper reports, and discussion with town members afterwards.
Q. Okay. What I'd like to do right now is, we've had marked for identification this statement. And I had asked Mr. DiJoseph to send you a copy of it before coming here, to save some time.
Did you get a chance to review this statement before coming here today?
A. Yes.
Q. We'll go through the various, I call them bullet points. But did you see anything that was attributed to you that was a mistake?
MR. HUNKINS: Object to the form.
A. Not that I'm aware of.
Q. Okay. All right. So, let's go to page 2, at the top.
And let's go through these bullet points one by one, and I'm going to ask you if it's a correct statement.
The first bullet point, "Wozunk was employed at the City of North Wildwood from 2004 to December 2014."

A. It would be '15.
Q. That's -- it would be 15. Okay.
Next, "Prior to his leaving the City of North Wildwood, Wozunk was appointed as the superintendent of Public Works."
A. That is correct.
Q. All right. And when you started working for the city, you were, in fact, the superintendent of Public Works?
A. Yes.
Q. Okay. Next point, "As superintendent of Public Works, Wozunk was responsible for city employees that cleaned the North Wildwood beaches." Is that correct?
A. That is correct.
Q. Now, we had some photographs. I'm going to digress just for a second here, I want to show you some photographs.
We took this morning the deposition of Mr. Delinski, and we had marked as Delinski-5 a particular photograph here. If I could hand that to you.
Is the beach that we're looking at in Delinski-5 what people call Moore's Inlet Beach?
MR. HUNKINS: Object to the form.

MR. ROZELL: Join in the objection.
Q. Or a part of Moore's Inlet Beach?
MR. HUNKINS: Object to the form.
A. It's considered Moore's Inlet.
Q. Moore's Inlet?
A. Yeah.
Q. Okay. Is there such a thing called Moore's Inlet Beach?
A. Depending on who you talk to. I mean, I don't know of a sign posted that says beach, itself.
Q. Okay.
A. But it's an inlet.
Q. All right. Now, let me show you Delinski-6.
Is that Moore's Inlet again?
MR. HUNKINS: Object to the form.
MR. ROZELL: Same objection.
A. Moore's Inlet, yes.
Q. Okay. Now, before July 27, 2012, when you were superintendent of Public Works for North Wildwood, did you ever see police officers patrolling Moore's Inlet, as you see in that photograph that's in your hand?
A. Have I seen police in the area, yes.
Q. How about on the beach?
A. On the sand, yes.

Q. Okay. Fine. Now, did the employees of the North Wildwood Public Works Department pick up trash on the beach that is shown in Delinski-5 and Delinski-6?

A. Employees of North Wildwood Public Works would pick up trash on the inlet section by hand, yes.

Q. Okay, fine. Now, would tractors ever come down to this section and -- that had a rake on it to clean the area?

A. No.

Q. All right. How far would the tractors go down toward Moore's Inlet?

A. Our cut off zone was at Surf Avenue.

Q. Got it. Okay. So, let's go back to the statement now.

Next, "Wozunk believes he was asked to leave his position or be terminated."

A. That is correct.

Q. Okay. Next, "Wozunk did not want to elaborate on the specifics of his departure from North Wildwood."

A. Correct.

Q. Okay. Next, "During his tenure at North Wildwood, Wozunk became familiar with Inlet Beach and

Moore's Beach."

A. Yes.

Q. All right. Now, from talking to other people, we know what Moore's Beach is, or Moore's Inlet Beach. All right?

As you walk southeast, okay, you and I are -- we're on Moore's Inlet, and we decide to take a walk. All right? Before we get to a beach that had lifeguards on it, we -- we would walk through The Inlet Beach. Correct?

A. Yes.

Q. All right. Now, what, if anything, did the employees of the Public Works Department do with respect to The Inlet Beach?

A. They would hand -- walk the area, and police for trash. From there, there was an outfall pipe in the area, at the bend off of Central Avenue. We would have to periodically maintain that. We would use a backhoe, or a front end loader to open that up, when needed.

Q. Okay. Let me show you what's been marked for identification as Delinski-9. And I'm going to show you Delinski-10. Okay.

You can see in the lower right-hand corner, there's a date that those photographs were

taken. And I believe I took those photographs.

You'll see somebody in a Public Works shirt. Do you know who that is? Can you tell?

There's a young boy sitting in the vehicle with him.

A. Yeah. There's a young boy and a gentleman. And I'm not actually certain of his name. He was a seasonal employee. Both were seasonal employees.

Q. Okay. They are operating a vehicle that has a wagon behind it.

A. Yes.

Q. All right. Given your experience as the superintendent, what are they doing down there on that beach?

A. Well, first of all, they shouldn't be on the beach at this time. Because we've always had a no enter with a vehicle from the Fish and Game Wildlife, during the time period. From this picture, I'm looking at these gentlemen, they're probably joyriding. But their defense would be that they're looking for trash.

Q. All right. You see the sea grass in one of those photographs?

A. Yes.

Q. Did Public Works ever pick up that sea grass?

A. Not in that section.

Q. Okay. How about in the inlet -- on The Inlet Beach?

A. From Surf Avenue southeastward.

Q. Got it. Okay. All right. Thank you.

The next bullet point says, "Wozunk also fished the area of The Inlet Beach with his father when he was younger."

A. Correct.

Q. Were you raised in North Wildwood for a period of time?

A. I was raised -- born and raised in Cape May County.

Q. Oh, okay. So, occasionally, you would go to this area to go fishing?

A. Yes.

Q. Okay. This area, meaning The Inlet Beach?

A. The inlet.

Q. Right.

A. When I was a kid, there was no beach.

Q. Okay. We heard that.

Now, next bullet point, "During his tenure at North Wildwood, Wozunk oversaw the construction of two phases. Number 2 and 3 of the seawall construction."

Now, I'm going to ask you about this seawall, and I'm going to show you an aerial photograph that's in here someplace. Here we go. Nope. Sorry.

There are two small aerial photographs. Of course, they're lost in here now. Hold on.

While I'm looking for this -- oh, here they are. While I'm looking for this photograph, or photographs, I'm now going to direct your attention to the Hereford Inlet, the channel, itself.

And here are two aerial photographs that were taken on March 1, 2016. And we have -- I want to hand them to you. There's one. Okay? And there's the other. Okay?

Now, if you look at those photographs, you'll see Moore's Inlet?

A. Yes.

Q. All right. And if you go to the water, I'm referring to the water adjacent to Moore's Inlet as the Hereford Inlet channel. Is that a fair description?

MR. HUNKINS: Object to the form.

Q. Or what would you call it?

A. Well, the inlet's the whole body of water there, yes.

Q. Okay. All right. Now, I want to take you from the time you're a young boy up until July of 2012. If I had walked up to you and said to me, tell me what you know about this body of water called the Hereford Inlet, what would you describe to me?

A. It's a channel that cuts through between North Wildwood, Anglesea, and Stone Harbor.

Q. Okay. Did you, before July 2012, ever operate a boat through that channel?

A. No.

Q. All right. Did you ever swim in that channel?

A. No.

Q. Did you ever do any surf fishing in that channel?

A. Yes.

Q. All right. And that's when you were a young boy?

A. Yes.

Q. All right. If I said to you before July 2012, is there anything that's unique about this inlet that would be dangerous for swimmers --

MR. HUNKINS: Object to form.

Q. -- what would have been your answer?

MR. HUNKINS: Object to form.

MR. ROZELL: Same objection.

Q. If I can help you, specifically, I'm talking about rip tides, ebb tides, currents, things like that.

A. It's a moving body of water. I would -- you know, it's like any other body of water, inlet moving, be cautious on it, be like a river.

Q. Okay. We took the deposition of Chief Cavalier of the North Wildwood Beach Patrol, and he told us, like, for 10 years -- well, let me go back a little bit.

I asked the chief, I said, do you have an opinion as to what happened with Brad Smith. And counsel was there for that, as well as Lou.

And he said, yes. He said, the back bays were moving into the ocean, and when that happens, there is, like, a whirlpool, a vortex, which eats a piece of the beach away. And he goes, Mr. Smith and company, and the children, just walked into it, and the vortex sucked Mr. Smith down.

Now, here's my question: If I had asked you -- if I had come up to you before July 25, 2012, and asked you about the existence of a vortex or whirlpool at any time in the water that constitutes the Hereford Inlet, what would have been

your answer?

MR. HUNKINS: Before you answer, sir, and I apologize for interrupting, but I need to interpose an objection. And my thought is, if you don't mind, maybe if the witness just steps out for a second, I can say a little bit more than object to the form.

MR. D'AMATO: Sure.

MR. HUNKINS: Do you mind?

VIDEOGRAPHER: Watch your microphone, please. Going off the record, 1:15.

(Discussion off the record.)

MR. HUNKINS: You've -- in earlier questions, you've paraphrased Cavalier somewhat, and I, you know, really don't have too much of a problem with that. This -- in this particular question, the preface to the question was a long description of what Cavalier said. Without pulling out the transcript, I can't be certain, but I'm fairly sure that the way you characterized his testimony is not accurate. In particular, it sounds like you preface -- has Cavalier saying that the drowning occurred where there was a vortex.

MR. D'AMATO: That was not my intent.

MR. HUNKINS: Okay. And/or what I

thought I heard was that the beach -- piece of beach fell away, which again, A, I don't think Cavalier said that. I don't think he connected the dots the way I think you might be. And I'm concerned that this witness now, based on your question, thinks we all are in agreement as to what you just said. In particular, Cavalier.

And so, I want to only find out what this witness knows. And I think we know from his statement that he's aware there's a vortex.

MR. D'AMATO: Right.

MR. HUNKINS: I mean, if it was up to me, I would ask him, where have you seen a vortex? But your question ties it in locationwise in a way that I think is problematic.

MR. D'AMATO: What I'll do is -- I appreciate what you're saying. What I will do is, I'm going to say, if you will, forget the testimony of Chief Cavalier, okay, we just want to know what you know. And we'll go with that. Okay?

MR. HUNKINS: Okay.

MR. D'AMATO: All right? So -- and let's see if that, you know, cures your concern.

MR. HUNKINS: Yeah. And I -- agreed. And I'll just add one thing. I think the location of

the vortex is potentially an important issue. And so --

MR. D'AMATO: You're right.

MR. HUNKINS: -- where did you see the vortex is something, I think, maybe we all want to know, where he has seen it.

MR. ROZELL: And I should have put -- I was going to put -- I meant to put an objection in, too. But just along the lines of that, I wasn't a hundred percent sure that's what Cavalier said, not having the transcript in front of me, so.

MR. D'AMATO: I appreciate both of your comments. So, let's get him back in.

MR. ROZELL: Yeah.

VIDEOGRAPHER: We're back on the record, 1:19.

BY MR. D'AMATO:

Q. The three of us were having a conversation here, and I want to withdraw that last question, and put aside what Chief Cavalier said. We want to know what you know.

Now, so, without even looking at this statement, were you aware of a condition of the water in the Hereford Inlet that has been referred to as the vortex or a whirlpool?

A. Yes.

Q. Okay. When, with your history with North Wildwood, did you become aware of the vortex or whirlpool?

A. Through my tenure in Public Works, I've heard of the vortex years ago with -- and I'm pretty sure you -- I don't know if you've had him here for it, but Dr. Farrell. We've talked about the inlet with the sand migration, and so forth, between Stone Harbor and North Wildwood. As I said, I was previously employed with Stone Harbor, so I dealt with Dr. Farrell there on trying to maintain our beaches there. And then coming over to North Wildwood, had that same information. We always talked about the sand migration, always had an impact through the Hereford Inlet water channel.

With that, knew about the vortex that, this being called a vortex, is the water ebb tide from the mass of body of water changing from high tide, low tide on the in and out. Came familiar with that one evening, one afternoon, when I was in town late, and got called about -- from residents at New York Avenue, who thought something mysterious was happening with water boiling and so forth. And upon looking on the beach and so forth, we found out the

beach was actually -- beach area, sand area at Pine and New York actually had a 12-foot cliff, the sand was taken out, the whole corner in that area. That's when it was very obvious of a vortex and so forth to actually create a suction and remove the material in the area.

Q. What year is that, approximately?

A. Probably 2008 or 2009. Not --

Q. All right. Now, the area where you saw the vortex, all right, would that be north of Moore's Inlet, or south?

A. It's at the starting point. And to better show you, if I can --

Q. Go ahead.

A. -- point it out to you on your Delinski No. 3.

Q. Yeah.

A. Okay? It's actually this corner of the L shape.

Q. Okay.

A. So, right there.

Q. Here. Do you want to put an X with this green marker on that?

A. I'll actually put a dot.

Q. Okay.

A. This is the location.
Q. Can you make it a little bit bigger, so, you know, older people like me can see it?
A. (Witness complies.)
Q. There you go.
A. All right.
MR. ROZELL: Can I see that, I didn't get a look at it, when you're done with it.
MR. HUNKINS: Would you mind, this is just a suggestion.
MR. D'AMATO:
MR. HUNKINS: Maybe having him mark it on something else, as well.
MR. D'AMATO: Okay.
MR. HUNKINS: Would that -- it would help me. I don't know --
MR. D'AMATO: Okay. Do you mind, can I rip this off?
MR. HUNKINS: Yes.
MR. D'AMATO: All right. We -- here, we'll have this marked.
(Map, received and marked for identification as Exhibit Wozunk-2.)
Q. Okay. With counsel's permission, I ripped a page out of a tourism guide that North Wildwood

publishes that we used in an earlier deposition. And with this red marker, if you could put a nice big fat point as to where you saw this vortex.
A. (Witness complies.)
Q. Okay. Okay. Can I have that?
MR. D'AMATO: Do you see it, Brian?
MR. HUNKINS: Yes. And that exhibit is labeled?
MR. D'AMATO: Wozunk-2.
MR. HUNKINS: Thank you.
MR. D'AMATO: Wozunk-2.
Q. I'm looking at both the photograph that you marked and Wozunk-2. This seems to be the very corner of what I'm going to call Moore's Inlet.
MR. HUNKINS: Object --
A. Yes.
MR. HUNKINS: Object to the form.
MR. ROZELL: Same objection.
Q. Now, let me ask this, to get to the bottom line. You indicated that you were overseeing the construction of two phases of the seawall construction. There is a seawall behind where you put the point and the X on these two exhibits as to where the vortex was. Okay? Given your lifetime experience as a young boy, just as a layperson, do

you think the creation of this seawall had anything to do with the creation or exacerbation of this vortex?
MR. HUNKINS: Object to the form.
MR. ROZELL: Object to the form.
MR. HUNKINS: Did you get my objection?
A. No.
Q. Okay. And why do you say that?
A. Because there's a bulkhead that was there previous to the seawall, itself, that was erected after the '62 storm. So, it's been -- been there in the same footprint since 1962.
Q. Did that bulkhead have anything to do with the creation of the vortex?
MR. HUNKINS: Object to the form.
MR. ROZELL: Object to the form.
A. Not that I'm aware of.
Q. Okay. Based upon your experience with this area, and based upon anything you read or were told, what is the cause of the vortex that you described?
MR. HUNKINS: Object to the form.
MR. ROZELL: Same objection.
A. Changing of the tide.
Q. Okay. I'm going to jump ahead here, in light of your testimony so far.

Okay. I'm now on page 3. And I'm looking at the fifth bullet point, which says, "The inlet waters in front of the Greek church of Pine Avenue are up to 80 feet deep."
A. Correct.
Q. Is that correct?
A. Yes.
Q. As you walk from Moore's Inlet, generally, in a south or southeast direction, with respect to the Hereford Inlet, that is, the body of water next to the walking beach that you typically see there in the summertime, how deep is the water there? That is, is it -- does it also run 80 feet, or does the depth change?
MR. HUNKINS: Object to the form.
MR. ROZELL: Same objection.
A. Depth changes.
Q. Can you give me the variation in the changes in the depth?
A. I can tell you I don't know for factual what the footage is and so forth, but I know Captain Kramer used to have a charter boat that used to go in and out of that inlet, and he pretty much, his business went belly up, because he couldn't drive through it past mid tide anymore. So, I mean, it --

it changes every day.
Q. Okay. Let's go to the bullet point that says, it's about two-thirds down, "Wozunk was familiar with the Smith drowning, believes the accident occurred on The Inlet Beach." Correct?
A. Correct.
Q. "Wozunk was familiar with beach collapses near Moore's Beach after the Army Corps of Engineers completed the construction of the seawall."
A. That's where I pointed out in the exhibits was that vortex.
Q. Okay. But it's your testimony that the beach collapses that you're referring to -- well, let me ask you this: The beach collapses that you're referring to in this bullet point, are you saying that in your mind there's a connection with the beach collapses and the construction of the seawall?
MR. HUNKINS: Object to the form. Are you saying collapses --
MR. ROZELL: Same objection.
MR. HUNKINS: Are you saying collapses, plural, because let me just read this point again. Are we talking about one?
MR. D'AMATO: It says collapses here on the bullet point.

MR. HUNKINS: Okay. Thank you.
Q. Do you understand the question?
A. Yeah. No, I believe it's just one incident at that intersection I point --
Q. Okay.
A. -- pointed out.
MR. HUNKINS: If I can interject. Was there one collapse, or more than one collapse?
THE WITNESS: One collapse.
MR. HUNKINS: Okay. So, in that respect, the statement is not accurate?
THE WITNESS: Correct.
MR. HUNKINS: Okay.
Q. Okay. Remember, ultimately, we're trying to make sure this statement is correct.
A. Okay.
Q. Okay?
A. Yes.
Q. Now, there's another bullet point here, "Wozunk said the outgoing tidal current makes a shelf under the rock wall, causing the beach collapse."
Is that an accurate statement attributable to you?
A. That's -- that's what -- that's what I believed happened at that incident, was the tide

going out created the shelf.
Q. Got it.
A. And collapsed.
Q. How frequently would you meet with Dr. Farrell, whether you were working for Stone Harbor, or North Wildwood?
A. I would base at a few times a year with consulting with Dr. Farrell, on -- depending on the projects that we had going on.
Q. Okay. Was there ever a discussion about replenishing the beach known as Moore's Inlet?
A. Not that I'm aware of.
Q. Okay. Was there ever a discussion about replenishing the beach south of Moore's Inlet that we've been calling The Inlet Beach?
A. Their discussion and the original plans for the first beach fill, where the rock groin is at Second and JFK, that is the transition point to the inlet, there was a section of that that was filled in, part of the project to have it as an end point. So, they had to go into that section.
Q. Okay.
MR. ROZELL: That was at Second and --
THE WITNESS: JFK.
MR. ROZELL: Okay.

BY MR. D'AMATO:
Q. Okay. Now, I want to get into the next bullet points that deal with the former mayor, Bill Henfey.
The first item says, "Deceased Mayor Bill Henfey told Wozunk that all of the back water from Turtle Creek, where the railroad crossing is, comes out through the Hereford Inlet."
A. Yes. And to add a little bit to that, where Turtle Creek is -- Creek is, it's a railroad crossing. That's where the water from Cape May inlet meets the Hereford Inlet. That's where they both meet during change of tides rising.
Q. Okay.
A. And then it change outward. That's where it splits and moves outward.
Q. I see. Okay. Next bullet point, "After the Smith drowning, Wozunk met with deceased Mayor Henfey who told Wozunk that the inlet is New Jersey State property." Is that a correct statement?
A. Yes.
Q. Now, when you say the inlet, are you referring to The Inlet Beach, are you referring to the body of water, the Hereford Inlet? What are you referring to in this statement?

A. **Everything from the roadside of the seawall towards the water is state property.**
Q. Okay. Did he ever tell you what the basis of his opinion was?
A. **The basis of Henfey and myself is, with the plans that we've had through the beach replenishment and so forth, that waterway, if we put a bulkhead or anything like that, we have to acquire a permit from the DEP, from the state, to have anything on the water side of the bulkhead.**
Q. Got it. And have you, in the past, procured that document from DEP?
A. **Not in my employment. But I do believe the City of North Wildwood did have a permit for a fishing pier they had in the same section that's under question.**
Q. All right. Now, the next bullet point is, "Henfey," referring to the former mayor, "referred to the area of Inlet Beach and Moore's Beach as an attractive nuisance."
A. **Yes.**
Q. That happens to be a legal term, and it also is something that laypeople would also say.
What did he mean when he said it was an attractive nuisance?

MR. HUNKINS: Object to the form.
MR. ROZELL: Same objection.
A. **I believe, in the discussions that we've had with that, the attractive nuisance was a catch phrase that we would use for an area that is attracting people, and we don't have much of the right or responsibility to the area.**
Q. You had a good working relationship with Mayor Henfey?
A. **Yes.**
Q. All right. When you say nuisance, as you're using the term, and as Mayor Henfey used the term, what was it about Moore's Inlet or The Inlet Beach that was a, quotes, nuisance?
A. **The red tape of the state saying we couldn't do certain things on the property, Fish and Wildlife, and so forth, and then the area itself, for patrolling, and the forces to be able to do anything in that area.**
Q. Okay. Now, the last bullet point there, it says, "Wozunk believes the area of The Inlet Beach and Moore's Beach is the property of the State of New Jersey."
A. **Yes.**
Q. So, therefore, that is your opinion, as well

as Mayor Henfey's. Correct?
MR. HUNKINS: Object to the form.
Q. No?
A. **That is my opinion.**
Q. Yeah. All right. Okay. Next page, which is 5, the top, "Former Mayor Henfey and former City Administrator Lasco spoke to the State of New Jersey regarding the closing of the beach due to complaints of drinking and partying by beach patrons."
Is that a true statement?
A. **Yeah. First of all, it's Belasco, not Lasco.**
Q. Belasco, okay.
A. **Yeah. Lou Belasco. And I was part of that conversation with that -- of the complaints of the drinking, partying, and for the beach to be closed.**
Q. Let's define the beach. Are we talking about Moore's Inlet?
A. **Moore's Inlet.**
Q. Or how about The Inlet Beach, which is next to Moore's Inlet?
A. **The Inlet Beach of -- being referred to in this is Moore's Beach.**
Q. Okay. Next bullet point. "Former Mayor Henfey told the state that if they wanted to patrol The Inlet Beach, they should send their own police to

do it."
Now, is that something that Mayor Henfey told you?
A. **I was at a meeting with fish and game and Bill Henfey, and they wanted us to use our resources to patrol the beach area, being referred to as Moore's Beach.**
Q. Um-hum.
A. **Because of the piping plover restrictions.**
Q. Um-hum.
A. **And with that, they said if you would like that enforced and so forth, bring your own police department.**
Q. What did -- what was the response from fish and game?
A. **Couple of posts and string.**
Q. Oh, really? Which is there every summer now. Right?
A. **Um-hum.**
Q. Okay. After Brad Smith's passing -- hold on. Let me find it here. Concrete blocks with big red balls and a chain were posted or positioned on the beach, The Inlet Beach. Were you involved in that project?
A. **Yes.**

Q. Okay. We have certain photographs that were marked here. We'll find them in a second.

Why were those red balls with concrete blocks put on The Inlet Beach?

A. It was after the drowning, and we knew that the area -- we became aware that it is a hazard area, with property signage and so forth, we were asked to place something in the area, in the waterway, to help trying to alert the people if they walked past the sign and didn't see it, that it was a hazard area.

Q. Okay. Now, this is not an exact quote, but I was trying to listen very carefully. You said after the drowning, it was learned that it was a hazard area?

A. Um-hum.

Q. Is that correct?

A. Yes.

Q. All right. What did you learn after the Smith drowning that made you say that it was a hazardous area?

A. The vortex, the rip current that's caused in the area, took a life, and we needed to be proactionary to alert further people from it.

Q. Okay. And the balls that we're talking about, one looks red, one looks orange. Here, this

is Delinski-4.

A. Yes.

Q. Delinski-2, and Delinski-3.

So, there were red and orange balls, or is that just a -- a developing issue there on the film?

A. Developing issue. They're all an orange buoy marker.

Q. Right. And was this an idea that both you and the mayor came up with?

A. Myself, the mayor, the administrator.

Q. Who was?

A. I do believe at the time it was Lou Belasco. But with -- the former mayor, Henfey, his boating history, and so forth like that, the only thing that that would be able to withstand the water and so forth and be able to mark was a buoy.

Q. Okay. Now, let me show you Delinski-18, are a series of flags with white poles.

A. Yes.

Q. Were those poles installed after the Smith drowning?

A. I do believe so.

Q. Was that done by the beach patrol, or Public Works?

A. Beach patrol.

Q. Okay. How long did the concrete blocks with the chain and the orange balls last before they disappeared?

A. Two disappeared immediately, and I do believe three lasted for a few months.

Q. And they disappeared because of what?

A. One was -- disappeared upon placement, to where, when we placed it, it disappeared and went under, and we never seen it.

Q. As soon as you put it on the ground, it just -- it was swallowed up by the ground?

A. Yes. We placed them with a loader. We went out to -- to the water's edge with a loader, a front end loader with the concrete and the buoy in the bucket. And then from there, we just rolled it off. And it rolled off into the water, and we never seen it.

Q. And the other ones?

A. The other -- we found one probably within a week or two, broke from the chain, and washed up down -- on the regular beach. And it was deflated. And then the three other ones were out there, and they disappeared in time.

Q. The present president of council of North

Wildwood is?

A. Sal Zampirri?

Q. Yeah. Was he involved in these discussions about posting the concrete blocks with the balls?

A. Not that I'm aware of.

Q. How about Mayor Rosenello?

A. Mayor Rosenello might have been consulted with Bill Henfey. I wasn't positive.

Q. Do you have an opinion as to whether people should be permitted to sit on the beach in what we were calling Moore's Inlet? Is it safe for them to do so?

MR. HUNKINS: Object to the form.

MR. ROZELL: Same objection.

A. Not knowing the conditions of every day, it would be up to them.

Q. Well, you mentioned how you placed the block and the ball, and it was swallowed up by the -- the sand. Did that experience lead you to have concerns about the safety of people walking on the water's edge at The Inlet Beach or Moore's Inlet?

A. It's -- yeah, it's an inlet moving water. I'd have concerns with anybody being there.

Q. Was there any discussions with Mayor Henfey about not allowing people to sit on the beach at

Moore's Inlet or The Inlet Beach, and just close it off?

A. Not that I'm aware of.

Q. Okay. Oh, you know what, I'm on page 5. The fourth bullet point from the bottom says, "Wozunk believes that The Inlet Beach and Moore's Beach should be closed, but refer to the area as a doubled edge sword." What do you mean by a double edged sword?

A. With that, it's -- you're darned if you do, you're darned if you're not. People are still going to go there. Unless you have security guards up, police department there all the time, you're going to have people on that beach.

Q. After the Smith drowning, was there any discussion about having lifeguards down there walking around to detect hazardous conditions on the beach or in the adjacent water?

A. Not that I'm aware.

Q. Okay.

(Discussion off the record.)

Q. Are you aware of any other drownings occurring off of Moore's Inlet or The Inlet Beach prior to the Smith drowning?

A. The only one I can recall to memory right now

is several years ago, probably going 30 years ago, of two firefighters that drowned in a Jeep.

Q. Yeah. We heard about that one.

Okay. Thank you very much. I appreciate your time.

MR. HUNKINS: Thank you. Just a couple questions. Thanks for your patience.

Do you need to take a break for any reason?

THE WITNESS: No.

MR. HUNKINS: Okay. I shouldn't be too long. Maybe I should put this on.

EXAMINATION

BY MR. HUNKINS:

Q. First of all, your current employment is what?

A. Superintendent of Public Works with Runnemede, the Borough of Runnemede.

Q. I may have mentioned when you first came in, I represent the State of New Jersey. So, I just have a few questions for you.

First of all, you testified that there came a point in time where you thought that there was a -- a hazard area, as you used the term?

A. (Witness nods.)

Q. And you need to verbalize your answer. You need to say yes, no, or --

A. Oh, yes. I'm sorry.

Q. Okay. And now, let me show you an exhibit that we marked earlier. It's --

MR. D'AMATO: Which one?

MR. HUNKINS: It's the one with -- that you ripped off, and we marked it as Wozunk-2, I think.

MR. D'AMATO: Right here.

A. Yeah.

Q. We're handing that to you. And maybe just start out by using your finger, point out for me the -- the extent of the hazard area. It, in your mind, at the time would have gone from where to where? And just use your finger, or -- yeah, your pen point without using the ink.

A. It don't depict it good right here. But the hazard area that we placed the buoys and so forth, was in this area.

MR. D'AMATO: Here. Why don't you use a green marker, and put like a bracket. Here you go.

A. Yeah.

Q. Okay. If you want to draw a line, a green line adjacent to where you thought it was a hazard

area, that would be fine.

A. I'd say it was around something like that.

Q. Okay. Okay. You've drawn a curved line.

A. Yeah.

Q. That's where you thought there was a hazard area?

A. Um-hum.

Q. And I think you're saying that's where the buoys went?

A. Yes.

Q. Okay. Then you used a couple of terms with -- we've obviously used the term vortex, and you drew for us on Wozunk-2 with a red arrow where the vortex was. Correct?

A. Yes.

Q. You also used the term rip tide. Is it fair to say that because this is an inlet with water running through it, that creates a rip tide?

A. Yeah. Rip tide, vortex would be pretty much the same definition in this circumstances.

Q. Okay. By the way, you mentioned Dr. Farrell. He's actually going to be an expert in this case.

Do you view him as an expert in the conditions in and around the inlet?

A. Yes.

Q. Okay. You would trust any conclusions or opinions he gives about what's happening in the inlet area?
A. **Yes.**
Q. Okay. I want to avoid getting into technical terms, because I don't think your training is in hydrology --
A. **No.**
Q. -- or marine biology, or anything like that. Right?
A. **Correct.**
Q. Okay. So, being careful not to use terms loosely, for example, the term rip tide and vortex, those terms could be potentially very important in this case.
A. **Um-hum.**
Q. And so, to go back over it again briefly, the vortex that you saw on one occasion was at the -- where you drew the red line on Wozunk-2. Is that right?
A. **Yes. And I'd like to be certain that it was the after effects of it. I didn't actually see it happen as it was developing. I was there probably 15 to 20 minutes after the effect took place.**
Q. Oh. Understood. So, if I understand you

correctly, you're referring to one occasion when you were alerted to a boiling water kind of effect?
A. **Yes.**
Q. And when you got there, you saw, and you marked the location with a red arrow.
A. **Yes.**
Q. That there had been a beach collapse?
A. **Yes.**
Q. All right. And your conclusion was that there had been a vortex at that location?
A. **Yes.**
Q. All right. Did you ever see a vortex anywhere else?
A. **No.**
Q. Okay. Were you aware over the months and years that you worked for the town that there is basically a rip tide or a very strong current that runs through the inlet?
A. **Yes.**
Q. All right. And so, in terms of what you're aware of, if we look at that green line that you wrote on Wozunk-2, that hazard area.
A. **Um-hum.**
Q. As far as what you personally have seen or observed, that's an area where there's a rip tide or

a very strong current. Correct?
A. **At the time when the placement of the blocks, yes.**
Q. Okay. You, personally, have never seen a vortex in the area of the green line, or hazard area. Correct?
A. **No.**
Q. Is that correct?
A. **That is correct.**
Q. Okay.
MR. ROZELL: I just have a couple.
MR. HUNKINS: I might actually have a couple more.
MR. ROZELL: I'm sorry, Brian. Okay.
BY MR. HUNKINS:
Q. Yeah. On your statement -- and by the way, I think we established this, but the statement which we marked as -- what is this, Wozunk-1?
A. **Yes.**
Q. Is -- was prepared by somebody else after they spoke to you. Correct?
A. **Yes.**
Q. When is the first time you read this?
A. **I received this by e-mail Friday, and I viewed it yesterday.**

Q. Okay. Did you spend a lot of time reviewing it --
A. **No.**
Q. -- or just a minute?
All right. Just went through it quickly?
A. **Just went through it quickly.**
Q. Okay. Because my impression was that you had a discussion with Mr. D'Amato's investigator for a period of time, and then after the discussion, you probably touched on a lot of points, and after the discussion was over, the investigator did his best to summarize some of the things that were discussed?
A. **Yes.**
Q. It's my impression looking at this statement, and the bullet points, that they don't necessarily flow in the same way that your conversation went. But I want to ask you about that briefly.
If you look at page 5, at the top, the first bullet point says basically that the former mayor and city administrator spoke to the state about closing the beach, due to complaints of drinking and partying. Yes?
A. **Yes.**
Q. And when you said that to the investigator,

which beach were you referring to; Moore's Beach?
A. **Yeah. Moore's Inlet Beach.**
Q. Okay. And specifically, what you were telling the investigator was that closure issue arose from drinking and partying?
A. **Drinking and partying, and the requirement of the piping plover. That's what it stemmed from.**
Q. Okay. That's --
A. **They didn't want people -- the restrictions that were coming down for the area being closed off to people, vehicles and so forth, with piping plover --**
Q. Okay.
A. **-- habitat.**
Q. And that's what I need to understand a little bit more. I'm going to ask you a couple of questions.
A. **Yes.**
Q. First of all, maybe you can clarify it for me, the piping plover area is not the entire Moore's Beach. Correct?
A. **That is correct.**
Q. It's a subsection, if you will, and it's sort of in the dunes section? In other words, it doesn't extend all the way up to the water line. Is that

fair to say?
A. **It does go to the water line.**
Q. Okay. Can you give me an estimate of how many of the -- the width of that area, if I were walking along the beach, how many yards, let's say, would comprise the protected area?
A. **Because that inlet is kind of on a curve and so forth, I wouldn't be able to give you a solid estimate of yardage and so forth. But it stems from Surf Avenue to Central Avenue.**
Q. Okay. And just roughly, how many blocks is that?
A. **It's two blocks.**
Q. Okay. And was it the issue that if you were going to try to police the drinking and partying, you would need to get vehicles on the part of the beach that was protected?
A. **Yes.**
Q. Okay. So, you were hampered from doing that because of the restriction by the DEP?
A. **Correct.**
Q. Okay.
A. **And I should clarify, saying DEP, it's actually Fish and Wildlife.**
Q. Okay.

A. **State Fish and Wildlife.**
Q. Thank you.
A. **They were the ones who were imposing the restrictions of that area.**
Q. Understood. So, the reason there was a discussion about closing the beach was because of the partying that was going on at Moore's Beach, and you felt, as the town, that you were not able to police it because of the piping plover restriction?
A. **Correct.**
Q. Okay. The beach wasn't closed. Correct?
A. **No.**
Q. One of the issues that's come up in this case is, who has the ability to close the beach. Were you at a meeting with the mayor and the administrator and Fish and Game?
A. **I was at a meeting, yes.**
Q. Okay. Was Fish and Game involved in that meeting?
A. **Yes.**
Q. Okay. And did you come away with any understanding of who, if anyone, has the power to close the beach?
A. **Fish and Game.**
Q. Okay. Is that because they're protecting the

piping plover area?
A. **Yes.**
Q. Okay. Any other reason?
A. **Not that I'm aware of.**
Q. Okay. Did you come away with an understanding that Fish and Game had the ability to close any other part of the beach, for example, the parts where there were no piping plover?
I'll rephrase the question.
Other than the area where the piping plover are, did you come away from that meeting with an understanding that the state had the ability to close any other part of the beach?
A. **I would say yes, if they had justification for some type of environmental specific or something like that.**
Q. Okay.
MR. HUNKINS: I think that's all I have. The other attorney has some questions for you. Thanks.
EXAMINATION
BY MR. ROZELL:
Q. I just want to clarify a couple of things that you talked about.
I believe Mr. D'Amato asked you a

question or some questions about the location on the inlet beaches where there was beach replenishment?

A. **Yes.**

Q. And I -- going back over my notes, it looks like, I believe you said that -- first, let me go back for a second.

As far as The Inlet Beach goes, are you familiar with the term guarded and unguarded beaches?

A. **Yes.**

Q. Do you consider The Inlet Beach to contain both guarded and unguarded beaches?

A. **Yes.**

Q. Okay. So, now, going back to where you gave testimony about the replenishment project, I believe you said that the furthest point on The Inlet Beach -- and if I'm misstating this, correct me -- where they did any sort of beach replenishment was Second and JFK?

A. **Second of JFK, probably within 200 yards off of JFK on the inlet. In other words, they didn't go past Ocean Avenue on the inlet side.**

Q. And that would -- and that area that you're talking about, that would be a guarded beach. Is that correct?

A. **Yes, that was guarded.**

MR. ROZELL: Okay. I don't have anything else.

MR. D'AMATO: Nothing else.

VIDEOGRAPHER: That's it? Okay. This concludes the videotaped deposition. Off the record, 1:55.

(Deposition concludes at 1:55 p.m.)

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, HARRY WOZUNK 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.

Lynn Smith, CCR

Certified Court Reporter

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Exhibit 10

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

SANDY 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.	:	CIVIL ACTION DEPOSITION TESTIMONY OF: JOSEPH ANTHONY CAVALIER

TAKEN BEFORE: LYNN SMITH, a Certified Court Reporter of the State of New Jersey, License No. XIO1520, at the North Wildwood Community Center, 900 Central Avenue, North Wildwood, New Jersey 08260, on Tuesday, February 9, 2016, commencing at 1:10 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

APPEARANCES:

D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
BY: PAUL R. D'AMATO, ESQUIRE
-and-
DOMINIC A. SPEZIALI, ESQUIRE
For the Plaintiffs

BARRY, CORRADO & GRASSI, P.C.
2700 Pacific Avenue
Wildwood, New Jersey 08260
609-729-1333
BY: JOSEPH C. GRASSI, ESQUIRE
For the Plaintiffs

BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
BY: A. MICHAEL BARKER, ESQUIRE
-and-
WILL ROZELL, ESQUIRE
For the Defendant, North Wildwood

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
(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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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?

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.

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.

Q. You need more time?
MR. BARKER: He's asking you do you want to speak to me now?
A. Oh, I'm sorry. I thought you said did I speak to him.
Q. Okay.
A. No, I don't need any more time.
Q. Okay. All right.
Also, given the fact this is your first deposition, and naturally, I appreciate the fact that it's not the most pleasant experience, if you need to take a break, just tell us. You can take a break.
I really have prepared for your deposition, so I hope I can move through the subject matter quickly.
If you do want to take a break, if you want to go outside, get some fresh air, and Mr. Barker can go with you, but the two of you, as Mr. Barker well knows, cannot talk about the subject matter of the deposition. You can talk about anything else, but not the subject matter. But he knows that, and he'll tell you that.
So, let's get started.
In preparing for this deposition, I have come across the following phrases, if you will.

Inlet Beach, The Inlet, Moore's Beach, Moore's Inlet Beach, The Point, and The Spit. So, I want to get an understanding here today of what those words mean to you, if anything. All right?
(Report is received and marked for identification as Exhibit 1.)
(Report is received and marked for identification as Exhibit 2.)
(Photograph is received and marked for identification as Exhibit 3.)
Q. Now, I have had marked for identification, as I said, I'm going to hand Mr. Barker every exhibit, most of all the exhibits, and you. This is -- we simply numbered them 1, 2, 3 with today's date.
(Report received and marked for identification as Exhibit 1.)
Now, let me hand you Exhibit 1.
And for the benefit of my colleagues, this is the front page of a report that was prepared for the City of North Wildwood by the Stockton University Coastal Research Center. And I would like you to look at that particular photograph. And when you look at that photograph, do you see what you call The Inlet Beach?
A. Yes.

Q. All right. Could you take this orange pen and circle, as tightly as you can, what you call The Inlet Beach.
A. (Witness complies.)
Q. Okay. May I see that?
Okay. Got it.
MR. D'AMATO: Mike, did you see that?
MR. BARKER: No.
MR. D'AMATO: Okay. Here.
Q. All right. Now, on that same piece of paper, which is Exhibit 1, with this green pen, could you circle or give us some indication of what The Inlet means to you, when -- the phrase "The Inlet"?
A. The same thing.
Q. Okay. Just for my education, would The Inlet refer to the body of water that moves from the bay to the ocean, and vice-versa?
A. Yes.
Q. Okay. So, with that in mind -- well, no. So, I think I understand what you're saying. You're saying to me that, in using your words, you would refer to the area that you marked in orange also as The Inlet?
A. I guess you would refer to that as The Inlet.
Q. Okay. Let me see what you marked there.

Let's see.
Okay. Here. All right.
So, okay, the green mark is The Inlet, and thus it's a body of water?
A. Yes.
Q. Okay, fine. Now, if I said -- maybe -- okay. I'm going to hand to you as Exhibit 2 another -- here we go.
MR. BARKER: Thank you.
MR. D'AMATO: All right.
Q. Another report that was prepared for the city of North Wildwood by the Richard Stockton Coastal Research Center, and you'll see it's the 2012 annual report. Let me hand that to you.
And could you mark on that particular exhibit with this blue marker where Moore's Beach is.
A. (Witness complies.)
Q. May I see it?
MR. D'AMATO: Here, Mike. Okay? Will? Okay.
Q. All right. Is Moore's Beach, in your mind, the same as Moore's Inlet Beach?
A. Yes.
Q. Okay. Now, with the two exhibits that you have in front of you, and don't mark it just yet, if

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

A. Not on this.

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

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

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

THE WITNESS: Um-hum.

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

THE WITNESS: Okay.

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

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

A. Yes.

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

A. Yes.

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

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

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

A. (Witness complies.)

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

Q. Could I see it?

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

A. I don't call it The Point.

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

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

Q. Who is that; Lindsay?

A. Lindsay.

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

Lieutenant Lindsay is no longer

employed by the North Wildwood Beach Patrol. Correct?

A. Yes.

Q. When did he stop working for North Wildwood?

A. October of 2014.

Q. Was he fired?

A. He retired. We have a pension plan.

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

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

A. Yes.

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

A. (Witness complies.)

Q. Okay. Here.

MR. D'AMATO: Here. You see?

MR. DIJOSEPH: Brian?

MR. HUNKINS: Okay, thanks.

BY MR. D'AMATO:

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

A. Yes.

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

A. City of North Wildwood.

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

A. You mean blacktopped?

Q. Yes.

A. Over 20 years ago.

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

A. How long ago?

Q. Yeah.

A. Seven, eight, nine years ago.

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

A. Yes. It was gravel.

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

A. As long as I can remember.

Q. Okay, fine. Okay.

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

MR. DiJOSEPH: Right here.

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

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

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

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

A. Yes.

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

A. Yes.

Q. All right. With that in mind, let's look at

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

A. '46.

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

So, take a look at 1956. All right? Now, what we've done here is, as best as we lawyers could, we tried to show where the -- got that, in 1956? Yeah.

A. Yeah.

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

A. Yes.

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

A. No.

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

A. I believe in the '40s.

Q. Okay. Let's go to the next page, which is an aerial photograph for 1963. In this photograph, do

we see Moore's Beach?

A. Yes.

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

A. (Witness complies.)

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

A. No.

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

A. Yes.

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

A. (Witness complies.)

Q. Okay.

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

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

A. (Witness complies.)

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

All right. Now, if you could look to

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

A. (Witness complies.)

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

A. (Witness complies.)

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

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

A. Yes.

Q. What period of time?

A. In the '70s.

Q. For approximately how many years?

A. Four or five.

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

A. I can't remember.

Q. Okay. Why was the posting of a lifeguard

stand or a lifeguard at Moore's Beach discontinued?
A. Because we couldn't -- the beach had eroded, and we couldn't get to it.
Q. Okay. Would you agree that since the early 1970s, that there have been summers where there's been a beach where people sit on the beach and sunbathe?
A. At Moore's?
Q. Yes, yeah.
A. Yes.
Q. Okay. Was there ever consideration by you to re-establish having a lifeguard or a lifeguard stand with a lifeguard at Moore's Beach?
A. No.
Q. Why not?
A. It was too inaccessible to get to, if there was a problem. We couldn't drive to it. We can drive to our -- our chairs, and we couldn't get to that.
Q. Okay. On the day of Mr. Smith's initial disappearance, which was July 27, 2012, could vehicles drive from the protected beaches to where the sand had collapsed when he and Mr. Sunderland and their children were walking?
MR. BARKER: Objection.

VIDEOGRAPHER: Off the record at 1:33.
MR. D'AMATO: Go ahead.
MR. BARKER: I'm objecting to the form of the question. And if you want me to be more specific, I could.
MR. D'AMATO: No, that's okay.
MR. BARKER: So --
MR. D'AMATO: That's good. I appreciate the way you just did that. You don't have to be more specific. I'm with you. Okay? Okay.
VIDEOGRAPHER: Please stand by.
Back on the record at 1:33.
BY MR. D'AMATO:
Q. Would you like the question read back, that I just asked?
A. Yes.
(Record read.)
A. Yes.
Q. Okay. All right. Now, if we could go to the aerial photograph for 2002. Would you agree that we see the parking lot that we've been referring to before?
A. Yes.
Q. Okay. Do you -- just put a little X over the parking lot.

A. (Witness complies.)
Q. All right. And as I look at the parking lot in this aerial photograph from 2002, I don't see the condominiums adjacent to the parking lot; do you?
A. No.
Q. Okay. Now, if we could go to the aerial photograph for April 1, 2003. In looking at this aerial photograph, is the Moore's Beach shown here?
A. No.
Q. Is it covered with water?
A. Well --
Q. Or does it --
A. It's cut off.
Q. Yeah, thanks. All right. All right.
Now, could you go to the aerial photograph of April 6, 2005. Would you agree that we do see Moore's Beach?
A. Yes.
Q. All right. Could you just circle it? Because some day, some people are going to be looking at this.
Can I see what you did, please.
Okay. Fine. Now, let's stay with that aerial photograph.
You have on several of these aerial

photographs indicated where you believe Moore's Beach is. Could you, on this aerial photograph, dated April 6, 2005, tell me where Moore's Beach ends?
A. I don't understand the question.
Q. Okay. If you and I are standing on the sand back on April 6, 2005, and we begin to walk south --
A. Okay.
Q. -- and I on -- when would you say to me, Paul, we're no longer at Moore's Beach?
A. You want me to circle it?
Q. No. You know what I want you to do, I'd rather you draw a line with this blue marker, if you don't mind, sir.
There you go.
A. (Witness complies.)
Q. Okay. Now, on that photograph, which is dated April 6, 2005, below the blue line, do we see any portion of a protected beach?
A. Yes.
Q. Okay. The first protected beach that's shown on that photograph, dated April 6, 2005, would be located next to what street, if we could use a street reference?
A. Surf Avenue.
Q. Okay. All right. Take the green marker, if

you will, and just draw a line where the protected beach at Surf Avenue begins.

A. (Witness complies.)

Q. Okay. Now, you have drawn a line where Moore's Beach ended, and you have drawn a line where the Surf Avenue Beach starts, which was a protected beach. Correct?

A. Yes.

Q. What do you call the area between those two lines, that beach area? What do you call it?

A. Inlet Beach.

Q. Okay. While we're there talking about The Inlet Beach on this photograph of April 6, 2005. Before July 27, 2012, did you personally ever observe, during the summertime, especially, people sitting on the beach area, what you call The Inlet Beach?

A. (Indicating.)

Q. That's right, yeah. Between where Moore's Beach ends and where Surf Beach begins.

A. Yes.

Q. All right. And were those individuals in violation of any North Wildwood ordinance by sitting on the beach between those lines that we're going to call The Inlet Beach?

A. No.

Q. Okay. If any of those individuals before July 27, 2012 were walking in ankle deep water, on what we're calling The Inlet Beach, between where Moore's Beach ends and where Surf Beach begins, would they be in violation of any ordinance of the City of North Wildwood?

A. No.

Q. All right. If they were walking in the water between this area that we're talking about, and the water came up to their mid calf, would they be in violation of any ordinance of the City of North Wildwood?

A. Can you repeat that again?

Q. Yeah.

A. I want to make sure --

Q. Sure. If a person in the summertime, before July 27, 2012, was walking in the ocean or the water there and the water was up to their mid calf, and they were in this area, what we're calling The Inlet Beach, which starts at the end of Moore's Beach and ends at the beginning of the Surf Avenue Beach, would they be in violation of any ordinance?

A. No.

Q. All right. Following this along, if a person

was out 20 feet swimming in that area that we've been referring to, would they be in violation of any North Wildwood ordinance?

A. Yes.

Q. Okay. Do you know why swimming in the ocean off of The Inlet Beach, and I'm not going to repeat, you know, the beginning and the end of it, I think we know what we're talking about, do you know why swimming 20 feet from The Inlet Beach was prohibited?

A. Because it's unprotected.

Q. Okay. And why was it unprotected for -- well, strike that.

Was there ever a lifeguard stand or a lifeguard posted in what we're calling The Inlet Beach before July 27, 2012?

A. No.

Q. Okay. Why not?

A. I can't answer that.

Q. Okay. All right. The Inlet Beach that we have been referring to over and over again, did it ever completely disappear, so that it wasn't available for the summer season for people to sit on and sunbathe?

A. No.

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 in 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 council 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.

Q. All right. And where are those written recommendations?

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

Q. I'm sorry. What?

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

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

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

VIDEOGRAPHER: Off the record at 1:43.

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

MR. BARKER: Okay.

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

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

MR. D'AMATO: Okay.

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

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

VIDEOGRAPHER: Back on the record,

1:44.

BY MR. D'AMATO:

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

A. I gave it to the city clerk.

Q. Okay.

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

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

A. No.

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

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

Q. Okay.

A. So, I miss --

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

A. Okay.

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

A. Yeah, right.

Q. All right. So, I do understand your testimony.

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. Should I ask it -- yeah, let me ask it completely.

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. Yeah.

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 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 put 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 was one of the things they wanted to do was to drink alcoholic beverages?

A. Yes.

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

A. Dogs, Jet Skis.

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 -- 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. Okay.
A. **It's --**
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 having 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.**
Q. Okay. And is there a set pattern as to when the police officers patrol that beach? That is, the Moore's Beach and The Inlet Beach?
A. **I can't answer that question.**
Q. Okay. All right. Is part of your duties and responsibilities to ensure that the protected beaches of North Wildwood are clean?
A. **My --**
Q. Yeah. Is that one of your jobs?
A. **No.**
Q. To make sure the beach is clean.
Okay. Whose job is it?
A. **Public Works.**
Q. All right. And who's the present head of the Public Works Department of North Wildwood?
A. **Gary Sloan.**
Q. Okay. And how long has Gary been the head of the Public Works Department?
A. **One year.**
Q. And who was the head of the Public Works Department before Gary Sloan?
A. **Harry Wozunk.**

Q. Is he still with us, the gentleman?
A. **No. He re -- he left.**
Q. Oh, he left the employment? Is he still alive?
A. **Yes.**
Q. Okay. Where does he live?
A. **Cape May Court House, I believe.**
Q. Okay. And how do you spell his last name?
A. **W-O-Z-U-N-K.**
Q. And --
A. **Wozunk.**
Q. And how long -- I'm sorry. I cut you off.
So far, I don't think I've cut you off.
A. **No.**
Q. But if I do, Mike will tell me, or you'll tell me. Right?
A. **Okay.**
Q. How long was he the head of the Public Works Department?
A. **Eight years.**
Q. All right. Before July 27, 2012, did employees of the Public Works Department clean Moore's Beach and The Inlet Beach?
A. **Just where the lifeguard protection was.**
Q. Okay. Well, now, remember -- I have been

using the phrase Inlet Beach.
A. **No.**
Q. Okay. They never closed it -- they never cleaned it?
A. **No.**
Q. All right. Now, did -- okay. Let me rephrase that.
The -- I've read all of these daily logs from the North Wildwood Beach Patrol. And I see references to First and Surf. All right?
Is First and Surf a protected beach?
A. **Yes.**
Q. Okay. Is that the first protected beach?
A. **That's the last.**
Q. Oh, you go the opposite way?
A. **Yes.**
Q. Okay. So, First and Surf would be the last protected beach?
A. **Yes.**
Q. And has that been the case for 10 years before July 27, 2012?
A. **Yes.**
Q. All right. Before July 27, 2012, what services did the North Wildwood Fire Department offer to the members of the North Wildwood Beach Patrol

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

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

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

A. A neck injury, spinal injury.

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

A. Yes.

Q. All right. Any other services?

A. That's mostly medical.

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

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

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

A. Yes.

Q. All right. For how many years before July

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

A. How often?

Q. How often, and what type of services?

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

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

A. Yes.

Q. -- would the marine police be called?

A. Yes.

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

A. No.

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

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

What do you call it?

A. Hereford.

Q. Hereford. Okay.

Do you know why it's called that?

A. No.

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

A. Yes.

Q. Okay.

All right. Let me put these away. These are just extras. Okay.

MR. BARKER: Off the record a minute.

VIDEOGRAPHER: Off the record, 1:56.

MR. BARKER: For clarity of the record, you indicated that Exhibit -- I thought you marked this as Exhibit 4, this compendium.

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

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

MR. BARKER: The compendium.

MR. DIJOSEPH: He has the stuff.

MR. BARKER: Oh, okay. So, this is Exhibit 4. It had previously been marked County Designee-5.

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

MR. D'AMATO: Right.

MR. DIJOSEPH: They all should be the same.

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

MR. D'AMATO: Yeah.

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

MR. D'AMATO: It is.

MR. BARKER: Okay.

MR. D'AMATO: And you --

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

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

MR. BARKER: Well, see?

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

MR. BARKER: Yeah, there's a couple

there.

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

BY MR. D'AMATO:

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

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

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

VIDEOGRAPHER: Back on the record at 1:58.

BY MR. D'AMATO:

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

A. No.

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. 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 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 inlet's changing all the time. Every year, it changes.

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

A. I don't know.

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

A. Yes.

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

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

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

A. No.

Q. -- read anything?

A. No.

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

A. Yes.

Q. Are you aware of that?

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

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

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

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

Q. Right.

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

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

A. The beach.

Q. The beach. Okay.

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

A. Correct.

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

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

A. Yes.

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. (Witness nods.)

Q. All right. Now --

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

Q. You meant yes. I know.

A. Yes. I'm sorry.

Q. That's okay.

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

Could an average swimmer swim through the vortex?

MR. BARKER: Objection.

VIDEOGRAPHER: Off the record at 2:03.

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

VIDEOGRAPHER: Back on the record at 2:04.

BY MR. D'AMATO:

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

A. I thought he objected to it.

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

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

THE WITNESS: Okay.

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

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

A. Ask me again.

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

(Record read.)

A. No.

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

A. No.

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

A. No.

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

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

A. No.

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

A. Yes.

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

A. Yes.

Q. All right. And you approved them?

A. Yes.

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

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

MR. DiJOSEPH: Yes.

MR. D'AMATO: Where are they?

(Discussion off the record.)

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

MR. D'AMATO: We found it.

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

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

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

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

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

A. No.

Q. Okay.

MR. DiJOSEPH: This is an exhibit --

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

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

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

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

A. No.

Q. Okay. All right.

MR. BARKER: What was that number; 5?

MR. D'AMATO: 5. You want to give that

to him?

MR. HUNKINS: Exhibit 5?

MR. DiJOSEPH: No, I'm sorry. That's marked 6.

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

MR. DiJOSEPH: 5 is BassBarn.

BY MR. D'AMATO:

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

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

A. No.

Q. Okay.

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

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

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

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

Q. I'm going to mark for identification an

aerial photograph showing the condominiums. Okay? All right. And the parking lot that we have previously referenced.

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

MR. HUNKINS: Thank you, Paul.

MR. D'AMATO: All right.

MR. BARKER: 8?

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

MR. BARKER: This side?

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

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

BY MR. D'AMATO:

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

A. Yes.

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

A. No.

Q. Okay. In fact, there is -- there are stairs

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

A. Yes.

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

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

A. No.

Q. Where else?

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

Q. Let me see.

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

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

So, there are two sets of stairs there?

A. Two sets.

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

A. Yes.

Q. Now, in reading about this inlet from the

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

MR. HUNKINS: Object to the form.

MR. BARKER: Join. You can answer.

A. No.

Q. Okay. How deep?

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

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 yards, twenty-five yards.

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

A. Yes.

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

MR. DiJOSEPH: Which one do you want? Do you want 4?

MR. D'AMATO: Yes, 4.

Q. Where that event took place, that you saw,

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

A. Yes.

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

A. (Witness complies.)

Q. Okay.

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

(Discussion off the record.)

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

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

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

MR. D'AMATO: Yes.

MR. HUNKINS: Okay, thanks.

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

MR. DiJOSEPH: That one.

MR. D'AMATO: Okay.

BY MR. D'AMATO:

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

A. Um-hum.

MR. BARKER: March?

A. (Witness complies.)

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

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

A. Hundred yards.

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

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

A. Yes.

Q. Yeah. Does anybody remember the word he used?

MR. GRASSI: It was drop off.

A. Drop off.

Q. Drop off. Okay.

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

A. Not to my knowledge.

Q. Okay. And again, that 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.

Q. Okay. Is the beach area where you put the X on the aerial photographs, where the event with Mr. Smith took place, is that considered a stable beach?

MR. BARKER: Objection.

VIDEOGRAPHER: Off the record at 2:18.

MR. D'AMATO: You know what, from now on, if you just could say to me, do we have to go off the record.

VIDEOGRAPHER: Okay.

MR. D'AMATO: It will save us some time. And it's not your fault.

VIDEOGRAPHER: Okay.

MR. D'AMATO: I just want to finish with the witness.

VIDEOGRAPHER: Okay. Ready to go back on?

MR. D'AMATO: Yeah, just one second. I appreciate your objection, but I don't need to know the basis of it.

Sometimes we just don't need to know the basis of it. Okay? That's what I just said.

Okay. So, we go back on the video record.

THE VIDEOGRAPHER: Back on the record, 2:19.

BY MR. D'AMATO:

Q. Okay. You want the last question read back?

A. **Yes.**

(Record read.)

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

Q. Okay. Why don't you know?

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

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

A. **No.**

Q. Why not?

A. **It's -- I can't answer that.**

Q. Is there somebody within the government of North Wildwood that you think could answer it?

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

Q. Okay.

MR. DiJOSEPH: Let me take that.

Q. Okay.

MR. D'AMATO: I did it again.

Oh, here we go, thanks.

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

Q. All right. Let me show you what's been marked for identification as Exhibit 9. This is

another photograph that Investigator DiJoseph pulled off the Moore's website for the Moore's Beach. And; let me hand it to you --

MR. DiJOSEPH: Paul, that is a public --

MR. D'AMATO: It's a what?

MR. DiJOSEPH: It's a public Facebook page for the beach.

MR. D'AMATO: Oh, okay. All right.

MR. DiJOSEPH: It's a public open group on Facebook called Moore's Inlet Beach.

MR. D'AMATO: Got it. Thank you.

BY MR. D'AMATO:

Q. Okay. Looking at that photograph, you'll see people bathing, okay, and you can assume our representation that that is showing you Moore's Beach.

Did the lifeguards of the North Wildwood Beach Patrol, before July 27, 2012, go to Moore's Beach and tell any bathers, like the ones you see in that photograph, to get out of that water, and not swim there?

A. **No.**

Q. Before July 27, 2012, if you saw those bathers right off of Moore's Beach, that is shown in

that particular exhibit, would you think that it was dangerous for them to be swimming, or just standing in that area?

MR. BARKER: Objection.

VIDEOGRAPHER: Do we need to go off?

MR. D'AMATO: No.

Q. Yeah.

A. **Any unprotected beach is dangerous, as far as I'm concerned.**

Q. Okay. All right. Where you see those bathers, can you tell us, and again you can estimate, if the bay was going out to the ocean, and the vortex or whirlpool was created, how far are they from that vortex or whirlpool?

A. **300 yards.**

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 that water is moving at five miles per hour, the water that's going out to the ocean.

A. **Um-hum.**

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.**
Q. Or nine miles per hour?
A. **Yes.**
Q. Okay. So, we'll say somewhere between five to nine miles per hour?
A. **(Witness nods.)**
Q. Okay. Could I have that back?
(Photograph is received and marked for identification as Exhibit 10.)
Q. Let me show you what's been marked for identification as Exhibit 10. Now, you could see in the lower right-hand corner, this photograph was taken by Mr. DiJoseph on August 10, 2012.
I just want to show Mr. Barker and Will. Okay?
All right. You see that sign that's there?
A. **(Witness nods.)**
Q. Yeah. That sign is warning people of what?
A. **No swimming.**

Q. Okay. Would you agree that on July 27, 2012, there were no signs saying no walking in ankle deep water? Would you agree?
A. **Yes.**
Q. Would you agree that on July 27, 2012, there were no signs saying do not walk in water that goes to your mid calf?
A. **Yes.**
Q. Okay. Now, I'll take it back.
(Photograph is received and marked for identification as Exhibit 11.)
Q. Now, I'm going to show you what's been marked for identification as Exhibit 11. Again, this photograph was taken on August 10, 2012. All right? You'll see a series of flags, red flags. All right? Were those red flags posted there after July 27, 2012?
A. **Yes.**
Q. And was this a result of -- as a result of Mr. Smith drowning?
A. **Yes.**
Q. All right. Whose idea was it to put those flags there?
A. **The city administrator.**
Q. And that was?

A. **Lou Belasco.**
Q. Okay. All right. What do those red flags signify? What are they warning about?
A. **It's -- that's the same signal -- it's an international signal, no swimming.**
Q. Okay. How long were those red flags up for the summer season of 2012?
A. **How long were they up?**
Q. Labor Day?
A. **Yes.**
Q. Okay. Were these flags that we're looking at in that photograph, were they posted in that location, or approximately next to those locations, for the summer of 2013?
A. **I believe so.**
Q. How about the summer of 2014?
A. **No.**
Q. Why not?
A. **We just stopped putting them out.**
Q. Was there any discussion with the mayor and council about not putting them out anymore?
A. **No.**
Q. You made that decision yourself?
A. **Yes.**
Q. Did you have a basis for that decision?

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

DiJoseph.

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

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

A. Yes.

Q. And would you agree it is?

A. Yes.

Q. Okay.

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

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

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

MR. BARKER: I prefer you mark them individually.

MR. D'AMATO: Okay.

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

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

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

A. Four or five.

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

A. Yes.

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

balloon connected to a piece of concrete?

A. The mayor, former mayor of North Wildwood.

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

A. Yes.

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

A. They were never taken out.

Q. Okay. Did they disappear in the ocean?

A. Yes. Yes.

Q. Okay. When did they disappear?

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

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

VIDEOGRAPHER: This ends videotape 1. The time's 2:32. We're off the record.

(Recess.)

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

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

BY MR. D'AMATO:

Q. All right. I've had marked for

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

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

MR. D'AMATO: Thank you.

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

MR. D'AMATO: Thank you.

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

BY MR. D'AMATO:

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

A. Yes.

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

A. Yes.

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

A. Yes.

Q. Okay.
MR. BARKER: Do you want back your Exhibits 14 through --
MR. D'AMATO: Yes. I'll provide you with color copies of everything.
(Photograph is received and marked for identification as Exhibit 19.)
BY MR. D'AMATO:
Q. I'm now going to show you what's been marked for identification as exhibit 19. For the benefit of my colleagues, all right, this photograph was taken July 31, 2014. Let me hand it to you. And just get your orientation as to what part of the beach that that is showing. Okay?
Do you know what part of the beach it's showing there?
A. I believe it's from Surf Avenue looking west.
Q. You're correct. All right. Can I have that back just for one second here.
This particular -- is our audio okay?
VIDEOGRAPHER: Off the record at 2:43.
Let me see if I can quiet them down a little bit in a nice way.
(Discussion off the record.)
VIDEOGRAPHER: Back on the record at

2:44.
BY MR. D'AMATO:
Q. All right. I had handed to you Exhibit 19, and then I took it back. And you identified the area where this, what is shown in this particular photograph, and you would agree that the sign on the top means no swimming?
A. Yes.
Q. All right. And is it fair to say that when you see that sign, it also means it's not a protected beach?
A. Yes.
Q. Okay. And below, there's another sign that says, "No dogs, cats, or any other domestic animals on beach May 1 to October 1," and it references Ordinance No. 1416.
Was it the responsibility, before Mr. Smith's drowning, of the North Wildwood Beach Patrol to enforce the no swimming sign and the no animal sign?
MR. BARKER: Objection. You may answer the question.
A. Can you repeat that again?
MR. D'AMATO: Please read it back for the chief.

(Record read.)
MR. BARKER: Objection.
A. I don't know how to answer that question.
Q. Well --
A. Not -- the second part. You mean, if people are in the water, did we enforce that sign?
Q. Yes.
A. No.
Q. Why not?
A. It's too big an area to cover.
Q. Okay. How about the sign below, no dogs, cats, or other domestic animals?
A. If we got a phone call complaint, we would get the dogs off the beach.
Q. And "we" is the beach patrol?
A. Or the police.
Q. Okay. Both of you, the beach patrol --
A. Yes.
Q. -- and the police? All right.
(Photograph is received and marked for identification as Exhibit 20.)
Now, let me show you another photograph that's marked for identification as July 31, 2014, it was taken, it's Exhibit 20. And it says, "Area closed, endangered birds nesting."

I've learned about the endangered birds.
Every summer, an area is cordoned off where the birds are nesting?
A. Yes.
Q. All right. Who enforces that particular sign, as to what it's saying? Is that the responsibility of the beach patrol?
A. No. Wildlife.
Q. Okay.
MR. D'AMATO: You want to take these back?
Q. Now, do you 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.

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

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

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

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

MR. BARKER: Objection.

A. This did exist.

Q. It did exist?

A. Yes.

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

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

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

A. And the blue.

Q. The blue existed?

A. Yes.

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

A. Yes.

Q. At whose suggestion or recommendation?

A. Public Works. Mr. Wozunk.

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

A. Yes.

Q. Okay. Did anyone have to get your approval in order to post this sign that says high risk rip current area?

A. No.

Q. All right. Were you even asked if --

A. No.

Q. You weren't even asked. Okay.

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

Q. Let me show you a photograph that's been marked for identification as Exhibit 22. The good looking gentleman there is a colleague of Mr. DiJoseph. He's also a licensed private investigator, Charles Atkinson. And you'll see two officers that

are walking on the beach. And I could tell you, I was there when that photograph was taken. We were right on the beach off that what you call The Inlet Beach.

Would you agree that that shows that area?

A. Yes.

Q. All right. So, you, before July 27, 2012, personally observed police officers walking on the beach as we see in that particular photograph?

A. No.

Q. Why not?

A. This was instituted by our present mayor, the walking patrols.

Q. Okay. And when was that instituted?

A. '14.

Q. Okay. Did police officers ever patrol the beach before July 27, 2012?

A. They occasionally would ride down in a vehicle.

Q. Okay. All right. Could I have that?

MR. D'AMATO: Can you make a note to see if there was a resolution or an ordinance that regards that? Okay.

Here. You can take that.

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

Q. Okay. I'm going to now show you what's been marked for identification as Exhibit 23. And there's a follow-up photograph. And again, I was there when this photograph was taken. Take that. And I'm going to mark for identification as Exhibit 24.

(Photograph is received and marked for identification as Exhibit 24.)

Q. Would you agree that the persons that we're looking at on that vehicle are Public Works employees of the City of North Wildwood?

A. Yes.

Q. Okay. Do you know who that individual is? And let me hand to you 24.

(Discussion off the record.)

A. I have no idea.

Q. Okay. How do you know that it's a Public Works vehicle?

A. Because that's the type of vehicle they use.

Q. Okay.

A. The little cart on the back.

Q. Would you agree that they're on what you and I have been calling The Inlet Beach?

A. Yes.

Q. Okay. In the parking lot located near the condominiums, there was or -- there was, when I was there during the summertime, a porta potty. A blue porta potty.

Did you ever see it?

A. On the beach, or on the parking lot?

Q. In the parking lot.

A. Yes.

Q. Who puts that there?

A. Public Works.

Q. Okay. And there's also a small little house. Is that where people can bathe in there?

A. No. That's the restrooms.

Q. Okay. And who maintains those?

A. Public Works.

Q. Okay. All right.

(Photograph is received and marked for identification as Exhibit 25.)

Q. Let me show you a photograph marked for identification as Exhibit 25. This was taken by Mr. DiJoseph on May 21, 2014. And I'm going to mark another photograph that shows you a close-up as Exhibit 26.

(Photograph is received and marked for identification as Exhibit 26.)

Q. Mr. DiJoseph, he wrote a report that indicates that this was a Public Works tractor.

A. Yes.

Q. Front end loader.

Was that front end loader taking sand from the Moore's Beach area and putting it on a protected beach?

MR. BARKER: Objection.

A. No.

Q. No? Do you know what it was doing?

A. There's an out fall pipe there, that they have to dig out to clear the -- so the water can flow.

Q. Got it. And Public Works take care of that. Correct?

A. Yes.

Q. Yeah?

A. Yes.

(Photograph is received and marked for identification as Exhibit 27.)

Q. Okay. Let me show you what's been marked for identification as Exhibit 27. This photograph was taken by a Mrs. Patricia Possey, P-O-S-S-E-Y. These photographs have been supplied to counsel. And this was after the Brad Smith incident.

Did you become aware of the beach in The Inlet Beach area collapsing as shown in this particular photograph?

MR. BARKER: Objection.

MR. HUNKINS: Can I -- sorry. Are you objecting?

MR. BARKER: I'm objecting.

MR. HUNKINS: I was wondering if you could represent the date the photo was taken.

MR. D'AMATO: It's in the interview here. Go ahead.

(Discussion off the record.)

MR. D'AMATO: My recollection is when we -- when Mr. DiJoseph interviewed her, it was -- this event took place the summer of 2013. 2013.

MR. DIJOSEPH: August 3rd, 2014.

MR. D'AMATO: 2014. Okay. I was wrong. Okay, here.

MR. DIJOSEPH: Oh, no. See, provided to NBC 10 News in September 2012. And we interviewed her August 3rd, 2014.

MR. D'AMATO: Okay. Let me just put this on this record.

Q. And I've given this statement to your attorneys. But I'll just mark it as part of the

record.

This is an interview of Patricia Possey, this report is dated August 4, 2014. And she said that she provided this video to NBC 10 News in September of 2012. Okay? So, here. I'm going to hand that to Mr. Barker. You really don't have to read that, because I want to ask you about this photograph. Where is it?

Can I have that, please?

MR. BARKER: Certainly.

MR. D'AMATO: Yeah. All right. All right.

MR. HUNKINS: And I hate to interrupt, but just for the follow-up, we know she gave it to them in September of 2012. Do we know the date she took it?

MR. DIJOSEPH: It's in the report.

MR. HUNKINS: Oh, it's in the report?

MR. D'AMATO: You have this report. I'd just like to move on. Okay?

MR. HUNKINS: Yeah.

Q. I believe it was taken in September 2012. All right.

Here's my question: First, do you recall seeing the beach in this condition back in

September 2012?
A. No.
MR. BARKER: Objection. But you can answer.
Q. Okay. Have you ever seen conditions like what is shown in Exhibit 27 along the North Wildwood beaches, protected or unprotected, before September 27, 2012?
A. Yes.
Q. Okay. What locations, if you will, in the City of North Wildwood?
A. Moore's Beach.
Q. Okay. Given the number of years that you have been a member of the North Wildwood Beach Patrol, can you explain why a condition like this occurs?
A. No.
Q. Okay.
MR. D'AMATO: That's unused. This is used.
MR. DiJOSEPH: I need the report.
MR. D'AMATO: That's all right.
(Discussion off the record.)
Q. Okay. Here. These are unused. Okay? All right. Don't need those. Here.

Take this. What am I up to now; 23?
MR. DiJOSEPH: 29.
(Photograph is received and marked for identification as Exhibit 29.)
Q. Okay. Let me show you a photograph that's been marked for identification as Exhibit 29.
MR. DiJOSEPH: It's from the public Facebook profile.
MR. D'AMATO: Okay. Mr. DiJoseph advises me that that is from the -- what?
MR. DiJOSEPH: Moore's Inlet Beach public Facebook group.
Q. Okay.
MR. BARKER: Date?
MR. DiJOSEPH: I believe it's like August 2015, it says. Somewhere in that area.
MR. HUNKINS: Meaning, that's the date it was taken?
MR. DiJOSEPH: That's the date it was posted on the Facebook page. I don't know when it was taken.
BY MR. D'AMATO:
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.
MR. HUNKINS: Meaning?
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. The area that's shown in that photograph, is that Moore's Beach?
A. No.
Q. Is that Inlet Beach?
A. Yes.
Q. Okay.
MR. D'AMATO: For the record, he was referring to Exhibit 29.
Here we go. Hold on. Okay. You can take that. You can take that. Put that away. Thank you. Here.
(Discussion off the record.)
MR. D'AMATO: Is that mine, Mike, or is that yours?

MR. BARKER: That's what you gave me.
MR. D'AMATO: Okay.
(Discussion off the record.)
MR. D'AMATO: All right.
What exhibit number are we up to now?
MR. BARKER: 30.
(Discussion off the record.)
(Photograph is received and marked for identification as Exhibit 30.)
BY MR. D'AMATO:
Q. Okay. Let me show you what's been marked for identification as Exhibit 30. This was sent to me by Mr. Barker. And I'll hand it to you. It is a memo to Attorney William Kaufman, who I believe is your city solicitor, from Ronald Simone, administrative assistant, it's dated August 27, 2015.
Have you ever seen this document before?
A. Can I open it?
Q. Sure, sure. You'll see on the next page, it says North Wildwood Beach Patrol Rescue Report.
A. This actual report?
Q. Yes.
A. I've never seen this.
Q. Okay. The gentleman, Ronald Simone,

administrative assistant, do you know to whom he is an administrative assistant?

A. To the mayor.

Q. Mayor? Okay.

MR. D'AMATO: Spez, just we've got to send out a letter, so we can take Mr. Simone's deposition.

MR. SPEZIALI: Got it.

Q. All right.

MR. BARKER: I'll take the extra copy, if you want.

MR. DiJOSEPH: Mr. Barker.

MR. BARKER: Yeah. 30.

(Photograph is received and marked for identification as Exhibit 31.)

BY MR. D'AMATO:

Q. Okay. Let me show you what's been marked for identification as Exhibit 31. Give a copy to Mr. Barker, and an extra copy for the mayor, if he wants to look at it.

MR. ROSENELLO: Thanks.

Q. This is a transcription of a conversation that former Lieutenant Lindsay had with a Mrs. Simpson.

Have you ever seen this transcript

before?

A. No.

Q. Okay. Can I take you to page 4. The numbers are in the upper right-hand corner. Okay?

I want to read into the record, because I don't have copies for all the rest of the attorneys, what Lieutenant Lindsay said, and we actually have the recording of this.

"Yeah. At low tide, between mid and low tide, the gentleman that drowned last year, when -- we called him out of the water here, so they said, 'Okay, we can't go in the water, let's go for a walk.' They're walking, him and his friend and their two daughters, and they're in ankle deep water, and they're right there, and they fell into the 30-foot deep."

Now, I'm just going to stop there, and I'll continue in a second.

The area, according to Lieutenant Lindsay, where this event took place, it was 30-foot deep.

Do you agree or disagree?

A. Disagree.

Q. Okay. And again, how many feet do you think it is?

A. Ten.

Q. Okay. Let me continue with the quote.

"And the thing is, is when from mid tide to low tide, all the water in the back bay is rushing out, and it doesn't -- the only place -- all sand bars here, okay."

Then Mrs. Simpson says, "Oh." And Lieutenant Lindsay says, "Here to Stone Harbor, all that water comes out right through here."

Mrs. Simpson: "It's causing, like, a canal?"

Lieutenant Lindsay: "It's like a river. So, you -- they fell in here, and before they knew it, they were getting sucked out, and he, the one little girl, got on the dad's back, they managed to swim, he managed to make it to shore. The other little girl got picked up by a Jet Ski, bought in -- brought in. The Jet Ski went back out to get the father. And by the time he got back out, the father must have panicked, and once you panic, you're -- you're done."

My question to you is this: Did you ever become aware of the existence of this recorded conversation between Mrs. Simpson and Lieutenant Lindsay?

A. No.

Q. All right. There is the first time you ever heard of it?

A. Yes.

Q. Okay. Okay. If I could take you to page 7. Okay? And I'm getting to the part of his statements that I want to ask you a question about.

"We could get the state and have this whole -- from there to the Greek church, the rocks, shut down. But then you run --"

Mrs. Simpson says: "Because of the bars?"

Lieutenant Lindsay: "Then you run into the people with the, you know, the bars, and the condo owners, who want to walk over the bulkhead and be on the beach. And for the local people, they know, you know, they -- they know how dangerous it is, but a guy comes down from Philly with his family, and they're, like, because of a lot of -- a lot of people, when we go down and say, 'Hey, you can't be' -- they're, like, 'Oh, we didn't know, thanks for telling us.'"

I have a couple questions. Did you, personally, ever feel any pressure from any of the bar owners in the area of Moore's Beach to keep

Moore's Beach an area that was not closed down?
A. Repeat that.
Q. Okay. Let me change it up a little bit.
All right. Did you, before July 27, 2012, ever get any pressure from any of the bar owners not to close down what we've been calling Moore's Beach?
A. No.
MR. HUNKINS: Object to the form.
Q. How about from the condo owners?
A. No.
Q. Did anybody ever tell you, in city government, that they were getting pressure from the bar owners or the owners of the condos in that condominium next to Moore's Beach that those individuals didn't want Moore's Beach closed down, so no one could sit on it?
A. No.
Q. Okay. Okay. I'll take that back.
(Discussion off the record.)
Q. Now, I have a series of North Wildwood patrol daily reports.
MR. D'AMATO: Oh, here's an extra copy. Mike, is this yours you gave you, or did you take it?
MR. BARKER: You brought it here.

MR. D'AMATO: No, I know, but --
MR. BARKER: I don't think I brought that into the room.
MR. D'AMATO: No, but we gave you a copy. And I wonder if I took your copy. Is it --
MR. BARKER: Oh, you gave me a copy? Then --
MR. D'AMATO: Yeah, okay.
MR. BARKER: No, I didn't know you did.
MR. D'AMATO: Here. All right. Sorry.
MR. BARKER: Did it have an exhibit number, by the way, or --
MR. D'AMATO: Yes.
MR. DiJOSEPH: It did. It was the memo from Mike Barker to Attorney Kaufman was Exhibit No. 30.
MR. BARKER: Yeah, but this is something different. This is to Paul from me, dated -- it's like a discovery.
MR. DiJOSEPH: That's not an exhibit.
MR. D'AMATO: No. Everybody, the attachment is an exhibit. I didn't attach the letter.
MR. BARKER: Oh, okay.
MR. D'AMATO: Okay? All right.

MR. ROZELL: It's the Ron Simone report.
MR. BARKER: Yeah. I have the report.
BY MR. D'AMATO:
Q. Okay. Did you read any North Wildwood Beach Patrol daily reports in order to prepare for this deposition?
A. No.
Q. All right. The -- let's see if we can do it this way: Were there any occasions before July 27, 2012 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. Okay. Now, let's go south to The Inlet Beach.
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?
MR. BARKER: Objection.
A. Yes.
MR. BARKER: You may --
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?
MR. BARKER: Objection. You may answer.
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.
Q. Okay. Let's do this: All right. Before July 27, 2012, do you know if any of your lifeguards had to effectuate a rescue of someone that fell into that drop off that you and I were talking about earlier?
MR. BARKER: Objection.
A. No.
Q. Okay.

(Discussion off the record.)
(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 32.)
BY MR. D'AMATO:
Q. Let me show you a daily report from the North Wildwood Beach Department, or Beach Patrol, I meant to say. It's dated June 19, 2010.
What I've done, to save some time, is to highlight what I'm going to ask you a question about, to save some time.
And on 32, it says -- may I have this? "Two boogie boarding adults from The Inlet with Guard Lydon, no other incidents on a busy day."
Now, when the author of that refers to The Inlet, given the fact that you're the chief of the beach patrol, is he referring to the body of water that we earlier called The Inlet, or is he referring to The Inlet Beach, if you can tell from that document?
A. He's referring to the guarded beach.
Q. Okay. And what guarded beach would that be?
A. Surf Avenue, Ocean Avenue.
Q. I got you. Okay. Thank you.
(Discussion off the record.)

(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 33.)
Q. All right. All right. I'm now going to hand you what's been marked for identification as Exhibit 33, a daily report dated July 25, 2010. And you'll see a reference to one inlet rescue. And my question is, can you tell from that document where the rescue -- no, more precisely, off of what beach the rescue took place?
A. This would be in the unguarded area.
Q. Okay.
A. Because it's a kayak.
Q. Okay. That would be Moore's Beach?
A. Moore's Beach, or --
Q. Or The Inlet Beach?
A. The Inlet Beach.
Q. Okay. Thanks. All right.
(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 34.)
Q. Now, I'm going to hand to you what's been marked for identification as Exhibit 36. It's dated July 28, 2010.
MR. DiJOSEPH: You're on 34.

MR. D'AMATO: I'm sorry. Yep, you're right. That should be 34.
Okay. Do you have that?
Q. July 28, 2010. It says, "Kite surfer stuck in channel for 15 minutes."
Can you tell where that event took place, in looking at that report? I know the --
A. Out in Hereford Inlet.
Q. Okay. And -- okay. You can take that.
(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 35.)
Q. All right. Now, I'm going to show you, yep, one dated July 31, 2010, and this is Exhibit 35. And the highlighted part says, "3:55, Guard Lydon saw a group at The Point that was about 200 yards out. They drifted down from Moore's, and two of the victims were shaken up."
Where was that rescue effectuated?
A. About a hundred yards from Moore's Beach.
Q. Okay. And that was off of an unprotected beach. Correct?
A. Yes.
(North Wildwood Beach Patrol Daily Report is received and marked for identification as

Exhibit 36.)
Q. All right. Let me show you a report dated August 23, 2010, marked for identification as Exhibit 36. The highlighted part says, "Second and Surf rescue at The Point. People drifted down from Moore's."
From your experience, was it unusual to see that people who had come from Moore's Beach into the water were drifting down towards The Inlet Beach?
MR. BARKER: Objection.
A. I'm confused the way they wrote this.
Okay. Second and -- they -- they went in a hundred or so yards from Moore's, and drifted in the current.
Q. Okay. All right.
A. It was probably an outgoing tide.
(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 37.)
Q. Okay. Let me show you what has been marked for identification as Exhibit 37. It's a report dated August 25, 2010. And the highlighted part says, "Major rescue off Moore's Beach. Fisherman fell off sea wall."
It's back in 2010. Do you remember a

fisherman falling off a sea wall?
A. Yes.
Q. Is that something that happened more than once, in your career?
A. That's the first -- one time only, that I know of.
Q. Okay. Okay.
(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 38.)
Q. Let me show you what's been marked for identification as Exhibit 38. It's a daily report, has a date of August 31, 2010. August 31, 2010. And the highlighted part says, "Rescue at 'The Point.'" Okay?
Can you tell from that document what the author -- what specific area of the beach he is referring to? That was Lieutenant Lindsay.
A. He referred to that area as The Point. The beach patrol did not refer to that. That was his description.
Q. Got it. Okay. So, we'll ask Lieutenant Lindsay when we take his dep. All right.
Okay. Let's see here.
What I'm doing is, I'm -- because we're

going to take Mr. Lindsay's deposition, I'm not going to ask you about these.
MR. D'AMATO: Here you go. Take these. It will be easier to find this. Okay?
Q. Before July 27, 2012, did the members of your beach patrol have to effectuate any rescues relative to Jet Ski accidents that had taken place off of Moore's Beach and/or The Inlet Beach?
A. Yes.
Q. Can you give us an estimation in the summertime how many rescues occur relative to Jet Ski accidents?
A. Half a dozen.
Q. And how were the members of your patrol alerted to the fact that a Jet Ski accident takes place?
A. Police radio. Somebody called 911.
Q. Okay. Okay. Okay. Here, take these.
(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 39.)
The next exhibit is dated July 24, 2011. I'm marking it as Exhibit 39. And my question of you is about the entry here under ocean rescues. Again, it's dated July 24, 2012.

It says, "Guard Ryan Sanki - rescue on woman 50 yards outside swim zone ignoring whistles."
(Discussion off the record.)
MR. D'AMATO: July 24, 2011. Excuse me. 2011.
Q. What swim zone is the author of this referring to?
A. The Surf Avenue chair, we put a flag west of it, no swimming. This is referring to a woman that was past the flag that went in the water.
(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 40.)
Q. Thank you. Okay. The next one is dated May 26, 2012, a couple months before the Smith event. And the highlighted portion reads, "Two rescues, guards, Goss and Muso did a good job on controlling the crowd at First and Surf. There are heavy crowds at First Street due to the parking lot."
Can you explain what he means that there are heavy crowds due to the parking lot? What's the connection?
A. Well, there's a --
MR. BARKER: Objection. You may

answer.
A. The city made a parking lot, and people come down to the beach and park there, so they go out on the First and Surf.
Q. Got it. And from that parking lot that we've been referring to that's next to the condominiums, individuals that park their cars there, can take one set of steps to get right on Moore's Beach?
A. Yes.
Q. All right. Okay. Here you go. You don't have to get this one.
(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 41.)
Q. Exhibit 41 is a daily report dated July 4, 2012. Couple weeks before Brad Smith's drowning.
The author, under ocean rescue, says, "Two Jet Ski prevents at Moore's Beach."
You'll see that phrase, preventions, or prevents, used in all these reports.
Can you tell what the author means from that, by prevents?
MR. BARKER: Objection. You may answer.
A. They took the WaveRunner Jet Ski down to

Moore's Beach, people were swimming out, Champagne Island, and they prevented them from doing that.

Q. Okay. I've been educated by locals as to this Champagne Island.

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?

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

Q. Go ahead.

A. About a dozen a summer.

(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 42.)

Q. All right. Let me show you what's been

marked for identification as Exhibit 42. This is a report dated August 17th, 2012.

And I'm going to hand it to you, and I want to ask you, at the bottom, it says, "Lifeguard issues - concerns - comp time used." It says, "Five preventions at The Point."

Given your years as the chief of the beach patrol, and again, you'll see that the crew is Edwards and Lindsay, is The Point, The Inlet Beach, that we've been referring to?

A. Yes.

Q. Okay. All right.

(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 43.)

Q. Now, let me hand to you what's been marked for identification as Exhibit 43. And this is dated August 18, 2012. And at the bottom, it says, "Seven preventions at Inlet. Notified" -- I don't know if that's PD or PB -- "since alcohol was involved."

I'm thinking it means police.

Again, can you tell from that, when it says at The Inlet, does that mean The Inlet Beach, or the body of water called The Inlet? Can you tell from that?

A. Inlet Beach.

Q. Okay.

(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 44.)

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 preventions, does that -- if you can tell, does that mean preventing eight people from going into the water? What -- I don't understand this term preventions.

MR. BARKER: Objection. You may answer the question, if you can.

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

Q. Got it. Thank you.

(North Wildwood Beach Patrol Daily Report is received and marked for identification as Exhibit 45.)

Q. Let me show you what's been marked for identification as Exhibit 45. It's a daily report

dated August 20, 2012. At the bottom, it says, "Ten preventions at Point."

Would your answer be the same as it just was, that they're trying to prevent --

A. Yes.

Q. -- people from going -- that are on The Point, the beach, going into the water?

A. (Witness nods.)

Q. Okay.

MR. BARKER: You have to answer verbally.

A. Yes.

Q. All right. Here. Finished with these. These are unused. Or actually duplicates. Okay?

MR. D'AMATO: If we can go off the video and steno record. It --

VIDEOGRAPHER: Off --

MR. D'AMATO: Just one second. It will save some time, because I think I'm almost finished. I just want to look at my notes here. Okay?

MR. BARKER: Certainly.

MR. D'AMATO: But nobody has to go far. Because I could do this real quick.

VIDEOGRAPHER: Off the record at 3:31.

(Discussion off the record.)

VIDEOGRAPHER: We're back on the record at 3:36.
BY MR. D'AMATO:
Q. Chief, I feel I have four questions, maybe not, some follow-up questions.
When I was on the beach the past couple summers, I saw ice cream vendors.
Now, in order to sell ice cream on the beaches of North Wildwood, do you need a mercantile license?
A. Yes.
Q. All right. Is it the responsibility of the lifeguards to determine if someone's on the beach and whether they have a mercantile license or not?
A. No.
Q. Is that the police department's responsibility?
A. Yes.
Q. Okay. From your experience, before July 27, 2012, were the ice cream vendors, if they were able to, take their cart and sell ice cream to people who were sitting on The Inlet Beach?
A. Yes.
Q. As well as Moore's Beach?
A. Yes.

Q. Now, what about getting a permit to operate a vehicle on the beach, is that something that came under the jurisdiction of the beach patrol, or the police department?
A. Police department.
Q. Okay. Were there ever occasions before July 27, 2012 where your lifeguards had to alert the North Wildwood Police Department that somebody was trying to operate some sort of vehicle on the beach, that you know of?
A. Not that I know of.
Q. No. Did you ever read the North Wildwood ordinance that deals with the beaches of North Wildwood? It's Ordinance -- it's Chapter 138, and the subsection is Section 196-1.
Did you ever read that ordinance?
A. Yes.
Q. Okay. I could find you the definition here in a second, but the -- you know what, I'm -- I might have to -- let me do this. I'm going to have Joe ask you his questions, and let me find it. I have a -- I want to get a clean copy of what I have here.
So, I'm finished. I thank you for your time. I hope you thought I was being fair with you. I know it was your first deposition. Thank you.

MR. D'AMATO: Off the video record.
(Discussion off the record.)
MR. GRASSI: Do you have questions?
MR. HUNKINS: Just a couple, yeah.
MR. GRASSI: You want to go now?
MR. HUNKINS: No, you can go.
MR. D'AMATO: Joe, you want to sit here?
MR. GRASSI: I don't think I need to do that. I might need your help with the exhibits. So, I'm going to refer back to Exhibit 5 and Exhibit 4. So, if you could give those to --
MR. DiJOSEPH: 4 and 5?
MR. GRASSI: Yeah, 4 and 5.
MR. HUNKINS: Off the record. I was going to ask about Exhibit 13, also. So, if you pull them out. Sorry.
MR. GRASSI: What number are we up to?
MR. DiJOSEPH: We are at 45.
MR. GRASSI: Okay. So, why don't we have this marked as 46.
MR. D'AMATO: Okay.
(Newspaper Article is received and marked for identification as Exhibit 46.)
(Discussion off the record.)

MR. GRASSI: While Mr. Cavaller's reviewing those exhibits, which one was 5?
MR. DiJOSEPH: 5 is the Bass --
(Discussion off the record.)
MR. GRASSI: Exhibit 6, could we see Exhibit 6?
All right. So, I said I wasn't going to move down there, but if it's going to help the court reporter, maybe I should.
VIDEOGRAPHER: Let's go off the record at 3:42.
(Discussion off the record.)
VIDEOGRAPHER: We're back on the record at 3:43.
EXAMINATION
BY MR. GRASSI:
Q. All right. So, Chief, I want to show you first an exhibit that Mr. D'Amato asked you a question about. That's Exhibit 6. And he asked you, I think, whether you would warn that woman that she was in some danger, or whether you would order her out of the water. And you said no?
A. Correct.
Q. Why is that?
A. Because you can see past her, where the water

-- the color of the water changes, that's where it gets deeper.

Q. Okay.

A. She's standing in flat -- a flat area.

Q. All right. Okay. So that where she's standing, she's not at the drop off; is she?

A. No.

Q. Are you able to see the drop off in the photograph that she's in?

A. I would say where the water changes color.

Q. Okay. So, it's hard from the perspective, but it's not very far from where she's standing, that the water seems to drop -- that the water changes color. Is that right?

A. Yes.

Q. Maybe 10 feet?

A. No. That's probably -- I'll bet that's 20 yards from where she's standing.

Q. Okay. And again, I say it's difficult with the drop off.

A. Yes.

Q. But, in fact, if you go to the Exhibit 46, that I had placed in front of you.

MR. BARKER: That's the newspaper article?

Q. That's a newspaper article from the Shore News, that's a local North Wildwood paper, or Wildwood paper, that you're familiar with; aren't you?

A. This article? Yes.

Q. Well, the newspaper, in general, and that particular article.

A. Yes.

Q. All right. Can you tell me what date that article was published?

If I could borrow a copy of it, I can tell you. I think it's --

A. It says 2011.

Q. It's July 27th, 2011. Right? July 27th, 2011?

A. Yes.

MR. BARKER: That's what it says.

Q. Okay. Yeah. And at the bottom, I've actually circled the paragraph that I want to draw your attention to right now. You indicate that "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 the shore, it can drop off."

Is that accurate?

A. Yes.

Q. All right. And I'm going to assume that you're discussing here the drop off that you discussed earlier in the deposition?

A. Yes.

MR. HUNKINS: Object to the form.

Q. All right. Virtually, all the questions I'm going to ask you about are 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 it'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.

MR. BARKER: Objection.

Q. Okay. You can answer. You did answer it. No, I'll move on.

MR. BARKER: I objected. He answered.

MR. GRASSI: Right, okay. So, we'll move on.

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. High tide, it's a regular beach.

Q. Okay. And that's because the drop off --

A. Would be further out.

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

A. Correct.

Q. Is that right? Okay. Because by the time you got out there, you'd be swimming, you wouldn't be walking?

A. (Witness nods.)

Q. Is that correct?

A. No. Not exactly, no.

Q. Okay.

A. Say that again.

Q. Okay. The -- when you're saying that it changes on different tides, I -- do you mean that it

becomes inaccessible by walking when the tide is high?

A. Well, it's -- it's basically like this picture is showing you.

Q. Okay.

A. When the tide's up, it will be deep water.

MR. BARKER: He's holding Exhibit 6.

MR. GRASSI: Okay.

A. When the water is out is when there is a drop off.

Q. Okay. When it's low tide, there's a drop off?

A. Not basically low tide. But mid tide.

Q. Okay. And, in fact, at low tide, it may be that the drop off looks -- would it look more like those pictures where the beach was actually falling away?

A. No.

MR. BARKER: Objection.

MR. HUNKINS: Objection to form.

A. No.

Q. Okay. You had indicated, and I'm going to ask you to take a look at 4 -- do I have 4?

MR. BARKER: That's the compendium of exhibits?

MR. GRASSI: That's the compendium. I probably buried it somewhere. Yeah.

MR. BARKER: There you go.

Q. Here's 4. And I turned it to the March 2012 photograph.

MR. BARKER: March 14th, 2012.

Q. Since that's the -- the photograph that's the most approximate in time to the events.

You had indicated that there was an area that was about a tenth of a mile wide where the drop off occurred?

A. Yes.

Q. Did I understand that right?

Could you indicate on that photograph where that area is?

A. Approximately.

Q. Okay. Would you do that? And I don't know if we've had the green ink yet. Why don't you use the green ink to draw lines on the beach that show the area where that would occur.

MR. BARKER: Okay. Hold on. Is the packet that you gave him the same one that Paul was using? Because --

MR. GRASSI: There's only one way --

MR. DiJOSEPH: Should be marked on the

front. That's the exhibit.

MR. GRASSI: Yeah. That's the exhibit.

MR. BARKER: It's not. This is a copy.

MR. D'AMATO: Okay. There it is.

MR. GRASSI: Switch with me.

MR. BARKER: Okay. Let me get --

MR. GRASSI: Are you going to get to the right page? Thanks.

MR. BARKER: Yeah. He'll ask you the question again. Just a minute.

BY MR. GRASSI:

Q. Okay. Perfect. All right.

MR. BARKER: No, he's going to ask you a question.

Q. Yeah. So, do you understand what I want you to -- what I want you to do is, is to give us the outlines of the area where the drop off appears.

MR. HUNKINS: Object to the form.

MR. BARKER: Objection. You mean like appears in the photograph? Or --

MR. GRASSI: No, no, no. Here's my understanding. And I'll run through the foundation again.

Q. Your testimony was that the drop off moves from time to time. Correct?

A. Yes.

Q. And that it -- and that it does that along a particular section of Inlet Beach, or Moore's Beach?

A. Yes.

Q. Okay. So, what I want you to do is give us the south and north or east and west limits of where it appears.

A. (Witness complies.)

Q. Okay. And if you would take those lines back into the beach a little bit, just so that we can see them on -- because of the contrast.

A. (Witness complies.)

Q. Okay. Now, I was up at the other end. So, I didn't really see where you were indicating that Lieutenant Lindsay called an area The Point. Is that The Point?

A. Yes.

Q. Okay. And that area on the aerial photos, that changes from time to time, moves -- moves around. But there's almost always some area on The Inlet throat where the sand falls away, as you start to go south?

MR. BARKER: Objection.

Q. Is that right?

MR. BARKER: I object. You may answer

the question.
Q. Do you understand what I'm saying?
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?
A. Yes.
Q. Okay. That's sort of The Point. Correct?
A. Yes.
Q. All right. And the drop off occurs on The Inlet side of that Point when it occurs; doesn't it?
MR. BARKER: Objection.
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?
A. Yes.
MR. HUNKINS: Object to the form. I just don't know what you mean by The Inlet side.
MR. BARKER: You mean where the water is?
Q. Well, the water -- it's in the water. But

when I say The Inlet side, as opposed to the ocean side.
MR. HUNKINS: So, you mean northwest as opposed to southeast?
MR. GRASSI: Yeah, more or less northwest of that Point, as opposed to southeast.
Q. But The Point where the current's actually going in and out of The Inlet. Correct?
A. Yes.
MR. BARKER: Objection.
MR. HUNKINS: Objection to form.
Q. Have you ever studied any of or read any of these studies of how The Inlet migrates?
A. No.
Q. Okay. Do you know whether the currents are scouring that Point, that Lindsay calls a Point?
MR. BARKER: Objection. I'm objecting to the form of the question. You may answer it, if you understand it.
A. I believe it scours the whole Inlet Beach, the way the currents run, not just there.
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?
A. You got me confused on that one.

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 this drop off, how far will they step down?
A. Over their head.
Q. Okay. All right. So, it's sort of a cliff?
MR. BARKER: Objection. You may answer the question.
Q. You can answer it.
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.
Q. All right. So that, do you have any idea what the slope of the sand at that drop off is?
A. No, I don't.
Q. Okay.
A. No.
Q. Have you ever lost your footing on the drop off?
A. No.

Q. Have you seen anyone do that?
A. No.
Q. Mr. D'Amato asked you whether you knew of anyone who was rescued after stepping off the drop off?
A. I don't remember that.
Q. Okay. Well, I'm going to ask you that.
Do you know of anyone who was rescued after stepping off the drop off?
A. No.
Q. Do you know if the drop off is circular?
MR. HUNKINS: Object to the form.
A. I don't know what you mean by that question.
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?
A. It's right here.
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?
MR. BARKER: Objection.
MR. HUNKINS: Objection.
MR. BARKER: I'm objecting to that question. I object to the form. But -- you're pressing the question.
Q. You can answer. Is what I said accurate?
MR. HUNKINS: Object to the form.
MR. BARKER: Join.
Q. That you think they fell into the drop off, based on the description of Sunderland?
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 slid in 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.

Q. Okay.
A. I don't call that a cliff.
Q. Okay. Well, that's fine. I just -- it's fine. You've called it a drop off, and I'm -- I want to call it what you call it. I just am trying to understand where it is, what shape it is.
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. Regardless of knowing that it's a cliff, or -- or calling it a cliff?
A. Yes.
Q. You understand that that drop off is a risk to people who are using the beach.
A. (Witness nods.)
Q. Is that right?

A. Yes.
Q. And you recognize that it's a risk that comes up to someone who is simply walking, not swimming?
A. Yes.
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.
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.
Q. Okay. Have you ever discussed that risk with the police chief? Have you discussed that risk with the police chief?
A. No.
Q. Have you discussed it with -- and I'm -- I'm asking you a pretty broad area of time. So, I'm going to ask you if you ever discussed that risk with a business administrator, mayor, council president?
A. No.

Q. Okay. Have you discussed it with anyone, other than other lifeguards?
A. No.
Q. Okay. At the time that the borough administrator was devising warnings for that area that Lindsay calls The Point, did you have any discussions with him about the risk that was presented by the drop off?
A. No.
Q. All right. The December -- strike that.
The July 27th, 2011 article, that -- that article discusses the disappearance of a woman named Christina Tsiotsias, I might be butchering that, from Baltimore, Maryland.
That indicates that woman came to the beach at about three o'clock in the afternoon, and that people came looking for her at six to pick her up, and that she was gone. They then reported her missing to the police at about eight p.m. that night.
A. Yes.
Q. Okay. When did you learn that a woman had been missing from the beach?
A. The next day.
Q. Okay. And at that point, did you attempt any rescue?

A. **No.**
Q. Did you learn that her -- when the people came to find her, that although they couldn't find her, they did find her beach blanket, and belongings?
A. **Yes.**
Q. Do you know if there was ever any type of analysis of what happened to her?
A. **Not to my knowledge.**
Q. And you would agree with me that, for most of that time, between three p.m. and six p.m., lifeguards were on duty?
A. **No.**
Q. All right. And that's because she appears to have been at an unprotected beach?
A. **I don't even know where Spruce Avenue is in The Inlet.**
Q. Okay.
A. **It's saying Spruce Avenue. I -- that's -- that's pretty far down.**
Q. Moore's Inlet Bar was on Spruce Avenue. Right?
A. **Yeah. I -- that's Moore's Beach.**
Q. So, that's Moore's Beach. Right?
So, and you're saying that because the article says that the people who said they dropped

her off dropped her off at Spruce Avenue, so that --
A. **Yeah, I'm not familiar with somebody saying Spruce Avenue, I'm just --**
Q. I understand. You'd agree with me that's likely the parking lot at Moore's Beach that you talked about earlier. Correct?
A. **Yes. It runs into Central Avenue.**
Q. Okay. But my question is, is, is about the time of day. That time of day is the time of day when guards are on duty; isn't it?
A. **Three p.m., yes.**
Q. Okay. And what time do the guards go off?
A. **5:30.**
Q. Okay. All right.
MR. GRASSI: Would it be best to take a break now, so you can take care of that?
VIDEOGRAPHER: You've got five minutes.
MR. GRASSI: Oh, I could take longer than five minutes. All right. So, I'll -- just give me another warning.
BY MR. GRASSI:
Q. There was a -- there've been a number of drownings at Inlet Beach and Moore's Beach in the last 10 years; haven't there?
MR. BARKER: Objection.

Q. You can answer.
MR. BARKER: You can answer.
A. **A number?**
Q. Yes.
A. **In the last 10 years?**
Q. Yes.
A. **I don't think more than three.**
Q. Okay. Well, we know about Mr. Smith.
A. **Right.**
Q. All right. And then there was a drowning last year; wasn't there?
MR. HUNKINS: Are we talking about Inlet Beach, or any of the beaches?
MR. GRASSI: Only in The Inlet. I'm just talking about The Inlet.
MR. HUNKINS: Yeah. And I know, but Inlet Beach, or --
MR. BARKER: Moore's Beach?
MR. GRASSI: Moore's Beach, Inlet Beach.
MR. HUNKINS: Oh, any of the beaches?
A. **To my knowledge, that was a suicide.**
Q. The one from this past summer?
A. **Yes.**
Q. Okay. And how about Jamilah Watkins and

Shayne Hart?
A. **Yes.**
Q. All right. They were two women who died?
A. **Yes.**
Q. In 2000 --
A. **Nine.**
Q. 2009. Did you participate -- and when I say you, I mean the --
A. **Yes.**
Q. -- Wildwood Crest Beach Patrol?
A. **We recovered the bodies.**
Q. Okay. And when was that?
A. **After hours.**
Q. Okay. So, they were recovered that evening?
A. **Yes.**
Q. Okay. Do you know whether there was any analysis of what occurred there?
A. **When we knock off at 5:25, we clear the water. They were -- the lifeguards remember those two women, and they got them out of the -- young ladies, got them out of the water. That's our policy. We drove away. They went back in the water.**
Q. Would you have the name of the third woman who survived?
A. **The police would.**

Q. Okay. Because I don't know that that incident didn't -- I don't know that it occurred -- that it appeared in the reports that we were reviewing earlier.

MR. DiJOSEPH: It does not.

Q. All right. So, the police would have that. And are you aware that the Coast Guard assisted in that --

A. Yes.

Q. -- recovery?

And did you read an article where Petty Officer Kennedy indicated that it appeared that those women had been wading in the water, and then were swept away?

A. No.

Q. Is that the first time you're hearing that?

A. Yes.

Q. Okay. Because you've indicated in your discussions of this that they were swimming.

A. They were swimming off where we were protecting the beach.

Q. That was earlier in the evening?

A. Yes.

Q. Okay. You don't know if they were swimming or wading at the time that they were carried away; do

you?

A. No.

Q. Do you know of someone drowning in 2008?

A. I can't remember.

Q. Where -- where would I best locate records of people who drowned off Inlet Beach?

A. Well, it's in those records that Mr. -- Paul had.

MR. BARKER: We've provided records in discovery.

MR. GRASSI: Of --

MR. BARKER: From different sources. Police, fire, and beach patrol. You have them all.

MR. GRASSI: Okay. So, you think I have this one for this lady from Baltimore, who floated away and was found a day or two later in Avalon?

MR. BARKER: I can't remember what records, you know, whether one would correspond directly to that.

MR. GRASSI: I'll just look later.

MR. BARKER: You could look.

VIDEOGRAPHER: Two minutes. Two minutes.

MR. GRASSI: Two minutes? Okay.

BY MR. GRASSI:

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

MR. HUNKINS: Object to the form.

MR. BARKER: Objection. Joined.

Q. You can answer.

MR. BARKER: You may answer, if you can.

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.

MR. GRASSI: All right. Why don't you change. I'll take a look and see if I've got anything else.

VIDEOGRAPHER: This ends video 2. The time is 4:09. We're off the record.

(There was a brief recess.)

VIDEOGRAPHER: This marks the beginning of videotape 3. The time is 4:14. We're back on the record.

BY MR. GRASSI:

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

A. Yes.

Q. Okay.

MR. GRASSI: I don't have any other questions. Thank you.

MR. D'AMATO: Are you going to sit over here, or are you going to sit there?

MR. HUNKINS: I'm good here.

MR. BARKER: You have a clear line of sight?

MR. HUNKINS: I do. I'm good.

EXAMINATION

BY MR. HUNKINS:

Q. Sir, you've been very patient. We won't be too much longer. Maybe I have 10 minutes of questions for you, tops.

I'm the attorney for the State of New Jersey. Do you need a break at all?

MR. BARKER: Can you hear him?

A. No. I really have bad hearing, too.

Q. Oh, okay. I'll move --

MR. BARKER: Would you change with Will, then?

MR. HUNKINS: Yes.

VIDEOGRAPHER: Off the record at 4:14.

(Discussion off the record.)

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.

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.

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

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.

Q. Was Inlet Beach posted as no swimming?
A. **Yes.**
Q. Okay. And then I think my last question has to do with Exhibit 13, if we have it. It's the photo where Mr. Sunderland was showing where the incident occurred, and there's a jet skier in the background.
Thank you. Let me show you Exhibit 13.
Do you see that?
A. **(Witness nods.)**
Q. Earlier, you were questioned about it, and I think the indication was that the man standing in the foreground is Mr. Sunderland?
MR. DiJOSEPH: Correct.
Q. Okay. And he's standing -- maybe I can get some help from counsel. He's standing near where the drowning occurred, or at the spot where --
MR. D'AMATO: Okay. May I suggest, you got to be careful. Because there's going to be testimony in this case that he didn't drown instantly. You kept saying the drowning. He was dragged out, according to some witnesses. So, the drowning doesn't take place where --
MR. HUNKINS: Understood. Thank you.
Q. I guess what I'm -- here's what I'm really trying to ask you: I think you've indicated that the

shore line or the beach changes along The Inlet, because of the normal action of the tides --
A. **Yes.**
Q. -- and the fact that it's an inlet. Is that right?
A. **Yes.**
Q. And I think the photo we're looking at, Exhibit 13, was taken in August of 2012, and counsel's indicating that's correct, so --
MR. DiJOSEPH: Yes, that's correct.
Q. -- I would assume at least a couple of weeks went by between the drowning and the time this photograph was taken.
MR. DiJOSEPH: What's the date on the photo?
MR. BARKER: August 16, 2012, 1:20 p.m.
MR. DiJOSEPH: So, you're looking at almost 15, 16 days.
Q. Okay. So, a couple of weeks went by. So, my question is, and I'm not an expert on the shore, so here's why I'm asking. In the course of those two weeks, could the normal action of tides have moved sand around in that area?
A. **Yes.**
Q. So, although Mr. Sunderland is standing on a

certain piece of sand in Exhibit 13, from your experience, is it possible that a couple of weeks earlier, that piece of sand wasn't even there?
A. **It depends on the tide, when the tide was.**
Q. Because things change all the time?
A. **Yes.**
Q. All right. Because here's what I'm getting at: If we look at Exhibit 13, and Mr. Sunderland's standing on that piece of, I'll say, sand, it could have been -- it could have looked differently on the day of the accident?
A. **Yes.**
Q. Okay.
MR. HUNKINS: I think that's all I have.
MR. D'AMATO: Okay. I have three quick questions.
EXAMINATION
BY MR. D'AMATO:
Q. I found the clean copy of the North Wildwood Ordinance. I marked it for identification as 47, Exhibit 47.
It says Article 1, government supervision, use, and policing. Then it gives definitions. I just want to hand this to you. It's

pretty evident that these are regulations regarding what can be done on the beaches of North Wildwood, and what can't be done. Correct?
A. **Yes.**
Q. Now, I read the definition of beach that -- you see at the top there, where it says "definition of beach"?
A. **Yes.**
Q. Yeah. Now, when I read that, and I checked with the people to my right, when it talks about Spruce Avenue -- well, let me rephrase that.
Would you not agree that that definition includes, A, Moore's Beach; B, what we've been calling here today The Inlet Beach?
A. **Let me read it.**
Q. Yeah.
(Discussion off the record.)
A. **Yes.**
Q. Okay. Thanks. Now, two final questions.
When you spoke to the chief of the North Wildwood Police Department, as you had shared with us a couple hours ago, what were the two of you talking about?
A. **Who was I talking to?**
Q. The chief of police of North Wildwood,

regarding patrols on the beach. I asked, did you ever speak to the chief of police of North Wildwood about patrolling the beach, you said yes. I didn't follow up on it.

A. Right.

Q. Do you remember generally what the conversation was?

A. That was instituted by the mayor to control the rowdiness on the beach at Moore's Beach.

Q. Okay.

A. That's why the police were down there.

Q. Okay, I see.

A. He's been proactive of trying to clean it up.

MR. BARKER: Who's he?

A. Mayor Rosenello. Sorry.

Q. Mayor.

Now, final question: If it was up to you, would you have a manned lifeguard stand on what we have called Moore's Beach and on The Inlet Beach?

MR. BARKER: Objection.

A. No.

Q. Okay. And can you tell us why not?

A. Wouldn't have enough lifeguards to guard it. It's too big an area.

MR. D'AMATO: Okay. Thank you.

Nothing else.

VIDEOGRAPHER: Anyone else?

MR. D'AMATO: Nope.

VIDEOGRAPHER: This concludes this deposition of Joseph A. Cavalier. The time is 4:25. We're off the record.

(Deposition concludes at 4:25 p.m.)

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.

Lynn Smith, CCR

Certified Court Reporter

License No. XIO1520

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Exhibit 11

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

SANDY SMITH, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF HER LATE HUSBAND GEORGE BRADLEY SMITH,	:	CIVIL ACTION VIDEOTAPED DEPOSITION TESTIMONY OF: STEWART FARRELL
Plaintiff,	:	
vs.	:	
CITY OF NORTH WILDWOOD, STATE OF NEW JERSEY, JOHN DOE, MARY DOE, ABC PARTNERSHIPS and XYZ CORPORATIONS,	:	
Defendants.	:	

TAKEN BEFORE: LYNN SMITH, a Certified Court Reporter of the State of New Jersey, License No. XI01520, at the D'AMATO LAW FIRM, 2900 Fire Road, Suite 200, Egg Harbor Township, New Jersey, on Wednesday, June 29, 2016, commencing at 10:15 a.m.

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6 NORTH BROAD STREET, SUITE 202
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Ph. (856) 384-2770 Fax. (856) 384-2779

APPEARANCES:

D'AMATO LAW FIRM
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
BY: PAUL R. D'AMATO, ESQUIRE
For the Plaintiffs

BARRY, CORRADO & GRASSI
2700 Pacific Avenue
Wildwood, New Jersey 08260
609-729-1333
BY: JOSEPH C. GRASSI, ESQUIRE
For the Plaintiffs

BARKER, GELFAND & JAMES
210 New Road
Linwood, New Jersey 08221
(609) 601-8677
BY: WILL ROZELL, ESQUIRE
For the Defendant, North Wildwood

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
R.J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625
(609) 777-4872
BY: BRIAN HUNKINS, ESQUIRE
For the State of New Jersey

Also present: Lou DiJoseph
Sandy Smith (via telephone)

Videographer: Josh Grossman

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VIDEOGRAPHER: Today is Wednesday, June 29th, 2016. This is the videotaped deposition of Stewart Farrell. We are going on record at 10:15 a.m. The appearance of counsel will be noted on the stenographic record.

Will the court reporter please swear in the witness?

STEWART FARRELL,

having been first duly sworn, testified as follows:

EXAMINATION BY MR. D'AMATO:

Q. Dr. Farrell, my name is Paul D'Amato, and I represent Mrs. Sandy Smith, the widow of Brad Smith, and we represent the adult children of Brad and the minor children of Brad and Sandy.

The process that we're going through today is a deposition.

Have you ever gone through this process before?

A. Yes.

Q. How many times?

A. Several.

Q. Okay. More than 12, or less than 12?

A. Less than 12.

Q. Less than five?
A. **Maybe, but probably not.**
Q. All right. I'll get into those depositions in a moment, but I just want you to know that if any time you need to take a break, you just tell us you want to take a break.
I have been speaking to the deputy attorney general about the areas that I wanted to ask you questions, and after receiving his letter with the report attached, instead of asking you questions for about an hour, I think it's going to be two hours, maybe a little bit more.
I've ordered a tray of sandwiches from Fitzpatrick's in Somers Point, and as I told counsel, if we take a break, it will just be for 10, 15 minutes, just get a little something to eat, and then we'll finish up, we'll get you out of here.
Even though you've gone through the process of a deposition before, I just like to emphasize a few things.
If I or my co-counsel, Joseph Grassi, who's sitting to my left, if either of us asks you a question that you find inherently confusing, or just doesn't make any sense to you, don't answer it. Just simply say, I don't understand the question. We are

going to go into your world. Okay? And I guess in a way you're coming into our world of law. So we may phrase a question that structurally is a little bit confusing. So just tell us what you find confusing about the question and we'll rephrase it.
I've been doing this for a long time, and I've always tried to treat the people that I'm conducting a deposition of with the utmost respect. You know, these questions are going to be very simple, direct questions.
All right. Hold on one second.
(Discussion off the record.)
BY MR. D'AMATO:
Q. Once we begin this deposition, the rules of court are such that when we take a break, you're not allowed to speak to any of the attorneys about the subject matter of the deposition. That goes for everybody, whether a person's an expert or not.
With that in mind, do you need any more time to speak to the deputy attorney general before we begin our examination under oath?
A. **No.**
Q. Okay. What's your educational background, starting with college?
A. **I have a bachelors of science from chem -- in**

chemistry from Lafayette College. Then I went to the University of Massachusetts, where I got a Masters degree in geology and coastal science, followed by a Ph.D. in 1972.
Q. And the Ph.D. was in what area?
A. **Plasticine geology, which is the last 10,000 years, to modern coastal processes.**
Q. Okay. What was your thesis for your -- in order for you to get your doctorate?
A. **The location was at Saco Bay, State of Maine.**
Q. And what was the topic?
A. **It was the holocene, which is the recent stuff, holocene processes in coastal history of Saco Bay, Maine.**
Q. Okay. While you were getting your Ph.D., were you working for a private business, or government, or college?
A. **Well, we were supported by the university --**
Q. Okay.
A. **-- on grants. And I had what was called a National Defense Education Fellowship.**
Q. All right. After getting your Ph.D. in 1972, could you give us an overview of your employment up until today?
A. **In the fall of 1971, I started work for the**

Richard Stockton College of New Jersey, then a brand new institution in the State of New Jersey. And that employment has continued through 2011, when I resigned my teaching position to assume full-time operations of the Coastal Research Center --
Q. Okay.
A. **-- which continues to today.**
Q. I have read so much about this Coastal Research -- all right, excuse me. Okay. Sandy, can you hear now?
MS. SMITH: Yes, I can hear you now. And I'll put my phone on mute.
MR. D'AMATO: Okay, all right. We just went over Dr. Farrell's educational background and his employment background.
Q. So let me go back to my question. What is the Coastal Research Center?
A. **It's an in-house institute within the university. Stockton has become a university in the last four years.**
Q. Okay.
A. **And its purpose is to serve the public sector, mostly local municipalities, county, and the State of New Jersey, in terms of gathering information about conditions that effect the coastal**

zone in general, and beaches, in particular.
Q. All right. And could you repeat, the year that you started working for the Coastal Research Center was 2011?
A. No. I founded the institute in 1986, following Hurricane Gloria, driven by requests from the Department of Environmental Protection --
Q. Okay.
A. -- for information about the storm damage to New Jersey beaches. And as a result of that award of funding, we began what was a fairly small operation, with three people, that grew over time to what it is today.
Q. All right. And how many employees does the institute have?
A. Nine.
Q. Okay. And what is your title presently relative to the institute?
A. I think I'm the executive director of the Coastal Research Center.
Q. And can you give me a summary of what the other eight people do that are employed by the institute?
A. They start as student workers, doing field work under the direction of a full-time staff member.

They choose to stay and continue learning what we do and how to do it better. And they become invited, if they are qualified, to become full-time staff members, if they can fill a niche that we need as a result of changing interests on the part of the client base. Some -- there's like four people who do information mapping, geographic mapping of spacial data. Anything with a geographic attachment to it can be mapped. It has become highly electronic, and highly sophisticated since the days of a drafting board and felt pens.
Q. Yeah.
A. Others deal with animal coastal interactions, salt marsh growth. Right now we're working with the horseshoe crab migration in Delaware Bay, followed by the red knots eating the horseshoe crab eggs for fuel to get to the Arctic. It's a rehabilitation of the habitat that was damaged by Hurricane Sandy, funded by the Department of the Interior, as a matter of fact. And so there are folks who specialize in that. And one individual is the office manager. We need one of those. And then of the crew of nine, three are what are called temporary services employees. They work for an hour's pay for an hour's work, doing jobs that are assigned to them.

Q. The students that have been employed, if you will, by the institute, are they eligible by virtue of that work and any additional studies to get a Ph.D. through Stockton University?
A. No.
Q. Okay, I see. Now, you used the phrase client base. What is the client base of the institute from, let's say, 2000 -- the year 2000 up until now, 2016?
A. I can give you a laundry list.
Q. Well --
A. Dom --
Q. Go ahead. I'm sorry.
A. It's dominated by work with either the Philadelphia District Corps of Engineers, or the Bureau of Coastal Engineering from the New Jersey Department of Environmental Protection.
Q. Okay.
A. Other clients would be local municipalities.
Q. The client base, does it pay for the services of the institute?
A. Yes.
Q. Okay. So if -- if the institute has an assignment from the Bureau of Coastal Engineering, and the institute performs that assignment, the institute receives compensation?

A. Correct.
Q. Okay. And that would be the same for the United States Corps of -- Army Corps of Engineering?
A. Yes.
Q. Okay. Now, let's talk about the City of North Wildwood.
Given your extensive background, can you estimate for us the first year that you, personally, had some involvement in any way, shape, or form with the City of North Wildwood? And you can always estimate.
A. Pretty clearly, summer of 2009.
Q. Okay. And how did that come about?
A. Through a joint project between the State of New Jersey, Bureau of Coastal Engineering, and the City of North Wildwood, to restore the beach along the oceanfront.
Q. Okay. The area that was going to be restored was from Second Street or Avenue to 26th Street or Avenue?
A. Basically, the oceanfront beach, yes.
Q. Okay. And when you use the phrase oceanfront beach, you're -- you would distinguish that specific area from the Hereford Inlet?
A. The shoreline?

Q. Yeah.
A. **Yes.**
Q. Okay. What was your next involvement with the City of North Wildwood after that first project?
A. **The initial construction of the beach was interrupted by a northeast storm in November of 2009. Was called the Veteran's Day Storm. As a result of the damage to the beach from that storm, since the project was funded by the State of New Jersey and the City of North Wildwood, they were eligible for what is known as a Presidential Disaster Declaration reimbursement funding through the FEMA, Federal Emergency Management Administration.**

So we were asked to get down there as soon as possible after the storm and quantify the damages done to the project, in terms of sand volume lost from the beach due to erosion, which we did.
Q. Okay. Was there another project after the first two that you just described?
A. **Well, this project was continuously, you know, suitable for FEMA reimbursement, should there be another disaster declaration. Turns out, there was. March 10th, 2010, December 23rd, I believe, 2010, and then Hurricane Irene in August of 2011, and, of course, the big one on everybody's plate,**

Hurricane Sandy in 2012. Most recently, a northeast storm which now has a name called Jonas, January 23rd, 2016.

So each of these events triggers a survey of the beach to determine the lost sand as a result of the storm damage, which got a disaster declaration from the United States president.
Q. Okay. Now, you have in front of you an exhibit -- you want to pass that down to Matt -- which has been marked for identification as Farrell-1.
A. **This one?**
Q. Yes. That is a letter from my colleague, Brian Hunkins, department attorney general of the State of New Jersey, to which is affixed a report from you dated June 23, 2016.

You are the author of that report, correct?
A. **Yes.**
Q. All right. Relative to this litigation involving the Smith family and the City of North Wildwood and the State of New Jersey, have you issued any other reports?
A. **No.**
Q. Oh, you haven't? Okay. Thank you. All

right.

To prepare for this deposition, what did you review?
A. **Fairly extensive laundry list of previous depositions, a report by Dr. Richard Weggel, and collected from sources out on the Internet, the weather of the day of the incident, the tidal conditions on the day of the incident, and from Google Earth, the nearest collection of aerial photography that Google possesses.**
Q. From what Brian told me, you didn't bring any of those items with you here today?
A. **No.**
Q. All right. Can you tell us what transcripts of what depositions you reviewed?
A. **The one from Mr. Sunderland.**
Q. Right.
A. **And another one that I remember being relatively significant was Harry Wozunk, former public works director of City of North Wildwood.**
Q. Okay. Did you read the transcript of the deposition of Chief Cavalier, who is the head of the North Wildwood Beach Patrol?
A. **I can't say that I recall doing that.**
Q. Okay. How about Lieutenant Lindsay of the

North Wildwood Beach Patrol?
A. **I may have read it. It's part of the file. But I don't recall too much from it.**
Q. Okay. Now, I've had marked for identification as -- the report of Dr. Weggel -- oh, here it is. And I believe that is Farrell-5, correct?
A. **Correct.**
Q. Now, would it be fair to say that you read Dr. Weggel's report, which is dated April 19, 2016, more than once?
A. **Correct.**
Q. Okay. You want to estimate how many times you have reviewed it?
A. **Three times is fair enough.**
Q. Okay. Now, what I would like you to do, and I will give you a highlighter, is to go to page one of his report, and for the record, we're dealing with a report that runs with a -- report that runs about 13 pages, and on page 12, he has a category called summary and conclusions.

I'm going to hand you a highlighter. And in looking at Professor Weggel's summary and conclusions, I'd like for you to highlight anything contained therein which you disagree with.

A. **There's nothing there that I blatantly disagree with.**
Q. Okay. Now, if you could go to Farrell-1, which is the third page of your report.
A. **Yes.**
Q. It's right under --
A. **Yeah.**
Q. -- Professor Weggel's report. Okay? And if you look at the last full paragraph, it says quotes, "I disagree with Dr. Weggel to the extent that he may be saying that a shelf of sand was created and collapsed."
Where in Dr. Weggel's report do you see where he may be saying that a shelf of sand was created and collapsed?
A. **Where he opines that the steepness of the channel margin equaled or exceeded his angle of repose of 28 degrees.**
Q. Okay. Could you find that in the report for me?
A. **Well, it's throughout the report. The --**
Q. Okay.
A. **This is an analysis of slope failure.**
Q. Right.
A. **Leading to the conclusion that the slope**

failed due to the excessive steepness. That's basically his thesis, which is not untrue.
Q. Okay. But going back to your report -- just give me one example of where, in your opinion, Dr. Weggel is suggesting that the shelf of sand was created and collapsed.
A. **Okay. Standby.**
Well, page five, titled North Wildwood Inlet Beach Conditions at the Time of Drowning, first paragraph, he's essentially making the claim that their presence on the edge of the deep channel created enough force to cause the beach to collapse into the channel, carrying him with it -- carrying them with it.
Q. Okay. And what is it about that particular sentence there that you disagree with doctor -- Professor Weggel?
A. **That, in fact, there was a sizeable collapse of the channel margin leading to all four individuals being discharged into deeper water.**
Q. What is your understanding, especially in light of the fact that you read Mr. Sunderland's transcript of his deposition, as to what happened to Mr. Sunderland and his daughter and Mr. Smith and his daughter?

A. **Well, he -- they were on their way to the southeast, away from the wall, when this incident occurred. They had gone the length of the beach, and turned around, and were headed back to where they had been sitting. The various testimony I read had them in water between ankle deep and calf deep. That's a range of a few inches, but calf deep is definitely deeper than ankle deep. The tide was approximately halfway between high tide and low tide, with the ebb in full development. So there was a decent ebb current going out the inlet.**
Q. Into the ocean?
A. **Into the ocean, yes, sir.**
Q. All right.
A. **According to Mr. Sunderland, they found themselves going rapidly off the edge, in some fashion they were unable to fully describe.**
The current, presumably immediately picked them up, and they found themselves in water over their heads before they could stand up and walk out again, if there was an ability to do that.
So they ended up being transported from ankle or calf deep water into water at least deep enough so that a current flowing would carry them along without them being able to stand up against it.

Whether or not -- what that depth was, I have no idea.
Q. Okay.
A. **But a large scale slope failure would have left evidence that other witnesses would have noticed, and that's not in Mr. Sunderland's testimony at all.**
Q. The -- it's unfortunate that you didn't read the transcript of the deposition of Chief Cavalier, the head of the North Wildwood Beach Patrol, because we asked him what he thought happened. And he described something that he's known about for 10 years before Mr. Smith's death; that just at the time that you're talking about, where the back bay's going into the ocean, that a whirlpool or vortex would be created in two locations in the Hereford Inlet, and that whirlpool would erode the beach. And he was of the opinion that the Sunderlands and the Smiths just walked into what I'm going to call a hole.
Now, given your expertise, can -- what would you call what the Sunderlands and Smiths walked into? What was that condition?
MR. HUNKINS: Hold your answer. Object to the form. Your description of what Cavalier said I think is basically right, but I'm not sure it's

entirely accurate. I could go into more detail, but I object to the form.

MR. ROZELL: Join. Same objection.

Q. Yeah, I'm going to tell you, it's accurate, because I just reread the transcript this morning. But go ahead.

A. Would you repeat the question, please?

Q. Sure. Please have the stenographer read it back.

(Record read.)

A. Not having been there, not having reviewed the evidence immediately after the incident, but being familiar with the territory, it is -- it is exceedingly probable that they simply walked off the steep edge of the tidal channel as it existed on that day in July of 2012.

Q. Okay. Now, to try to save time --

A. Um-hum.

Q. -- what I'm going to ask you to do is, you have a highlighter there, I would like for you to go to page one of Dr. Weggel's report, and with the consent of all counsel, I'm going to suggest that we go off the record and have you highlight in yellow any statement in the 12 pages of -- or 13 pages of his report that you disagree with. And that will

save us time if we do it that way, instead of having you on the video. Okay?

A. Okay.

MR. D'AMATO: All right. So with the consent of counsel, we'll go off the stenographic record and the video record, and we'll allow Dr. Farrell to read the report. Okay? Thank you.

VIDEOGRAPHER: Time is now 10:47 a.m. We are going off the record.

(Discussion off the record.)

MR. HUNKINS: We've had some discussions about Dr. Farrell, and the timing of his deposition, and I think we have an agreement that if necessary, the state can serve a supplemental report by Dr. Farrell, and if we were to do that, you know, he could be deposed again.

MR. D'AMATO: I agree.

MR. HUNKINS: Thanks.

(Discussion off the record.)

(Aerial photograph received and marked for identification as Exhibit Farrell-6.)

VIDEOGRAPHER: Time is now 11:01 a.m. We are back on the record.

BY MR. D'AMATO:

Q. Dr. Farrell, have you highlighted in yellow

any statements of Dr. Weggel in his report that you disagree with?

A. Yes.

Q. Okay. Would you give us the first one, please? And tell us the page and paragraph.

A. Okay. First page, line three, is a minor point; while walking in ankle deep water.

Q. Okay.

A. Was that applied to all four individuals, or just one?

Q. Okay. Next.

A. Page two, the Escoffier 1977 graph is not what Miles Hayes et al in 1970s came out with in terms of the title of the article they published on this was Flood/Ebb Tidal Asymmetry, that the maximum flow does not occur at midtide. It's late in a channel, because that's when the difference is the greatest between the water in the bay and the open ocean. And similarly, when the flood tide comes in, the greatest volume and velocity of flow occurs just before the peak elevation in the tide, and then dissipates quickly.

So basically, this was done on New England estuaries, not in New Jersey. But the tide difference is, you know, significant, but not going

to make it impossible to be similar.

Q. Okay. So --

A. Again, this is -- this is just points in science.

Q. Okay, all right. And you've high -- can you just show the camera what you've highlighted?

A. (Witness complies.)

Q. Okay. All right. Now, the next entry?

A. Page five, the writer's opinion in paragraph one under the North Wildwood Inlet Beach Conditions at the Time of Drowning, this first paragraph, I find he's interpreting the data in one way.

Q. The specific data that you're referring to is what?

A. The slope conditions, and the fact that the failure of the edge of the channel was part of the equation that was mandatory to cause this incident to occur.

Q. All right.

A. Resulted in the beach sloughing into the channel, carrying Mr. Smith and his companions into the ebbing current.

Q. Okay. The second sentence of that paragraph says quotes, "A deep hole adjacent to the North Wildwood inlet shoreline is a persistent feature

along this beach." Do you disagree with that?
A. True or false? Yes and no. I mean, it happens.
Q. Okay. Do you have an opinion as to how frequently there is a, quotes, deep hole along this beach?
A. No, I do not.
MR. HUNKINS: Just object to the form. Do you want to clarify where along the beach?
MR. D'AMATO: Well, I'm talking about the Hereford Inlet, I'm talking about, they call it The Inlet Beach, Moore's Beach.
MR. HUNKINS: Can I just make a suggestion? I have a substantive comment. I'm going to suggest sending the witness out of the room just for 12 seconds.
MR. D'AMATO: Yeah. Let me ask you, would it cure the objection if I were to get the exhibit that we used with Chief Cavalier, where he said, okay, here's Moore's Beach, here's The Inlet Beach, and he blocked it off?
MR. HUNKINS: No.
MR. D'AMATO: Okay.
MR. HUNKINS: But I think we can resolve this real fast. Do you mind stepping out for

just a second?
MR. D'AMATO: Okay.
VIDEOGRAPHER: Time is now 11:06 a.m. We are off the record.
(Witness excused.)
MR. HUNKINS: Okay. Weggel in his report says a deep hole, quote, "adjacent to the North Wildwood inlet shoreline" end quote is a persistent feature, quote "along this beach" end quote. Location is really important in this case. And I think it's evident from Dr. Farrell's report, you can ask him, if it's not clear, but there is a deep hole caused by a whirlpool that happens up immediately adjacent to the rock wall. That's in Farrell's report. If you ask him, he'll -- you need clarification, that does not occur anywhere else. What happens elsewhere is this deep channel caused by the ebb and flow tides.
So the reason I'm -- I spoke up is that you're asking if he agrees or disagrees with this deep hole adjacent to the shoreline, and I don't want anybody to read the transcript and come away with the impression that Dr. Farrell thinks a deep hole is created where Mr. Sunderland went into the water. Because as he's actually stated earlier in

this deposition, in his opinion, it was a -- the tidal -- the margin slope of the channel that Sunderland stepped into, not this deep hole that's created by the whirlpool. Because the whirlpool is only up at the rock wall.
MR. D'AMATO: All right. You know what I'm going to do --
MR. GRASSI: Of course, that's very different than what Tony Cavalier says. Tony Cavalier says that there's a vortex or -- right next to the rock wall, and that there is another one that he's observed for at least 10 years. So just -- so I mean, it's not as if there's no testimony in the case that talks about a second hole or drop-off, as he calls it, associated with a vortex at that point.
MR. HUNKINS: Right. And earlier today, I put -- if I had Cavalier's dep with me, I would have tried to find where it said two locations. Evidently, he did say two locations. But my interpretation of everything I've heard is that Cavalier definitely is under the impression that there's a whirlpool at or around where Sunderland went into the water. Farrell, you can ask him, is of the opinion that that doesn't happen there. Whatever happens where Sunderland went in has nothing to do

with the rock wall.
And since we're just chatting for two more seconds, I think Farrell does believe that there's a fair amount of -- it might be in his report -- it's pretty agitated, the water's going to look turb --
MR. GRASSI: Turbulence.
MR. HUNKINS: Yeah, turbulent. So my interpretation is what Cavalier thinks or views as a whirlpool is turbulence.
MR. D'AMATO: Okay. Can I suggest something? Okay. The narration is good, and it's supportive of your objection. But I'm going to withdraw the question.
MR. HUNKINS: Okay.
MR. D'AMATO: Okay? He told me what he disagreed with, and I'm not going to follow up on it, because I have other stuff we have to accomplish. Okay?
MR. HUNKINS: Thank you.
MR. D'AMATO: Just, here. Doctor?
Don't get me wrong, I love listening to your elucidations.
MR. HUNKINS: Talking too much.
VIDEOGRAPHER: Time is now 11:10 a.m.

We are back on the record.
BY MR. D'AMATO:
Q. Doctor, the deputy attorney general wore me down, so I withdrew the question. But we're going to get on -- move on here.
All right. Can you go to the next entry in Professor Weggel's report that you disagree with?
A. Page six, figure six. This is a close-up view of one of our maps done for State of New Jersey. The feature that he's pointing to with his black arrow in the drawing is actually the feature that was present at the time of the incident that was built by the flooding tide, not a whirlpool, not the ebb tide. This feature had been there for months preceding this incident, in 2011 and 2012. It's a wedge of sand attached to the beach that has a very -- relatively gentle channel-ward slope, but a very steep slope at its landward edge. A flood tidal feature.
Q. All right. You used the phrase flooding tide a couple times.
A. Um-hum.
Q. What is the definition of a flooding tide?
A. Flood tide starts after what is called low tide slack water. In other words, the current comes

to a stop. The water reverses direction and begins moving back into the inlet to raise the water level in the bays the inlet serves. And so the flooding tide is the movement of the ocean water into the inlet, into the bays. The ebbing tide is the reverse of that, where the bay water empties out the inlet into the ocean.
Q. Okay. Are you saying that in that Hereford Inlet, there has never been what a layperson would call a whirlpool?
A. No.
Q. Okay. All right. And why are you not saying that?
A. Because it's certainly a possibility.
Q. Okay. Have you ever, personally, seen what laypeople call a whirlpool in the Hereford Inlet?
MR. HUNKINS: Object to the form.
A. Personally, no.
Q. Okay. Have you ever spoken to anyone that said they saw a whirlpool in the Hereford Inlet?
MR. HUNKINS: Object to the form.
A. No.
Q. Have you ever read an account of someone that they said they saw a whirlpool in the Hereford Inlet?
A. Yes.

MR. HUNKINS: Object to form.
Q. Who?
A. It would be the cumulated information that I read in preparation for this case, in the depositions.
Q. Okay. And when you read those depositions, did you highlight them, mark them up as to --
A. No.
Q. -- areas that you thought were important?
A. No.
Q. Okay. You told me you read Mr. Sunderland's deposition, and Harry Wozunk, his deposition, correct?
A. Yes.
Q. Can you think of anybody else that you read?
A. Well, the names escape me --
Q. Okay.
A. -- but I did read through others.
Q. All right. When we take a quick 15-minute luncheon break at around 12 o'clock, is there someone that you could call that could just give you the names of the other transcripts that you read?
A. No.
Q. Were the transcripts at your home?
A. No.

Q. Where are they?
A. On my computer --
Q. Okay.
A. -- at work.
Q. Can you access your computer remotely?
A. No.
Q. Okay. All right. Well, if we can make a note that I'm going to need the names of all the deponents that Dr. Farrell read.
(Discussion off the record.)
BY MR. D'AMATO:
Q. Doctor, could you give us the next entry in Professor Weggel's report that you disagree with?
A. That's it.
Q. Okay. All right. We have had marked for identification an interview that was conducted of you by licensed private investigator Lou DiJoseph. Was it marked?
A. It's 3.
Q. Okay. It's marked for identification as Farrell-3.
Incidentally, the gentleman next to Mr. Grassi, that is Lou DiJoseph. He's retired from the intelligence bureau of the New Jersey State Police and is a licensed private investigator.

I would like you to look at the various bullet points, and just, I think if I go through this with you, it could be faster.

A. Okay.

Q. And Mr. DiJoseph attributes your saying certain things, and I want to go over the bullet points to see if you believe that Mr. DiJoseph accurately stated in his report what you said.

So the first paragraph states: Quotes, "Farrell was asked if he was familiar with the unprotected North Wildwood Beach section where the Smith drowning occurred, and he replied yes. Farrell said that the area of the unprotected beach at Hereford Inlet was not part of the beach replenishment process, and was specifically included" --

MR. HUNKINS: Excluded.

Q. "Excluded," thank you, "by the permitting agencies. Farrell referred to that specific area of the beach as The Inlet Beach." Is that accurate?

A. Accurate.

Q. Okay. Next page, second bullet point: Quotes "The Inlet Beach was created by natural ocean erosion of the oceanfront beach, which began in approximately 1998."

A. Correct.

Q. "The inlet waterway next to The Inlet Beach is 60-foot deep in some areas, and has some interesting current patterns due to waves and tidal currents and flooding. All of which" --

MR. HUNKINS: Do you mind if I -- it's your deposition. But do you mind if we stop after every sentence and allow him to say whether it's accurate or not?

MR. D'AMATO: Sure.

MR. HUNKINS: Okay.

Q. Okay. So I'll --

A. Okay.

Q. Okay. We'll do it that way.

Okay. Let me read that last sentence here.

"The inlet waterway next to The Inlet Beach is 60-foot dep in some areas and has some interesting current patterns due to waves and tidal currents and flooding."

A. Yeah, that's correct.

Q. "All of which contribute to the displacement of sand around the beach."

A. Yes.

Q. "Farrell said that the current pattern and

tides at Inlet Beach change very quickly and often without notice."

A. True.

Q. Okay. Next bullet point: Quotes, "Farrell was not sure what the municipal -- what the municipal regulations apply to Inlet Beach, but stated that the City of North Wildwood does allow for persons to enter the area of The Inlet Beach."

A. Correct.

Q. Okay. "During the endangered species nesting period, which ends August 15th of every year, access to Inlet Beach is denied to the public because of the area nesting."

A. This is correct.

Q. Next bullet point: Quotes, "Farrell read about the Smith drowning in the newspaper, and does not believe that the City of North Wildwood and the State of New Jersey provide maintenance to Inlet Beach."

A. That is my belief.

Q. Okay. Now, I'd like to ask you a question. I think it will be better if I ask you now.

When you mean maintenance, what type of maintenance were you referring to?

A. Bringing in sand supplies, modifying the

slope gradient, dune field, other sorts of features. I'm not talking about picking up trash.

Q. Okay. All right. What you just described is beach replenishment?

A. Correct.

Q. Okay.

A. Well, yes. Beach replenishment means you increasing the sand volume. But there are other things one does to rearrange it. So all of those things.

Q. Okay. All right. Next sentence: Quotes, "The Inlet Beach area is, quotes, 'natural and never has been part of a beach replenishment project'."

A. Correct.

Q. "Beach sand replenishment starts at the Second Street jetty and proceeds south."

A. Correct.

Q. "The Second Street jetty was buried by sand in 2009."

A. Yes, that is true.

Q. Now, at this point, he says quotes, "Note, the Second Street jetty is approximately 300 yards south of the area where the Bradley Smith entered the water."

Would you be in a position to agree or

disagree with that?
MR. HUNKINS: Object to the form.
A. 300 yards is 900 feet. The Second Street jetty is 2400 feet from the point of water entry.
Q. So --
A. I disagree.
Q. You disagree, okay.
Next bullet point: Quotes, "Numerous northeasters storms have since wiped out most of the beach replenishment near the Second Street jetty system, and the permitting agencies do not replenish sand north of the Second Street jetty."
A. Correct.
Q. Okay. "Farrell described the permitting agencies as the City of North Wildwood and the State of New Jersey."
A. That's -- they're not permitting agency. The State of New Jersey is a permitting agency. Wildwood is not.
Q. Okay. Next, "Farrell believes the property known as Inlet Beach is owned by the City of North Wildwood."
A. That's a belief. I don't know it for sure.
Q. Okay. "There is an old lifesaving station that is a New Jersey state park located inland near

Surf Street."
A. That's not correct.
Q. Okay.
A. It's near New York.
Q. New York Avenue, you mean?
A. Yeah, New York Avenue.
Q. Okay. Next, "Farrell was not sure if the sandbar known as Champagne Island, located in the center of the Hereford Inlet, is a state park."
A. Correct.
Q. Correct? "However, when the piping plover birds wings turn red and the mating season begins, Champagne Island, Stone Harbor Inlet Beach, and anywhere else the birds nest, are areas controlled by the Endangered Species Habitat Program."
A. Correct.
Q. Okay. Excuse me.
(Discussion off the record.)
MR. D'AMATO: Sorry for the interruption.
BY MR. D'AMATO:
Q. Okay. Now we're at the top of page three, correct?
A. Yes.
Q. All right. Next bullet point, quotes, "The

tidal currents at Inlet Beach are, quotes, 'fierce and can get very nasty'."
A. That is generally true.
Q. All right. How do you know that?
A. We've measured them.
Q. Okay. And let's say from 2009 up until July of 2012, can you estimate how many times you measured these tidal currents?
A. Twice a year; fall and spring.
Q. Okay. We obtained a lot of documents online from the institute.
A. Oh, okay.
Q. Yeah, your institute.
A. Um-hum.
Q. In what generic document would these measurements be located that you just described?
A. They're not. They weren't required by the permitting agency, so we just never included them.
Q. Okay.
A. They're just raw data.
Q. All right. If we needed that raw data, data, that you just described, could you get that to Brian?
A. Yes.
Q. Okay. Now, when you measure the tidal currents, in your world, do you measure in miles per

hour?
A. They can be converted to miles per hour. Usually, it's in feet or meters per second.
Q. Okay. And just given your experience with the measurements of the tidal currents at The Inlet Beach, can you just give us an estimate of the -- a low and a high in miles per hour for the currents? Just an estimate.
A. The maximum flow is between 1.8 and maybe 2.2 miles per hour.
Q. Okay. Why did the institute measure the tidal currents at Inlet Beach?
A. Curiosity.
Q. Okay. Have -- has the institute measured the tidal currents at other inlets located on the New Jersey shore?
A. Yes.
Q. All right. How would you rank the speed of the tidal currents at The Inlet Beach located off of North Wildwood, compared to other inlets that the institute has measured?
A. In the middle. Less than Townsends Inlet, for sure. That's between Avalon and Sea Isle City. About the same as Little Egg Inlet, which is the southern end of Long Beach Island. And probably less

than one finds in the very heavily controlled inlet of Barnegat Inlet, which has rock jetties on both sides, so the current streams out between the jetties and moves faster.

Q. Okay. That was where?

A. Barnegat Inlet.

Q. You know, I read so much background material on this case, I want to make sure I understand something.

What does the existence of jetties in the Barnegat Inlet have to do with the tidal currents?

A. Well, they form a non-movable barrier to flow. The rocks stay put. The channel is therefore confined between the rocks. And in Barnegat, they're about 350 feet apart, those two jetties. And as such, that means that all of the tidal water has to flow between those two rock jetties. There's no Champagne Island to flow across. There's no north channel out past Stone Harbor to flow past. So you have concentrated the flow in a fairly restricted cross section.

Q. If the Barnegat Inlet that we're talking about -- and I did read some materials on that -- only had one jetty, as opposed to two, what effect

would that have on the tidal currents that run through that inlet?

A. If you go back prior to 1990, the jetties were vastly different than they are today. There was a north jetty and a south jetty, which was built at a big angle to the north jetty. So folks called them the arrowhead jetties, because they came together at the very opening to the sea.

And so the tidal flow between the two jetties was unpredictable and extremely variable, such that a navigator going out to sea in the morning would find a different channel pathway coming home. That happened more than once. And the accident rate was fairly high.

So in 1988, '89, the Philadelphia District decided to realign the south Barnegat Inlet jetty parallel with the northern one to actually define the channel more succinctly.

It was an engineering solution, and so they brought in lots of rocks and rebuilt the jetty. And since then, the channel has obviously stayed between the rocks, and dredging needs declined, because the faster flow kept it flushed out and deeper. And other than the errant boater who, at high tide, decides to take a fast port side turn

going out and cross over the submerged part of the jetty at high tide, to his much chagrin, the accident rate has declined.

Q. Um-hum.

A. So that's the reason they did it. It was caused by the vagrancies of the channel position on a day-to-day basis, the problems with the -- there's a fishing fleet that uses it regularly and commercially, and so therefore, they decided it was worth improving.

Q. Okay. If the Barnegat Inlet, going back to my question, only had one jetty on one side, and the other side did not have a jetty, what effect would the existence of one jetty have on those tidal currents?

MR. HUNKINS: Object to the form.

A. They would be more unpredictable and more variable.

Q. Okay. Would the existence of the channel have more ability to move periodically because there was only one jetty?

MR. HUNKINS: Object to the form.

A. It would move more widely within a range of possibilities. The one jetty being the anchor for big time movements.

The reason the jetties were built initially was because the inlet was migrating into Barnegat Inlet -- Barnegat Light Borough and consuming it.

Q. I don't know if you saw these, but we took the deposition of the engineer of Cape May County.

A. No, I did not.

Q. Okay. And I'm going to hand this to you. These were the aerial photographs that were attached to his transcript.

Let me hand it to you. The exhibit was marked as County Designee 4 at a deposition on July 23, 2015. Take that.

And if you just could quickly look at -- go to the third page. You'll see that -- yeah, third page, in the upper left-hand corner -- if you want to turn it this way -- there you go.

You see the upper left-hand corner, it says number two?

A. Yes.

Q. Okay. So that's the -- that's an aerial map from Cape May County for the year 2012. Okay? If you go to number three, that's the aerial map for 2007. And if you go to number four, that's the aerial map for 2002. If you go to number five,

that's the aerial map for 2000. And if you look at number six, that's an aerial map from 1941. And if you look at number seven, that's an aerial map for 1930. And if you look at number eight, there's an aerial map for 1930.

Now, would you agree that the actual inlet that is referred to as the Hereford Inlet, as noted in these aerial photographs that we just looked at, moves periodically, the actual inlet, where the water is, moves, changes locations?

A. Are we talking about the inlet, or its main channel?

Q. The main channel.

A. The answer is yes.

Q. Okay. Why does that happen?

A. Because it's the equilibrium for the moment in time between the water volume, the tidal change, high low -- high to low, the vertical tidal change, and the wave conditions that are present in the ocean over a period of months or weeks or even years.

Q. Okay.

A. So it's a combination of forces. It's -- the sand has no control over things. It's a passive player in the game.

Q. All right.

A. The forces are the tidal currents and the wave action that accompanies ocean processes at a shoreline like this.

The openings through the barriers, themselves, the actual inlets, are determined mostly by tidal range.

Q. Tidal range?

A. The height between high and low tide.

Q. All right.

A. If you go to Texas, you will find barrier islands that are a hundred miles long, entire length of the Jersey coast, one island. That's because the tidal range is 18 inches. If you go to Yakutat Bay in Alaska, tidal range is 16, 18 feet. There are no barrier islands at all. It's all inland. Because the tidal surge is so intense and so dramatic that no sand can be deposited perpendicular to the flow. It gets strung out in bars in and out of the Yakutat Bay.

So here we are in New Jersey, with a moderate tidal range, we have a moderate scale of islands, and we have 12 inlets.

Q. Okay. Hypothetically, if -- if money wasn't an object, and you were to construct jetties, one on the North Wildwood side and another to be determined,

could you control the path of the tidal currents similar to the Barnegat Inlet?

MR. HUNKINS: Hold your answer. He's not being offered for any opinions on that.

MR. D'AMATO: This is a discovery deposition. I can -- I can explore this. He's been offered as an expert.

MR. HUNKINS: Same thing for -- so I'm clear, your question is if a wall was built.

MR. D'AMATO: Well, I'll have the question read back.

MR. HUNKINS: Yeah, maybe you could have it read back. Thanks.

(Record read.)

A. It would be --

MR. HUNKINS: Just hold your answer for a second.

MR. ROZELL: I'm going to object to the form regardless.

MR. D'AMATO: Okay.

MR. HUNKINS: Yeah, object to the form. You can answer it.

Q. Go ahead.

A. It would be extremely difficult.

Q. And why is that?

A. Because of the dimensions of Hereford Inlet.

Q. And what dimensions specifically?

A. The width.

Q. Okay.

A. There's this other island up there called Stone Harbor, or Seven Mile Beach.

Q. I see. Normally -- let me rephrase the question.

Do the -- what is the purpose of jetties in the various inlets on the Jersey shore? Why are they there?

MR. HUNKINS: Object to the form.

A. Navigation aids.

Q. Okay.

A. Do you want the science answer?

Q. Yes.

A. In a natural inlet, there is the gap between the barrier islands. That's the deep spot. But it's a sand system, so sand is in transport at all times. Where does the current dissipate? As you go out into the ocean, the current has to dissipate. The ocean isn't going anywhere. So the tidal flow goes out into the ocean and dissipates, drops the sand. So there is a body of sand deposited at the mouth of the inlet, which is a deterrent to navigation.

Likewise, as the sand moves into the inlet, it creates another pile of sand, which is where the lagoons open up. And that's another problem area.

So back in George Washington's time, the U.S. government decided that jetties were a solution to sailboat navigation, which don't have quite the control you do with an outboard motor, into and out of our commercial harbors. That concept has spread over time to include recreational inlets, as well.

Q. Does an existence of a jetty in an inlet have an effect on where sand is being deposited in this process; tides going in and out?

MR. HUNKINS: What jetty are you referring to?

MR. D'AMATO: Just generally.

MR. HUNKINS: Okay. You're not referring to the one in this case?

MR. D'AMATO: Just generally.

MR. HUNKINS: The rock walls? Okay. Object to the form. You can answer.

A. Well, the jetty is twofold. Keep the inlet position from engulfing uplands adjacent to it. And to maintain a suitable navigation channel where

possible.

Q. But do you remember my question, or do you want it read back?

A. No.

Q. Okay. Let me have my question read back.

(Record read.)

MR. HUNKINS: Object to the form.

A. That -- the answer is still the same. That's the purpose of them being built. And yes, they will alter where sand is deposited.

Q. Okay. Let's go back to Mr. DiJoseph's report with you. There it is, right there.

We were on page three, and --

A. No. These are the aerials. That got sandwiched.

Q. I had read the first sentence of the first paragraph at the top. I want to continue.

Quotes, "The sand near the water can instantly give way and drop into 60 feet of water."

A. It's a possibility.

Q. Okay. Farrell advised that this case --

(Interruption.)

(Discussion off the record.)

MR. D'AMATO: Okay. Forgive me.

Q. "Farrell advised that this past fall on Long

Beach Island, New Jersey, 500 feet of shoreline next to their inlet suddenly, quotes, 'shuddered and disappeared'." Correct?

A. Correct.

Q. "Three fisherman who were parked on the beach in pickup trucks were lucky they didn't get swept away from the erosion," correct?

A. Correct.

Q. "One pickup truck in particular was approximately three feet away from a deep cliff of sand."

A. Correct.

Q. Okay. Next bullet point, "The circular current at Inlet Beach acts similar to a whirlpool and can make the beach area very unstable."

MR. HUNKINS: He actually wrote inland beach, but you're right, he probably meant inlet.

MR. D'AMATO: Yeah. Okay.

Q. It's true, he says Inlet Beach, but I think he meant Inlet Beach.

Okay. So let's assume that I'm correct, The circular current at Inlet Beach acts similar to a whirlpool and can make the beach area very unstable?

MR. HUNKINS: Object to the form.

A. This is -- this is a supposition.

Q. Okay. What is the basis of that supposition?

A. It's the effects on, you know, a sand shoreline, or a sand body of any kind, of a circular current. It's a rotating current, which, if it's stable as to location, can have that effect.

Q. Okay. Next, "Farrell never surveyed the area of The Inlet Beach."

A. True.

Q. Okay. When Mr. DiJoseph uses the term survey, are you interpreting it as like what a surveyor does in measuring metes and bounds?

A. Yes.

Q. Okay. Next, "Farrell was asked if he believes the surf area of the Smith drowning may have become unstable and gave way and Farrell replied to that" -- excuse me, "Farrell replied that that the, quotes, 'angle of repose' is about 30 degrees."

A. This is for dry sand, yes.

Q. Okay. What is angle of repose?

A. Sand is a granular substance. The grains do not stick together, unless you add a little mortar.

If you just take dry sand and put it on this table top and pile it up, just let it come out and form its own shape on the table top, from the

horizontal to the slope of the material will never be more than about 30 degrees.

Q. Okay. Next, wet sand is even less at 20 or 25 degrees.

A. The pour water makes it less stable.

Q. Okay. This means that any erosion of sand at an angle greater than 20 degrees becomes very unstable, and if you're walking on top of sand that is undermined at an angle greater than 20 degrees, the sand will either gradually slide into the water or suddenly fall into deeper water.

A. This is generally true.

Q. Okay.

A. Yes. Just generic statement about unstable slopes.

Q. Okay. Next, "Farrell was advised that both Smith and Sunderland were good swimmers, and stated that sometimes people who are unfamiliar with rip currents have difficulty swimming."

A. This is true.

Q. Okay. "While swimming in rip currents, people fight the current and panic, and often leads to injury or death."

A. Yes.

Q. The current is, quotes, 'very fierce' in the

area of The Inlet Beach."

A. Yes.

Q. Next, "The Inlet Beach tides are both horizontal and vertical."

A. That's a very big generalization.

Q. Okay. How would you more, as a scientist, accurately describe what Mr. DiJoseph had written here?

A. The -- the actual pathway that a particle of water, just pick a particle, any particle, pathway that that particle takes is not a straight line in the inlet. It doesn't -- if a particle starts out at the surface, it doesn't stay at the surface all the way up to the bridge.

Q. Got it.

A. The pathway is not a straight line. There's a vertical and a horizontal component to the flow.

Q. Okay. Let -- let me say something, as a layman.

When you talk about the flow of water through the Hereford Inlet beach, and I'm thinking that as the water is moving, these particles of water are moving horizontally, but then there's also particles of water that are moving vertically.

A. Not really.

Q. Then explain that, then.

A. There's a compon -- the particle of water has an X -- an X is horizontal in or out of the inlet. There's a Y component, and a Z component. In other words, there's a vertical part, and then there's -- here's your pathway in. It can go left or right, it can go up or down. So there's an X, Y, and Z component to each water particle, all of which are constantly changing in some pattern, driven by the topography, the flow, the -- everything that makes the system function.

Q. I see, okay. The next bullet point, quotes, "The Inlet Beach tides" -- no, excuse me, I read that.

Next sentence, quotes, "If you fall into an area which has horizontal and vertical tides, the force can actually take you underwater, like being sucked into a vortex."

A. If that's what you're involved with, yes. If there is a downward component to this flow, and you aren't ready for it in a fairly big way, you can have a problem, yes.

Q. Does the Hereford Inlet have that component?

A. It's true in any flowing stream.

Q. Okay. Next, "Farrell explained that a

vertical current is not the common current where you can see water flow in one direction or another."

A. True.

Q. "A vertical current flows in spirals, and often occurs in flooded rivers."

A. Yes.

Q. Okay. Quotes, "People who become stranded in their cars caught in flood water and exit their vehicles in waste deep water only to be sucked under due to vertical currents."

A. Well, this is -- this has been just illustrated in spades in Texas.

Q. Yeah. There was a piece on this on The Today Show. I don't know if you saw it.

A. I think I did.

Q. About how -- what happens to you if you're stuck in a vehicle.

A. Yeah.

Q. Yeah. Next, "Farrell does not have an issue with the public being allowed to walk on The Inlet Beach and stated, quotes, 'no one should ever swim there'."

A. This is generally true.

Q. All right. Why shouldn't people swim in the water off of this Inlet Beach?

A. I guess the answer is, it's wrapped up in the individual's personal safety.
Q. Okay. Does it have anything to do with the tidal currents there?
A. Well, the fact that there are tidal currents is the reason for the safety problem.
Q. Okay. "Farrell advised that people walk along the water's edge at Inlet Beach constantly, and believes that someone should have placed warning signs in the area."
A. Well, this was a direct question.
Q. Yeah. What type of warning signs should have been posted?
A. I --
MR. HUNKINS: Just --
A. -- have no opinion on that.
Q. Okay. Do you have an opinion as to whether there is a potentially dangerous condition on the beach alongside the -- that is part of The Inlet Beach where people shouldn't be walking there at all?
MR. HUNKINS: Just hold your answer.
MR. D'AMATO: It's just whether he has an opinion.
MR. HUNKINS: Object to the form. Do you have an opinion?

MR. ROZELL: Object to the form.
MR. HUNKINS: You can say yes or no, and then we'll see where we go.
A. No, I do not have an opinion.
Q. Okay. Part of what I'm trying to do here today is, in the event this goes in front of a judge or a jury, is to know what opinions are being offered and what opinions are not. So I'm trying to eliminate certain areas, if you will.
Okay, the last page, top, quotes, "The area of Inlet Beach can be severely impacted by tidal surges and currents that can alter the shelf of the area of beach near the water's edge."
A. Yes, that's true.
Q. "The current can wash away sand and create a drop off of approximately 60 feet."
A. There is one.
Q. And I'm going to have you mark it soon. But it's located where, that --
A. It's there.
Q. Right next to the seawall?
A. Right next to this point, yes.
Q. Okay. You know what, I think we've already marked it, right?
You know what --

MR. HUNKINS: Off --
Q. Here, you know what, let's use Sunderland-2 marked for identification on March 22, 2016. Here, I'll hand this to you. And why don't you put a nice sized X, so we know where that 60 foot area is.
A. (Witness complies.)
VIDEOGRAPHER: Excuse me, counsel. Just need a moment to change tape. Time is now 11:53 a.m., we are off the record.
(Discussion off the record.)
VIDEOGRAPHER: Time is now 11:54 a.m. We are back on the record.
BY MR. D'AMATO:
Q. Can you show the cameraman what you've marked there?
A. (Witness complies.)
Q. All right. How do you know there is a 60-foot drop off there?
A. Through repetitive bathymetric surveys that we have done since 2009.
Q. And how do you physically measure the depth of the water?
A. The electronics do it for us.
Q. Okay.
A. It's an echo sounder and GPS combination, so

the location position, the GPS does, the echo sounder determines the depth, and puts them together.
Q. When is the first year that you and your colleagues, as part of the Institute, determined the existence of that 60-foot drop?
A. Well, first survey was in the fall of 2009 --
Q. Okay.
A. -- that we did. The Army Corps has done others.
Q. Do you know how far back the United States Army Corps of Engineering has gone back and measured the depth there?
A. No, I do not.
Q. Okay. The -- this area where it's 60-foot deep, is it like a square, a rectangle, triangle, a circle? How would you describe it?
A. It's an oval, elongated in the access of the channel.
Q. Right.
A. And it's not very big.
Q. How -- if you had to give the diameter?
A. 200 feet wide and maybe 400 feet long.
Q. Okay.
A. You can almost map its position by the number of fisherman along the rocks on the --

Q. All right. What created that 60-foot area that we're talking about?

A. It's the acceleration of flow caused by the parking lot that extends into the inlet by perhaps as much as 150 feet, and armored by rocks. The rocks don't move, and the water has to flow by them. And in so doing, it scours the bottom a little deeper than the normal.

Q. Okay. I'm going to do something, and the cameraman can't see this.

The -- I'm going to ask you, and I'm going to hand this exhibit, Sunderland-2, to you, to explain to those people that will be watching this video, as you go south of the red spot 60 feet, what your experience is generally with the depth of that water. And if you could just show -- that's it, show potentially the jury here.

A. The small area of extremely deep water decreases very quickly into the thirties within 600 feet of the spot, and then gradually declines to five or six feet of water down by the Second Avenue jetty, that defines the oceanfront beach. The water depth out in here is extremely shallow. Because that's where the sand is being deposited by the ebb tide. So at low tide, you can walk out half a mile. Don't

advise it, but you could do it. Since we've surveyed it, the water's like three feet deep under the boat. You know, it's kind of tricky doing the work because of the waves.

But the channel -- the channel depth in here is 15, 18, 20 foot all the time. The channel up in here, above the parking lot, 35, 40 feet pretty much consistently. Hasn't changed in a decade almost, so we assume that 35, 40 feet is its average depth. The scour is at that point of rock.

Q. Okay.

MR. HUNKINS: Did you mark this, by the way, as an exhibit? You want to mark it?

MR. D'AMATO: Well, it's already been marked as Sunderland-2.

MR. HUNKINS: And now Sunderland-2 has a red dot on it, that's all.

MR. D'AMATO: Oh, you know what, you're correct. No, thank you. You're correct. Here, give that to me, and it will become Farrell-7.

Thank you.

(Copy of Sunderland-2 received and marked for identification as Exhibit Farrell-7.)

MR. D'AMATO: We senior citizens, we need as much help as we can get. Thank you.

Q. All right. Okay? Let's continue and we'll finish up with this DiJoseph report.

The next sentence is, quotes, "The current can wash away sand and create a drop" -- oh, "drop off of approximately 60 feet." I apologize. You just addressed that.

Next, "Farrell said that it is possible that Bradley Smith was walking on a shelf that was undermined by extreme currents."

A. In 2013, in February, it was certainly a possibility.

Q. Okay. This event took place in July of 2012.

A. I know. The question was asked in 2013, in February.

Q. Oh, okay. So let me ask you this, then: In light of your comment, is it possible that in July of 2012, when Bradley Smith was walking on the beach, that he was walking on a shelf that was undermined by extreme currents?

MR. HUNKINS: Object to the form. Just hold on. Object to the form. I think you're asking for his opinion now, correct?

MR. D'AMATO: Yes.

MR. HUNKINS: And you want his opinion within a reasonable degree of coastal engineering

probability, right?

MR. D'AMATO: Yes.

MR. HUNKINS: Okay.

A. It's -- it's -- it is difficult to go that far in the interpretation. Because since I was asked the question, none of the evidence that I've been shown has any evidence of a scarp or a concavity created by such a slope failure that that would create. So I'm not satisfied with that as a possibility in the long run.

Q. Okay. You described earlier in your deposition, based upon what you had read, the condition that you thought Bradley Smith and his seven-year-old daughter and Scott Sunderland and his seven-year-old daughter had walked into, correct?

A. Correct.

Q. As a scientist, what was the cause of what they walked into?

A. As succinctly as I can put it, based on my experience here, it's the confluence of the flood and ebb tide effects on the configuration of the sand shoreline that they created.

Q. Okay. The next bullet point: Quotes, "Farrell was not sure that the water near the edge of Inlet Beach is 60 feet deep."

A. **Definitely not.**
Q. Okay. Quotes, "The rock wall that was built to the north of Inlet Beach has caused the channel to keep wanting to make its way to the southwest in the inlet towards North Wildwood."
A. **Correct.**
Q. Okay. When you had what we have re-marked as Farrell-7, which is an exhibit that was marked at Mr. Sunderland's dep, and you were explaining to us the movement of the water because of the rock wall, is that what you were talking about in this statement here?
MR. HUNKINS: Just object to the form. I'm going to ask that you rephrase that question.
Q. Yeah, I will rephrase it.
MR. HUNKINS: Because --
Q. Let me hand this to you, Doctor. There's Farrell-7. Okay?
All right. In using Farrell-7, can you please explain to those that will be watching this what you meant when you said, quotes, "Until the rock wall was put in place, the channel used to push the sand as it moves across the beach in North Wildwood. Now the current passes the rock wall and becomes fierce as it tries to work its way back toward North

Wildwood."
And just show the people that are looking at this, if you could. Thank you.
A. **Okay. Going back a ways in time, this is the Second Avenue jetty and Second Avenue. First Avenue was once further toward the sea. It extended down to Kennedy Boulevard in the 1960s.**
The shoreline has migrated since 1960s, took away parts of First Avenue, resulting in further additions to the rock revetment structure. This is not a jetty. It's a revetment, which is a rock face to an upland shoreline.
Q. How do you spell that?
A. **Re -- R-E-V-E-T-M-E-N-T. Revetment.**
Q. Okay.
A. **They can be timber, they can be concrete, they can be made out of big boulders. Most commonly in New Jersey, they're made out of big boulders.**
So what I was referring to was the fact that this part was done first, historically. The inlet kept chewing away North Wildwood upland territory until the final construction was complete down to Second Avenue.
Q. What is your understanding of why the area next to the red dot that you placed on Farrell-7 was

constructed, that parking lot area, which I've been to several times? Why was that done?
A. **Why?**
MR. HUNKINS: Why?
Q. Why?
MR. HUNKINS: Why?
A. **Pure speculation.**
MR. HUNKINS: Don't speculate.
A. **Okay. I can't give you an answer.**
Q. You have no idea?
A. **No idea that I can back up.**
Q. Okay. Is there something that you read that in your mind would explain why that parking lot was built?
MR. HUNKINS: Object to the form.
MR. ROZELL: Same objection.
A. **I don't know when the parking lot was built.**
Q. Okay. I was reading a box of -- two boxes of documents that were given to me by Brian. And in one of the boxes, it has correspondence between the Bureau of Coastal Engineering, the United States Corps of Army Engineering, and the City of North Wildwood, about building what I'm going to refer to as a rock wall. And so you know what I'm talking about, I pulled it, a photograph here. Hold on. I

had a photograph that was taken at ground level I wanted to show you.
Okay. Let me show you, which I'm going to have marked for identification as Farrell -- well, as Farrell-8. It was -- let me rephrase it.
Before I do that, let me show you an exhibit that was marked at the deposition of Mr. Sunderland as Sunderland-15. Okay? I'm -- you'll see rocks that are running along this particular photograph. Let me hand that to you. Okay?
What do you, as a scientist, call that? I call it a rock wall, but I'm not a scientist. What do you call it?
A. **Specifically, I would refer to this as the North Wildwood revetment.**
MR. D'AMATO: Okay. Now, can we go off the video record for a second, please? I had a photograph.
VIDEOGRAPHER: Time is now 12:08 p.m., and we're going off the record.
(Discussion off the record.)
VIDEOGRAPHER: Time is now 12:10 p.m. We are back on the record.
BY MR. D'AMATO:
Q. Okay. The next bullet point is, quotes, "The

tidal current passes the rock wall to the north of Inlet Beach and is forced back to the east in the area where Bradley Smith was walking in the surf and fell into the water." Correct?

A. Yes.

Q. "Farrell believes the City of North Wildwood permits people to swim near the rock wall in the areas protected by lifeguards."

A. Not correct.

Q. Okay. What is your correct answer?

A. I believe, based on just being there, that Second and Surf is the guarded part of The Inlet Beach.

Q. Okay. Next, "On Wednesday, February 6, 2013, another article regarding the North Wildwood Beach replenishment project appeared in the Atlantic City Press. Farrell was once again quoted in this article regarding the condition of the North Wildwood Beach."

Okay.

MR. HUNKINS: Before we go on, just bear with me for one second. I have a follow-up question relating to one of the statements you just read. We can do it later, unless you want me --

MR. D'AMATO: Can we do it later?

MR. HUNKINS: That's fine.

MR. D'AMATO: Let's do it later.

We're going to take a quick break. And that's going to give us the opportunity for the attorneys on the plaintiff's side to talk.

Sandy, I am thinking, it is 12:10, I'd like to be back here in 15 minutes, so we can finish up with Dr. Farrell.

MS. SMITH: Okay.

MR. D'AMATO: I'll call you back.

MS. SMITH: All right. Thanks, Paul.

VIDEOGRAPHER: Time is now 12:12 p.m. We are going off the record.

(There was a brief recess.)

VIDEOGRAPHER: This begins DVD number two. Time is 12:45 p.m. We're back on the record.

MR. D'AMATO: Forgive me. Excuse me.

(Discussion off the record.)

BY MR. D'AMATO:

Q. Dr. Farrell, I believe you used the term controlled structures, right? Did you use that term before?

A. Controlled structures?

Q. Yeah. Relative to some of the answers to some of the questions I asked. Is that a term you use; controlled structures?

A. That is a term we would use to describe structures that were built for controlling where the sand sits and doesn't sit, yeah.

Q. Okay. Well, using Farrell-7 --

A. Um-hum.

Q. -- could you identify all the control structures that are in the Hereford Inlet there?

MR. HUNKINS: Object to the form. It assumes that there are some. But go ahead.

A. Basically, there's one rather irregularly laid out, but continuous feature that acts as a control structure to inlet positioning. And it would start at the Second Avenue jetty at Second and Kennedy Boulevard, which is at the very northeast-most part of the oceanfront beach.

MR. HUNKINS: Northeast, or southeast?

THE WITNESS: Well, southeast part of The Inlet Beach. Northeast part of the oceanfront beach.

MR. HUNKINS: West part of the --

THE WITNESS: No. North and east.

MR. HUNKINS: Oh, east, got you.

A. So that would be -- that's not where it starts. It actually continues along the oceanfront for some distance, as well.

Q. Um-hum.

A. All right? It comes up parallel to Second Avenue, and then wanders across among the dunes, and then follows the contour of development all the way up to the big condos with the blue roofs up near Beach Creek in Hereford -- well into Hereford Inlet.

Q. Okay. Now, let's talk about the jetties. Aren't there two jetties down there, one that I understand at times is covered with sand, there's an out flow pipe down there?

A. No. There's one jetty and one outfall. They're about 65, 70 feet apart.

Q. Okay.

A. The outfall is just a three-foot diameter storm water drain.

Q. All right. And that would not be a control structure?

A. No.

Q. Okay. The jetty at the bottom of that photograph, why was that built?

A. Some time back, probably to stop the erosion of Kennedy Boulevard.

MR. HUNKINS: That was the Second Avenue jetty?

A. The Second Avenue jetty.

Q. Yes, that's what I was referring to.
A. **Probably.**
Q. Okay. Is the parking lot structure --
MR. GRASSI: Just one second.
(Discussion off the record.)
MR. D'AMATO: Okay. All right.
BY MR. D'AMATO:
Q. Is the area to the left of the red dot on Farrell-7, which is the parking lot area, would you say that that is also a control structure?
MR. HUNKINS: Object to the form.
MR. ROZELL: Same objection.
A. **It's a rock revetment, and interpreting is -- a control structure is not out -- is correct. It is correct, it acts as a control structure.**
Q. All right. Now, you should have in front of you County Designee Exhibit 4. It's the photographs, the aerial photographs.
A. **Yep.**
Q. There you go.
Can you look at the 1995 aerial photograph? It's color.
A. **Let me see. Does it have a number?**
Q. It will say -- actually, if you keep on going.

A. **This one?**
Q. Keep on going. Here. Doc, it says this at the top; 1995.
A. **Oh, okay. Well --**
Q. Yeah.
A. **They're not all labeled. 1920.**
MR. HUNKINS: It's page 14, I think, Paul.
MR. D'AMATO: That's right, 14.
A. **Jesus, these are kind of all random.**
MR. HUNKINS: Here you go. You could use mine.
A. **All right.**
MR. D'AMATO: No, I have to use his, because I'm going to ask him to do something.
MR. HUNKINS: Okay. It's page 14.
A. **Page 10, 12, 14. Got it.**
Q. Now, can you just hand me that? I'm trying to move this thing along here. And I'm going to circle in orange and put a number one next to it, and I'm going to circle an object, put a number two next to it, and another object, and I'm going to put a three next to it.
Let me hand that to you. And could you just show the camera what I have done, so people will

know what I'm talking about?
A. **(Witness complies.)**
Q. Okay. So it's one, two, three. All right, good.
All right. Thank you.
What is one?
A. **One is the Second and Kennedy jetty.**
Q. Okay. Two?
A. **Two is another short shore perpendicular jetty.**
Q. All right. And what do you call -- well, what is the location of the -- of number two jetty?
A. **It is Surf and Second.**
Q. Okay. And the location of the jetty that we marked as number one?
A. **Second and Kennedy.**
Q. All right. And then what is number three?
A. **It's another very short structure of some kind. I don't know -- doesn't -- it's hard to tell what it is. And that also is shore par -- perpendicular, and is at -- knowing my North Wildwood streets, Surf, Ocean is the next one.**
Q. I think so.
A. **I think. Anyway, it's opposite the street end, the third street in from the ocean.**

Q. Now, I had asked you earlier about why a certain jetty at what I'm going to call the south end --
A. **Um-hum.**
Q. -- okay, was built. Why were jetties number one and number two on that exhibit, which is a 1995 aerial, why were they built again?
MR. HUNKINS: Object to the form. If you know, answer. But you must not speculate.
A. **I -- I'm not speculating. I don't know.**
Q. Okay. Though you may not know why those two jetties were built, what -- if those two jetties were not there, what effect, if anything, would it have on the beaches of North Wildwood, if any?
A. **In today's world?**
Q. Yeah.
A. **Since they're no longer exposed, nothing.**
Q. Okay. What do you mean they're no longer exposed?
A. **They're buried. They're buried in sand.**
Q. Okay. So they have no functional use at this point in time?
A. **Occupy space.**
Q. Okay. When did both of those jetties become buried in sand; do you know?

MR. HUNKINS: Talking about number two and three, or --

MR. D'AMATO: One and two.

MR. HUNKINS: One and two.

A. Well, one -- one is -- your one is the Second Avenue jetty. And it is not buried.

Q. Okay.

A. Two and three are buried.

Q. All right.

A. Probably?

Q. When did two --

A. Probably between -- well, you have one in here 2000. All right?

MR. HUNKINS: What's the question pending?

A. Yeah.

Q. The question was, when did one and two become buried? He said one is not buried. And you were -- I think you were going to try to answer when two became buried.

A. All right. By 2000, number two is buried.

Q. Okay, right.

A. And by 2002, number three is all but buried.

Q. Got it.

Now, with respect to the jetty at Surf,

which is number one on that 1995 aerial --

A. At Surf? No. Second.

Q. Second, I'm sorry. That's my fault.

A. Second and Kennedy.

Q. Right. That jetty was exposed back in July of 2012 when this incident took place?

A. Yes.

Q. Yeah, all right. Let's just talk about that jetty.

If that jetty had not been exposed in -- back in 2012, or didn't even exist -- let me be -- I'll be -- I want to rephrase the question.

If that jetty did not exist, what effect would it have on the beaches of North Wildwood, if any?

A. The answer is, based on experience and evidence of engineering -- coastal engineering probability, have minimal effect on the position of the beaches in North Wildwood. It's a hundred feet long, and its top elevation is at or slightly below high tide, so sand goes around it, over it readily.

Q. Um-hum.

A. It's an anchor point for the corner of Second and Kennedy, basically.

Q. All right. Earlier -- very early in this

deposition, you were talking about, in a general sense, the beach replenishment project that had been going on once, you know, you were associated with the institute and you became involved with North Wildwood.

As you sit here today, is the beach replenishment of the North Wildwood beaches still an ongoing issue?

A. Yes, it's still an ongoing issue. Most recently, as of Memorial Day 2016.

Q. And what happened?

A. Sand was excavated in the City of Wildwood and trucked north along the shoreline and deposited between Third Avenue, street end on the beach front, and about 15th Avenue, to repair the dune damage done by northeast storm Jonas in January.

Q. All right.

MR. D'AMATO: We're up to exhibit what. We're up to exhibit what? Excuse me. I'm looking for the exhibits that were marked.

(Discussion off the record.)

(Copy of photograph received and marked for identification as Exhibit Farrell-8.)

BY MR. D'AMATO:

Q. I want to show you what has been marked for

identification as Farrell-8.

And per chance, did you read an interview of a woman by the name of Pat Poussey, P-O-U-S-S-E-Y, I think it is. She was interviewed by Mr. DiJoseph. She took this photograph, which is, I would say, within 20, 30 yards of where Scott Sunderland said the incident took place.

First of all, did you ever review that interview of Ms. Poussey?

MR. HUNKINS: Okay. Object to the form. Long preface, which I disagree with and have a problem with. And the question is, right now is, just did you read the Poussey interview?

MR. D'AMATO: Right.

MR. HUNKINS: I have no problem with that part of the question.

Did you read an interview of somebody named Poussey?

THE WITNESS: No.

MR. HUNKINS: Okay.

BY MR. D'AMATO:

Q. Okay. Did you see a NBC TV 40, when it existed, news story where Ms. Poussey was interviewed and she took that photograph?

A. No.

Q. Okay. When you -- I can represent to you that this woman took this photograph, it was in North Wildwood Beach, and it was -- we can argue about how close it was to where Scott Sunderland said his incident took place, but it was within a certain number of yards.

And here's my question: When you look at the condition of the sand there, and compare it to the water, all right, have you ever seen that type of configuration, where you have the sand and the water, on the North Wildwood Beach, specifically The Inlet Beach?

MR. HUNKINS: Object to the form.

A. I have never been present when this occurred.

Q. Okay. Did you ever see any photographs of it?

A. Yes.

Q. Okay. Who took the photographs, where, and when?

A. They were part of the suite of things I was given.

Q. All right. So were you given a batch of photographs to review?

A. No.

Q. Okay. Was it an exhibit to one of the

depositions?

A. I don't know.

Q. Okay. But you saw that particular photograph before?

A. Not this particular photograph, no.

Q. Okay. Then what did you see that is similar to that photograph?

A. Presuming it's the same incident, which I don't know, it's a videotape.

Q. Okay. Well, actually, this photograph was made from that video.

A. Okay.

Q. Okay. And that video you saw was an NBC TV 40 video.

A. Okay.

Q. Okay? Now, and Pat Poussey's interviewed on that inter --

A. (Witness nods.)

Q. No, that you didn't see?

A. Just this.

Q. Okay.

A. People standing, sand falling in.

Q. Okay. You earlier had referred to a particular condition, and I don't want to put words in your mouth, but I thought earlier in your

testimony, you referred to a condition that would be similar to what we're looking at in this particular photograph, which is Farrell-8.

When you look at that photograph, as a scientist, what do you see?

MR. HUNKINS: Object to the form.

MR. ROZELL: Same objection.

Q. You can go ahead and answer.

A. Well, this is a vertical sand escarpment, where material is actively sloughing off in block form and falling into the water.

Q. Okay. What is the cause or what are the causes of such an event taking place?

A. Based on coastal experience, this is evidence for a large scale slope failure.

Q. Okay. And could you define for those people that will be watching this videotape, what that is, a slope fell?

A. The slope failure is where the sand, which is a loose, non-irrigated material, the slope into the channel is so steep that a large mass of material literally moves as a chunk and breaks up as it does so into deeper water. Essentially, it's called a block fault landslide.

Q. Okay. Would the tidal currents that run

through the Hereford Inlet be a causative factor in that event taking place?

A. Something has to scour the slope to make the instability. So the answer is most likely.

Q. Okay. All right. Now, let me show you what's been marked for identification as Farrell-9.

(Photograph received and marked for identification as Exhibit Farrell-9.)

Q. These are all photographs which counsel have. It was taken on January 28, 2013. And I'm going to hand it to you. And for the benefit of Mrs. Smith, it's a photograph showing what I'm going to call the rock wall, but you, as a scientist would call it a reventment?

A. Revetment.

Q. Revetment, correct?

A. Correct.

Q. All right. And let me show you what's been marked for identification as Farrell-10. This is a photograph that was made from a drone on July 31, 2014.

(Photograph received and marked for identification as Exhibit Farrell-10.)

Q. And let me hand it to you. And you would agree that again we're looking at the revetment?

A. **Yes.**
Q. All right. Do you know how many feet in its entirety that revetment is? You could approximate.
MR. HUNKINS: Length, or width, or --
MR. D'AMATO: Length. I'm sorry. From beginning to end.
A. **Probably six or 7,000 feet.**
Q. Okay. If that revetment did not exist at all, what effect would it have on the beaches of North Wildwood?
MR. HUNKINS: Object to the form.
MR. ROZELL: Object to the form.
A. **You can't answer the question without a very long discussion of where the inlet would be relative to the uplands of North Wildwood. North Wildwood -- quite a bit of North Wildwood wouldn't exist. It would be in the inlet. So the most striking effect on the position of the beaches would be where the inlet channel was relative to a fixed point on land.**
Q. Okay. All right. If the revetment that we see in the drone photograph, which was marked for identification as Farrell-10, did not exist, what effect would it have on the tidal currents running through the Hereford Inlet?
MR. HUNKINS: Object to the form.

A. **The only real effect would be the absence of the parking lot. It wouldn't exist. It would be washed away. So the scour hole off the point of rocks here would not exist.**
Q. Okay.
A. **The uniformity of the channel floor would be more complete.**
Q. If the revetment that is shown in the drone photograph was not present, would it change your earlier testimony about the speed of the tidal currents going in and out of Hereford Inlet?
MR. HUNKINS: Object to the form.
A. **No.**
Q. Why not?
A. **The channel is the channel, and it is defined by the lagoons in Grassy Sound and behind Stone Harbor and the width of the opening to the ocean. So all of that has set up a flow pattern that basically is independent of all the structures. It's going to be there. The structures simply either constrain the flow, or keep it from taking more upland surface away as the channel migrates.**
(Newspaper article received and marked for identification as Exhibit Farrell-11.)
Q. Let me show you what has been marked for

identification as Farrell-11, which is a newspaper article. I'm going to hand it to you.
You are quoted as saying in the article -- let me just read for the record, so Mrs. Smith knows what I'm referring to, quotes "Stewart Farrell, director of the Richard Stockton Coastal Research Center, said the situation is the result of tidal currents that create a whirlpool effect that moves the sand. The tidal channel configuration allows it to develop. They happen and the cost of trying to control it would be in the millions. Farrell said, adding, it is not an area that ever receives beach replenishment."
Now, here's what I want to ask you: In this article, when you say that the situation is a result of tidal currents that create a whirlpool effect, that is going back to your testimony earlier where you explained the whirlpool effect, correct?
MR. HUNKINS: Object to the form.
Q. Or --
MR. HUNKINS: No.
Q. Or in this article, are you referring to something else, other than what you described to us earlier in this deposition? That's what I'm trying to get to.

MR. HUNKINS: Object to the form. Part of my objection is, part of this is a quote, part is a summary by this author, which may or may not be correct.
MR. D'AMATO: Well, that's for him to say. Now you're leading him.
MR. HUNKINS: Yeah, object to the form.
MR. D'AMATO: Now you're leading him, and you know that's impermissible.
A. **Question, what's the date on this article?**
Q. It's after the Smith incident in July of 2012.
A. **Okay.**
Q. Right after it, you know.
MR. HUNKINS: So the question is? I interrupted. I apologize.
Q. I'm trying to determine from you, when you talk about the situation -- and let's go back a little bit.
A. **Okay.**
Q. In the first paragraph of the article, it says, quotes, "The ever-changing Hereford Inlet has lead to the loss of beach within 10 to 12 foot drop-offs along the area of New York and Pine Avenues, near the seawall. There has also been some

beach erosion between Second and Fourth Avenues?
Now, here's my question: Were you aware, when it happened, of the erosion that's being referred to in the first paragraph?
MR. HUNKINS: Object to the form.
A. Well, we were following beach changes since 2009, but only at six places along The Inlet Beach. So, yes, we had profile stations, which we repeatedly measured, and things came and went with no particular pattern to them over time.
Q. And where are the six stations located?
A. Between the Second Avenue jetty and -- the most northern one is located whatever this street is called here. And I'm -- there is a name. We can get you that.
The one with the curve in it is Central. That's what I believe it to be, anyway; Central Avenue.
Q. Okay. Now, what was the cause of these 10 to 12 foot drop-offs?
MR. HUNKINS: Object to the form.
A. Well, these are the edges of the channel, the steep channel edges. I mean, drop-off is just a generic term that the writer used.
Q. When I showed you the photograph taken by Ms.

Poussey --
A. Um-hum.
Q. -- would you call that a drop-off?
MR. HUNKINS: Object to the form.
A. A very local one. I mean, this is a very local phenomenon. It's right there, at that moment in time.
Q. Do you know, with respect to this article, where the location of these 10 to 12 foot drop-offs was located?
MR. HUNKINS: Object to the form.
A. She didn't explain that when she asked me the questions.
Q. Okay. Okay. In the paragraph that says, quotes, "Stewart Farrell, director of the Richard Stockton Coastal Research Center, said the situation is the result of tidal currents that create a whirlpool effect that moves the sand," okay, did you tell the reporter from the Press of Atlantic City, Trudy Gilfillian, that the loss of the beach, with the 10 to 12 foot drop-offs, was, in fact, the result of tidal currents that create a whirlpool effect that moves the sand?
MR. HUNKINS: Object to the form.
A. Her interview was -- she kept talking about

whirlpools. And I said, yes, they do exist. But connecting those things up was not part of the discussion ever.
She asked me if whirlpools exist, and I said, well, rotating currents do exist. But, you know, what do they do at any given time, I didn't answer that one.
Q. Okay. Well, then let's try to answer it today.
As a scientist, could the tidal currents that create a whirlpool effect cause the loss of beach with 10 to 12 foot drop-offs?
MR. HUNKINS: Object to form.
A. Within the diameter of this rotating whirlpool area, yes.
(Newspaper article received and marked for identification as Exhibit Farrell-12.)
Q. Okay. Now, let me show you what's been marked for identification as Farrell-12. It's an article that appeared in the Press of Atlantic City. Here, I'll hand you -- I got an extra copy.
A. All right.
Q. On February 6, 2013. And I want to direct your attention to where you are referred to. And if you look at, I guess it would be the fourth full

paragraph, it says, quotes, "Stewart Farrell, director of the Coastal Research Center at the Richard Stockton College of New Jersey, monitors the city's beach twice a year. After Sandy, he found that about 150,000 cubic yards of sand had been lost on the north end near Second Avenue and JFK -- JF Kennedy Boulevard and along the city's dune system."
Did you, in fact, tell the reporter Trudy Gilfillian?
A. Yes.
Q. Okay. I want to go to the next paragraph. "The dune was basically erased, and the water flowed into the streets, Farrell said of the dunes that had been near the city's amusement piers."
Where -- by reference to streets, if you can, where was this dune that was erased?
A. Well, it was part of the 2009 project from Second Avenue all the way to the Wildwood Board.
Q. Okay.
A. And up between Third Avenue and Second Avenue, right there at the northeast corner, the erosion of the sand beach took the dune, as well. And as a result of N.J. DEP insistence, the dune was built by the project in front of Morey's Piers and the two other piers at 21st, second, and Morey's is

at 25th. So the dune went out in front of the piers, and the storm erased that part of the dune, as well.

Q. Okay. You can put that down.

We had marked at a prior deposition of Mr. Sunderland as Sunderland-5 an interview of him. And I'm going to remark it this interview as Farrell-13. And there is an aerial photograph where Mr. Sunderland had made a marking as to his best estimate of where the incident involving him, his daughter, Mr. Smith, and his daughter took place.

(Interview of Mr. Sunderland received and marked for identification as Exhibit Farrell-13.)

Q. Have you seen this before?

A. Yes.

Q. Okay.

MR.D'AMATO: Now, Brian, could I have that one?

MR. HUNKINS: Yeah. Which one?

MR. D'AMATO: That one.

MR. HUNKINS: This?

MR. D'AMATO: Yes. I had it marked. And where are we?

Oh, there we go. There we go. Thank you. I'll give this back.

Q. We had marked for identification as Farrell-6

an aerial photograph. You can see on the back of it?

A. Um-hum.

Q. Okay? And you'll see the words -- the word Sunderland's, and next to it is an X.

Now, as I understand it from speaking to counsel, you created or made this Farrell-6? Correct?

A. Yes.

Q. Okay. When I say created or made, exactly what did you do that resulted in Farrell-6?

A. Well, this is a Google Earth aerial image from May 2011, if I'm guessing right.

Anyway, it -- if you have -- you've indicated this is Sunderland-10.

Q. Right.

A. And if you look at the two of them side by side, you'll see that the color topographic features on the beach are identical, which probably means they're the same image. These are ephemeral features, and they change weekly, and Google doesn't fly weekly.

So what we did, what I did, was I put the Google pin, a little yellow pin, that's Google's tool, I put it as close to where the X is on this photograph, Mr. Sunderland's X.

Q. Um-hum.

A. I just superimposed it on the picture with a wider view, so that we could discern the relative position of the supposed entry point into the water at the incident with all the aspects of the rock revetment and the beach all the way to the tail end of it.

Q. If I may, what was the point of doing that? You were trying to make a point.

A. Seeing exactly where everyone -- or where the most credible witness, the one that participated in the event, thinks it actually initiated.

Q. And assuming that Mr. Sunderland is correct, and he did give his best estimate, what is the significance of where he says the event took place, as a scientist?

A. It puts the initiation of the event right at the nose of the flood tidal feature that I had previously reviewed and kind of was making the case that this was the feature that he had stumbled across going back towards the place that they started from. The lobe of sand is right there, the little darker patch in -- of sand is the trough.

Q. Could you hold it up and show the cameraman, so --

A. This darker strip in here is lower in elevation, and is -- the whole feature is being built this way by flooding tides. And you can see in the water, the waves are breaking on a fairly gentle slope into the inlet.

Here, along this part, they're not. It's a steeper beach.

So as they walked this way, they simply walked off the end of this feature, and, yeah, maybe the sand did give way under their feet.

Q. As they're walking off, you mean?

A. As they're walking off.

Q. Right.

A. And that just accelerates the process.

Q. Okay. If I can take you back to your report.

A. Um-hum, yes.

Q. I just want to ask you a couple questions on this, and then I'm going to take a two-minute break, talk to my colleagues. I think maybe Mr. Grassi will have a couple of follow-up questions. Okay?

A. Okay.

Q. You say, about six sentences down, quotes, "Within a reasonable degree of coastal engineering probability, the water and sand conditions that contributed to the incident in this case were

completely natural and unaffected by any improvements in the area. Neither the seawall nor any beach replenishments nor any other improvement played a role. The seawall does at times create a whirlpool or vortex in the immediate vicinity of the seawall. The seawall has no effect in the area where Mr. Sunderland says he and Mr. Smith went into the water."

Okay. Now, let me stop there. I'm going to end the quote.

Now, what is the basis of the statement that the seawall doesn't at times create a whirlpool or vortex in the immediate vicinity of the seawall?

MR. HUNKINS: Did you say does, or doesn't?

MR. D'AMATO: No. I said what is the basis that it does. Yeah. I'm just quoting from his statement there.

A. Well, we have observed the curved beach surface that says something is -- you know, beaches like to be straight. Normally, waves come in, and they smooth the sand out in nice curvings or nearly straight lines.

Just in this one photograph, I will point to an area up near the corner of the rocks and

the parking lot, there's a very pronounced curve.

Q. Could you just take your finger off it, so the --

A. (Witness complies.)

Q. There you go. That's called Moore's Beach?

A. Whatever. I don't know what they call it locally. It's just The Inlet Beach to me.

But anyway, where that curve is is what I'm talking about; this rather unnatural curved feature, which would, in fact, essentially mirror the after-effect of the picture you marked Farrell-8. You let time go by, that cliff flattens out, forms a slope, but it's an indentation in the existing shoreline. Something took it away.

Q. Okay.

A. Now, that could be a failure, like this, or simply erosion gradually by the rotating current. The rotating current doesn't go anywhere. It's triggered by the rocks, the point of rocks right there.

Q. And the -- a layperson would call the rotating current the --

A. The whirlpool.

Q. Got it. Now, you say in this report that the seawall has no effect in the area where Mr.

Sunderland says he and Mr. Smith went into the water. All right?

Give me every single basis for that statement.

A. The configuration of the shoreline, as shown in the aerial photograph, is right where the flood tide influence on the beach bar that's moving up the inlet every time the tide's moving in meets up with the ebb flow that's doing things just down stream of the parking lot revetment. We are talking about -- the city blocks in Wildwood are 600 feet long and 250 feet wide. Center line street, center line -- that's from measuring them, okay? I just know that.

So from the rock parking lot, you have six, 12, almost 1500 feet from where the whirlpool could be generated to where the event we presume occurred.

And so that basically takes the events that caused slope failure fairly much off the table most -- I mean, within the realm of probability, if you're going to have one, it's going to be up here, up at the north end of the very north end of that sand beach. That's where it's going to be. And down here, you've got the interplay between the flood and the ebb tides with steep slopes at the end of where

the deposit is being formed every time the tide comes in. And this is a steep slope, angle of repose slope. And if you walk on it, it's not stable.

Q. Can you, as a scientist, absolutely rule out that the -- what's the phrase you used? I just lost it. You said -- you were talking about the activity near the red spot near the parking lot.

A. Right.

Q. You used a phrase just now. You said --

A. The rock revetment.

Q. No. You were talking about the water.

Does anybody remember what he said?

MR. HUNKINS: Just hold on.

MR. GRASSI: Rotating current?

MR. D'AMATO: Yes. Thank you.

MR. GRASSI: No problem.

MR. D'AMATO: Okay.

Q. Let me rephrase the question, now that Mr. Grassi helped me.

Can -- can you, as a scientist, rule out 100 percent that the rotating current at the red spot that you put on that aerial photograph had nothing to do with the event involving the Smith and Sunderland family?

MR. HUNKINS: Object to the form.

MR. ROZELL: Object to the form.
MR. HUNKINS: Within a reasonable degree --
A. **Within a --**
MR. HUNKINS: Yeah, go ahead.
A. **Within a reasonable range of scientific probability, I would say it cannot be a major contributor to that site where Mr. Sunderland put his X.**
Q. Okay. You used the word major. How about a minor?
A. **Well, how minor is minor? We can't be sure within zero percent. So I would say, in the range of one, two, three maybe, percent. It depends on the situation. And it's -- you know, anything is possible out here. I've learned that. But probabilistically -- okay. In this picture, Farrell-8, way in the distance, there's a sand shoreline showing in this picture.**
Q. Where your finger is, right below?
A. **Correct.**
Q. Okay.
A. **That's here. That's -- that's where Mr. Sunderland put his X. Not here.**
Q. And how do you know that?

A. **It sticks out from the general trend. I also could see that the flow of water here is flat and shiny. That means there's no waves. That means the current's dominating things. Okay? By the time you get down here, you see whitecaps, water, waves breaking down the beach, and generally a darker blue color to the sea. This is where the current has subsided substantially.**
Q. Okay. Could you get that red marker, and on the photograph that you just showed everyone, can you circle the area where you say the event involving the Sunderland and Smith family took place?
A. **This is -- I would add more, but I'll just put an arrow down somewhere within, you know, a range of --**
Q. Okay.
A. **-- that --**
Q. Okay.
A. **-- area.**
Q. So the event that took place here with the beach collapsing took place closer to the seawall, the actual seawall?
MR. HUNKINS: You're talking about what's shown on Farrell-8?
MR. D'AMATO: Yeah.

A. **Yes.**
Q. Okay. All right. Now, we have three exhibits here that came from your institute, and I'm going to have them marked for identification. I just want to put them in proper order.
Okay. Here we go. Okay.
The first one is Farrell-14. And I'm going to place the sticker so it doesn't cover anything.
(Digital elevation map received and marked for identification as Exhibit Farrell-14.)
MR. D'AMATO:
Q. Would you share with us what we are looking at?
A. **This is a digital elevation map model from data done July 25th, 2012, July 26th, 2012 up until July 31st of Hereford Inlet and the associated oceanfront beach.**
Q. All right. For the laypeople that would be looking at this, could you explain to them the significance of what we see there?
A. **This is a bathymetric, which is underwater topography, bathymetric elevation map of the configuration as we mapped it using our sonar and our GPS locating equipment on board our vessel, combined**

with work done on the beach by a beach survey crew using laser transit and GPS.
So we cover up to basically the point of rocks at the parking lot in this one.
Q. And could you show the people, when you -- where the parking lot would be then? Right there?
A. **Right there.**
Q. Okay. Now, relative to the opinions that you have shared with us today and the statements you have made, what document -- what relevance does that document have, if any?
A. **Well, it -- it shows that we pretty well mapped this lobe of sand that's shown by a minus nine contour, about minus 10 feet, coming in and then tucking in really quickly to the shoreline, with much steeper contours running up to the rocks.**
Q. But what relevance, if any, does that have to the opinions that are contained in your report and those opinions that you shared with us today?
A. **Well, this is the evidence that says there is a fairly dramatic change in shoreline configuration right at that location, which tends to correspond with where Mr. Sunderland put his X.**
Q. Okay. Could you, on that exhibit, put an X where the Sunderland and Smith event took place? You

know, I understand this is --
A. **I'm just getting a pile here. Okay. We got this one.**
Central. Central. Right here. We come down to the elbow.
Q. Okay. All right. Now, the date of that is --
A. **July -- well, July 31st was the final survey date. I don't know when any one of these was done, but it was done between July 25th and July 31st.**
Q. Of what year?
A. **2012.**
(Digital elevation maps received and marked for identification as Exhibits Farrell-15 and Farrell-16.)
Q. Okay. Now, let me show you Farrell-15, which in the upper right-hand corner says Hereford Inlet December 2012.
A. **Yep.**
Q. And can you -- and to save some time, here's Farrell-16, that says May 2013.
A. **Okay. This is -- these are the three consecutive surveys, okay.**
Q. So in looking at the date of the one you have in your hand, I can't see it --

A. **It is -- well, December '12 is the date it was done, between the 6th and the 17th.**
Q. Okay. What significance, if any, does that particular exhibit have relative to the opinions that you've shared with us today?
A. **Well, it shows changes occurred. The shoreline of the area in the immediate vicinity of the incident has essentially been straightened by --**
Q. Okay.
A. **-- tidal flow, and that the channel is more defined by a fan going out to sea. It's deeper -- less distance towards the ocean. It's shoaled up out towards the ocean.**
Q. Okay.
A. **This is something we did notice, and it continued.**
Q. All right. And then the final one, which is dated May 2013.
A. **This was based on data done between May 9th and May 24th.**
Q. And what relevance does that have relative to the opinions that you've shared with us today?
A. **The last information on land is at our Central Avenue cross section, so the -- that's where it stops. So it doesn't show much at the beach**

between Central Avenue and the rocks.
Q. Okay.
A. **We just didn't do it. The focus here was on the inlet, itself.**
And basically, the channel is narrower and a little shallower by December.
The other thing that's happening is, the channel from Stone Harbor, opposite a place called Champagne Island, which is an ephemeral island that is above high tide rarely, mostly is awash at high tide, or submerged at high tide, but it's very, very, very shallow. There is a channel that established itself in about 2010 out to sea to the northeast, serving Stone Harbor, which has subsequently gotten smaller and narrower with time, like it's virtually in the act of disappearing. If you know where it is, you can follow it. I don't advise the uninitiated trying to do it, because it's kind of risky. But it is a tidal channel. There's two main channels in this system as of the last half decade. And that's the other one. It was really dramatic around 2011, '12, and has faded since.
Q. You --
A. **So that's where the major changes are taking place, controlled by -- if this doesn't flow as well,**

this one has to flow harder.
Q. Referring to Stone Harbor?
A. **If the Stone Harbor one doesn't flow as well, then that enhances the flow through North Wildwood main channel. And traditionally, that's been the main channel, over long periods of time.**
Q. Is -- as a scientist, is it fair to say that when it comes to the Hereford Inlet, relative to the location of the channel of water where the -- where The Inlet Beach is, it can vary day to day?
A. **Well, week to week.**
Q. Week to week, okay.
Now, what I want to do is, I want to go over some of the aerial photographs, then I'm finished.
That would be the exhibit that you looked at before. I can see it right there.
That's it. Okay.
That, again, is County Designee Exhibit 4. And if you could, instead of going from front to back, if you could --
A. **Back to front.**
Q. -- look at the third exhibit from the back. It will have a marking of exhibit County Designee 6. That's it. Okay.

Now, you'll see that somebody put a pin, and there is the typed word accident.

So we could kind of be -- you know, follow up on this, does this exhibit show where the Sunderland and Smith incident took place?

MR. HUNKINS: Object to the form. Just hold on a second.

MR. ROZELL: Object to the form, also.

MR. HUNKINS: Could you remind me when County Designee 6 was taken?

MR. D'AMATO: You know what, I don't know. I mean, I could re -- I could research it. But it's a Google Earth photograph. And with all this in mind, okay, I could tell you, I think this was done by my former associate, I think.

MR. HUNKINS: Only because, then, on top of when it was taken, is the issue of the yellow pin says accident, and I don't know -- are you representing --

MR. D'AMATO: No, I'm not making any representation. I'm just showing him this exhibit. I'm just asking the doctor, if he's able to. If he can't, then that's fine.

MR. HUNKINS: Okay, that's fine. Able to --

A. Do what?

Q. To be able to put a marking on this exhibit, which is County Designee 6, as to your best estimate as to where the Sunderland and Smith event took place.

A. Well, the shoreline's in a different position. This is, I think, later in time.

Q. Um-hum.

A. It's not way off. The pin labeled accident is not exactly in the same place that Mr. Sunderland put his X on the 2011 map.

Q. Okay. Well --

A. But it's within 500 feet.

Q. All right. So just put an X on that exhibit as to -- and I understand this is an estimate.

We're on this one. Yeah, that's it.

MR. HUNKINS: Okay. He's going the make an X on County Designee 6?

A. 6, yeah.

Q. Yes.

MR. HUNKINS: And you want him to put an X where he believes the incident occurred?

MR. D'AMATO: Yes.

MR. HUNKINS: Okay. I object to that.

A. I mean, I could scale it on there for you,

but I don't have a scale.

In other words, I -- I see how much a block is here, how much a block is there, and then do the ratio, and put it out based on --

Q. Okay.

A. I mean, this could be plotted. It's going to be out here in the water somewhere, practically off the map.

Q. Okay. So why don't you show the jury, because I would like to move on, where -- where you believe it's off the map?

A. I'll put a --

Q. Okay.

MR. HUNKINS: This is an estimate, without doing the measurement?

Q. Right.

A. Yeah, this is an estimate. It's -- the photograph is later in time. Because we did this with the Google picture series when we made the map that we have created.

Q. Okay. I'm with you.

A. So the configuration of the streets and roads puts it somewhere either just off the map, or just barely in the darker area at -- in the water now.

Q. Okay.

A. Or at the time the picture was taken.

Q. Now, what I'd like you to do is, if you go to the next aerial, it's dated February 22, 2013 at the top. Should be that right there.

A. Okay, yeah, February.

Q. Now, again, you never saw these aerials that were marked for identification at the deposition of the Cape May County engineer, correct?

A. No.

Q. Okay. Have you ever ob -- have you, that is, you, personally, or the institute, ever obtained any aerials from the Cape May County planning department, where the county engineer obtained these?

A. They came from county planning, it would be Brian O'Connor. We have a very good relationship with Brian. So I would -- you know, anywhere in Cape May County, yeah, of course.

Q. Yeah, yeah.

A. Okay, yes.

Q. Okay. Now, I'm going to -- allow me to ask you a very lengthy question.

Look at the channel on the aerial photograph of February 22, 2013 and The Inlet Beach. Okay?

A. Um-hum.

Q. Now, go to the next photograph, which is March 14, 2012.
A. Um-hum.
Q. All right?
A. All right.
Q. Look at the inlet, look at The Inlet Beach.
A. Um-hum.
Q. And go to the next one, which is November 17, 2009, look at the inlet channel and The Inlet Beach. The next one is 2007, March 19, 2007. Do the same thing.
A. Um-hum.
Q. And then go to the next one, which is April 6, 2005. Okay?
A. Um-hum.
Q. The next one is April 1, 2003. Okay. The next one is 2002. The next one is 2000. All right?
A. Yep.
Q. The next one is 1995.
A. Um-hum.
Q. The next one is 1970.
A. Okay.
Q. And the next one is 1963.
A. Okay.
Q. The next one is 1956.

A. Um-hum.
Q. The next one is 1941. Okay? The next one is 1930. The next one is 1920. And we'll stop there.
A. Because that's the earliest one.
Q. Yeah.
A. These were -- we did these. We didn't take them. We just processed them.
MR. HUNKINS: Wait for a question.
Okay.
A. Just telling you.
Q. No, that's okay.
A. Sure.
Q. All of us, as I was taking you through it, we were all looking at these photographs. We see The Inlet Beach changing, we see the channel changing.
What is the cause or causes of those events taking place from 1920 to February 22, 2013?
A. Well, you have essentially taken us through three iterative cycles of spit accretion in Hereford Inlet along The Inlet Beach. Now, the spit is the sand deposit. It's a -- it's attached to the ocean beach, and it grows into the inlet as a body of sand that progrades on the flood tide up into the inlet.
Back in 1988, State of New Jersey had just found out about this neat new program called

ArcGIS, Geographical Information Systems. And they said, would you provide a proposal to digitize all of the known topographic maps done by Coast Geodetic Survey, United States Geologic Survey, Army Corps of Engineers, for us in this new GIS format, so we could have historic shorelines for the State of New Jersey? University of Maryland and Stockton participated in this project. It was a half a million dollars, a lot of time. Maryland had the fancy computer hardware. You know, we had the legs and could go places and get the stuff and do the digitizing.
So I went to the Army Corps, I went to the USGS, I went to the Coast Geodetic Survey, and we got all the maps.
Shorten this up a lot, Hereford Inlet. In Hereford Inlet, we discovered, by looking at these maps, aerial photographs, and other charts that exist for this region, that there is a 30 -- 28 to 30-year cycle of spit growth, erosion. The shoreline retreats, and every time it would erode, North Wildwood would lose real estate. Every time it would pour in there, like that 1941 picture, they actually put paper streets out there, they want to build houses on it. Fortunately, they didn't.
Q. Yeah.

A. And First Avenue really existed all the way to the oceanfront. It went away in the 1965 through 1970 iteration of erosion.
Q. Okay.
A. Now, that piqued in 1995, with your one photograph there, that shows it just initiating with the jetty, the little short jetties that I'd even forgotten were there, they're still exposed. Jetties one, two, and three in your picture.
That whole spit, okay, 15th Avenue is where the North Wildwood lifeguard stand is built. That's their lifesaving station. That's where they house it. We have a profile that's been there since 1986. We survey it twice a year.
In 1995, that profile from the lifeguard stand out to the water's edge was 1560 feet to the high tide line. Then you got the ocean.
By 2006, it was only about 250 feet. And Mayor Henfey and the council was worried about losing their lifeguard station and lots more.
We went to the State of New Jersey, and the 1909 beach fill resulted from this rather -- I mean, we're talking about six million yards of sand in front of the North Wildwood oceanfront that half of it went south into Wildwood, the other half went

into Hereford Inlet, making this feature that the Smiths chose to sit on in 2012. So it's an ephemeral feature in the long run, which undergoes very dramatic changes in a lifetime, in spite of the fact that it sits there in these pictures, you know, like it's been there forever. It -- it comes and it goes. This happens in Absecon Inlet, it happens in Ocean City's inlet. It happens in all of New Jersey's inlets where they're unrestricted.

Build a pair of jetties, doesn't happen anymore. But the ones that are unrestricted, this is -- this is the result of the interaction between northeasters, the sand arriving from the northern barrier island into the inlet, and where the main channel of that inlet is located relative to the ocean, itself, not right along the island, but where it enters the sea.

And as far as we can tell, in 1995, the channel went to the northeast. Shifted thousand, 500 feet. The main exit went out to the northeast. Didn't go near Second Avenue anymore. Just, we're out of here, straight out. Well, what happens? Flood tide moves sand in, there's no ebb tide to sweep it away. So the flood tide moves the sand in, around the jetty, and up the inlet shoreline, as this

deposit of sand. And it's still going on to this day.

Now, should the channel dramatically move at ocean side, back toward the Second Avenue jetty, all this sand will be blown out into the ocean and the waves will put it back on the beach in front of 15th Avenue, and it will be a thousand feet to the beach again. But this is a cycle, that's really dramatic in Hereford Inlet. And it's just -- this is just a series of pictures, in this series, from 1920 to 2012, that just documents it very nicely.

Q. Okay.

VIDEOGRAPHER: Excuse me, counsel. I just need a moment to change the tape.

MR. D'AMATO: Yeah.

VIDEOGRAPHER: Time is now 1:54 p.m. We are going off the record.

(Discussion off the record.)

VIDEOGRAPHER: Time is now 1:55 p.m. We are back on the record.

BY MR. D'AMATO:

Q. Here's my -- it's kind of a comment, but it's also a question.

I found, as a layperson, looking at these aerial photographs from 1920 up until 2013, and

how everything changed over time with the location of the inlet, The Inlet Beach. You said that the Hereford Inlet, you commented, you used the word dramatic. Is this -- what we see in aerial photographs, if we were to do the same thing for the Ocean City, Longport area, the Absecon Inlet, some other inlets, would it be just as -- would it be just as dramatic as what we've seen in these aerials?

A. **Well, from the work we did back in 1989, yes, there's dramatic changes take place in all of them. Until, of course, they put the big structures in there, and -- like for Barnegat Inlet, that changed that one for all time. The little ones up north, Manasquan and Shark River, used to migrate. And the reason they built what they call government dike was to keep from losing the Manasquan Fish and Hunt Club, which bought the piece of property right next to the inlet in 1880, 1879, and oh, my God, we're going to lose our hunt club. They built a wall.**

MR. D'AMATO: Okay. Thank you. We're going to go off the record. I just need a couple minutes to talk to my colleague here, and we'll be right back.

VIDEOGRAPHER: Time is now 1:57 p.m. We are going off the record.

(There was a brief recess.)

VIDEOGRAPHER: Time is now 2:13 p.m. We are back on the record.

BY MR. D'AMATO:

Q. Dr. Farrell, I have in hand here a letter, which I showed you off the record, dated April 22, 2016 from the deputy attorney general Brian Hunkins, who's sitting next to you. And the box that is in front of you was provided that contains numerical figures.

And can you tell me what those numerical figures represent?

A. **If I make two assumptions --**

Q. Go ahead.

A. **-- they came from the N.J. DEP Bureau of Coastal Engineering, as a result of our land surveys and bathymetric surveys for Hereford Inlet, and they are, in fact, of Hereford Inlet, then these are the raw data points that make those digital elevation maps that you showed me as Farrell-16 and 14 and 15.**

Q. 15, all right.

Okay. Now, my final question is, I'm -- I'm going to make -- provide you with Farrell-17. And I'm going to put this -- I'm going to put this on the back of an exhibit, which was Farrell-6.

(Copy of Farrell-6 received and marked for identification as Exhibit Farrell-17.)

Q. And I'm going to hand this to you, and if you could use the red marker to show us where the six locations were where you've been doing this testing or measuring since -- I think it was 2009.

A. No can do on this one. They're all southeast of this photograph.

Q. Okay. Are they -- these locations, are they on what I'm going to say the beach that faces the Atlantic Ocean, as opposed to The Inlet Beach?

A. There's six profiles on The Inlet Beach. The first one is essentially parallel with Kennedy Boulevard and goes straight out into the inlet, parallel to Kennedy Boulevard.

Q. All right.

A. Then there is three more 200 feet apart, ending at essentially Surf Ave. And then there's one 1200 feet from the jetty at the inlet, Ocean Avenue maybe, or the next one up, Central Avenue.

Q. Okay.

A. And the final one is located parallel to Central Avenue, going out into the inlet on this picture. This -- that's the -- the 2400 foot, that's just a distance from the zero point on the jetty.

MR. D'AMATO: Okay. Got you.

All right. I'm finished. And I'm going to hand the mic over to Mr. Grassi.

MR. GRASSI: Thank you, Paul.

EXAMINATION BY MR. GRASSI:

Q. All right. Doctor, I have just a few questions.

What is it that those stations were measuring?

A. The surface topography and offshore bathymetry along the line.

Q. So --

A. So they're profiles. They're linear profiles of elevation and distance from the starting point. The starting point is the rock revetment.

Q. Okay. Rock revetment. Which is uneven during that --

A. Oh, yeah, that's all it is. It's just a point in -- it's a point in space, but the sand out front changes its width, its height, its position. So we just repeat the survey down the same line over and over again. And then we can compare them, one time to the next, and you see where the beach advanced or retreated or it got higher, it got lower.

Q. Okay.

A. All of the above.

Q. Now, how is the rock revetment different than a seawall?

A. Just a little less robust.

Q. Okay.

A. Seawalls generally are bigger foundations, higher in elevation. You wouldn't see over a seawall, because the object is to stop everything. So that would probably be -- you know, if you were standing in the street, you'd just see a wall.

Q. Okay. This particular 6000 plus feet revetment that you referred to, do you know the history of it?

A. Not really completely that I -- you know, I was never involved in any of the design work or any of the permitting or any of the construction. But I kind of know its history.

Q. Do you know when it was first constructed?

A. Initial construction, lost -- probably pre me -- pre 1971.

Q. Do you know if it was constructed in stages?

A. It was definitely constructed in stages.

Q. Which was the first stage?

A. I think up there to the northwest of the parking lot.

Q. All right. And they -- I'm going to call the parking lot the projection.

A. Okay.

Q. Because it -- it projects out into the channel.

A. Yeah, no doubt about it.

Q. And as you have indicated, that projection actually has some -- I'm going to call them profound effects on the channel and the area of the channel; would you agree with me?

MR. HUNKINS: Object to the form.

A. I won't disagree.

Q. It increases the velocity of the flow?

MR. HUNKINS: Object to the form.

Where?

Q. Of the in-flow in the vicinity of that projection.

A. In the immediate vicinity, within a couple hundred feet, yes.

Q. Okay. And that's because control structures have a profound effect on the surrounding areas; don't they?

MR. HUNKINS: Object to the form.

MR. ROZELL: Object to the form.

A. They can.

Q. But it's the reason they're constructed; isn't it?
A. Well, they're constructed to have a control effect. Why that projection is the way it is, I have no clue.
Q. Okay. If you would pick up the county exhibit --
A. Um-hum.
Q. -- and there's a map towards the back, March 14th, 2012.
A. March 14, yes.
Q. Okay.
A. Um-hum.
Q. And I've chosen that one, because it's relatively close in time to our event, although it's after the fact.
A. Yeah, um-hum.
Q. And it contains the area of sand that you've called a spit?
A. Yes.
Q. Okay. And is that entire spit the area that you're referring to as the feature that was created by the flow tide?
A. This white sand feature ending approximately at Central Avenue, yes, that is the spit.

Q. Okay. And that's the spit that you're saying is a feature that comes and goes in 20- to 30-year cycles?
A. Correct.
Q. All right. In -- at this point in time, in 2012, at what point in the cycle would you consider that spit is?
A. Late in the cycle.
Q. And late in the cycle of coming or going?
A. Going. Well, late in the cycle in that I have been anticipating its severe erosion for a number of years. Hasn't happened yet.
Q. It hasn't, okay. Question, does the construction of the southern portion of the rock wall have an effect in preserving that spit?
MR. HUNKINS: Object to the form.
MR. ROZELL: Object to the form.
A. Not significantly.
Q. All right. Would you agree with me that the eastern-most portion of the spit is anchored by the three jetties, two of which you didn't recall being there?
MR. HUNKINS: Object to the form.
A. Well, actually, northeast storm Jonas scraped away a lot of the sand next to the Second Avenue

jetty, and may have almost exposed the next one in the series. So no, the northeasters have the major control over how much sand is in the southeastern part of this feature.
Q. Okay. There's a -- an area between the projection and the area at Central Avenue, which is, I think, pretty close to where Mr. Smith had his demise, and that area's generally carved out.
Can you -- can you tell us why that is?
MR. HUNKINS: Object to the form.
A. Well, it's probably related to the excess velocity due to the parking lot projection being reflected in the lack of sand coming in and the currents making it not stay if it does come in.
Q. Okay.
A. There's a big lobe of material in this photograph in 2012 seeking to make entry.
Q. Okay.
A. If you flip forward, bingo. By February 2013, a lot of that area has been filled in.
Q. Okay. That area, if you could go back to 2012, the area where you had your finger, would you agree with me that's an interface between the area of increased velocity and the sand deposited by the flow tide?

MR. HUNKINS: Object to the form.
MR. ROZELL: Object to the form.
A. By the flood tide?
Q. Flow, flow.
A. Flow.
Q. Flood. The flood. Yeah, I do mean flood.
A. Flood tide?
Q. The --
A. That's the interaction zone, yes.
Q. There's an interface there; isn't there?
A. Yes.
MR. HUNKINS: Object to the form.
Q. And that interface is incredibly volatile; isn't it?
MR. HUNKINS: Object to the form.
MR. ROZELL: Object to the form.
A. It's just steeper than it should -- you know, it's steeper.
Q. It's real steep; isn't it?
MR. HUNKINS: Object to the form.
A. Yeah.
Q. Let's go back to the maps that you made in July of 2012, bathymetric studies.
A. Okay.
MR. D'AMATO: Do you need a copy?

MR. GRASSI: Yeah, that would be helpful.

A. Oh, let me see. 14.

Q. That's Farrell-14?

A. Correct.

Q. Okay. You indicated that the mapping was done both by a vessel with an echo sounder and GPS. And I'm assuming that what was happening is, as the vessel was going around taking the soundings, that was all recorded on a computer?

A. Correct.

Q. So that later, you had a computer to map this all out for you?

A. Yeah.

Q. And similarly, using the rotating laser transit to get the uplengths?

A. The laser is just a single shot. It's like a --

Q. Okay. Did you actually participate in the mappings?

A. The data collection?

Q. Yes.

A. Yes.

Q. Okay. And coincidently, it seems that your mapping, which took place over a few days, actually

bracketed this incident.

A. Well, 25th, yeah, it would have, yeah.

Q. So this is a pretty accurate representation of the contours of that beach at the time that this occurred; isn't it?

A. Well, I don't recall whether the 25th, 26th was the boat work or the land work. You see, that's why I --

Q. Well, would you be able to tell us that?

A. Hum.

Q. Would you be able to tell us that? Do you have a log that would tell us that?

A. Yeah, sure, absolutely.

Q. I'm going to ask that you provide that to Mr. Hunkins.

A. Okay.

MR. D'AMATO: You'll note that request, please?

MR. HUNKINS: Yeah, actually, I would like that, it would be very helpful, if you could send me a letter, just so I don't lose track of that.

MR. GRASSI: Sure, okay.

Q. So -- it's difficult for me to see at this scale.

A. Um-hum.

Q. I've looked at this at a much larger scale. But when you look at this photograph, the areas that are in yellow, are they uplands?

A. No. The colors are based on elevation, true. The blues are deeper water. The yellows are transitional to land. And you have contour, the zero, is NAVD, North American vertical data of 1989, it's between high and low tide, depends on where you are what it is.

So two would be roughly mean high tide, roughly.

Q. Okay.

A. Minus -- minus two is roughly mean low tide.

Q. Okay.

A. You could follow them around.

Q. All right. And 10 and 12 and 14, they're --

A. They're over your head.

Q. Okay. And they're up against the revetment?

A. Oh. At the parking lot.

Q. Okay. Is it fair to say that overall this Inlet Beach has a much steeper slope than the beach front?

A. Well, actually, if you look between Surf and Atlantic on the inlet, and look at the oceanfront between Seventh and Ninth, they're pretty much the

same.

Q. Okay. And in fact, to a casual beachgoer, they would be the same; wouldn't they?

MR. HUNKINS: Object to the form.

A. They would -- yes.

Q. All right. If you draw a line from Central Avenue out --

A. Okay.

Q. -- into the inlet --

A. Yes.

Q. -- you get to an area where the contour lines all come together.

A. Correct.

Q. And that is virtually at the shoreline; isn't it?

MR. HUNKINS: Object to the form.

A. Well, shoreline is -- is a place, is the zero elevation is between high and low tide. So there's a four-foot and a two-foot contour that goes through there. So there's still sand between the rocks at Central Avenue and the water.

Q. Well, if you -- if you draw your -- if I draw my finger around on the zero line --

A. Um-hum.

Q. -- I come to a spot that is --

A. It's --
Q. -- at the shoreline where Central Avenue, if you draw a line with Central Avenue, you drew it out, there's a line where all of the contour lines seem -- there's a place where all the contour lines seem to come together.
MR. HUNKINS: Can you point to that?
A. **Well, here's Central.**
Well, they don't all come together. They get really close, but they don't come together. There is a slope.
Q. Okay. Could you put -- put that down for one second, so that I can make sure we're looking at the same thing?
And --
A. **Right.**
Q. I think we are. All right.
So at this point right here --
A. **Um-hum.**
Q. Do you have a dot on that point?
A. **That was the request made by Mr. D'Amato.**
Q. Okay. Okay. Can you estimate what the slope is at that point, at that point in time?
MR. HUNKINS: Object to the form.
A. **Somewhere in the range of about a four degree**

slope.
Q. And the angle of repose is?
A. **23, 22.**
Q. Okay. So does that mean that that slope was unstable?
MR. HUNKINS: Objection.
A. **Actually, no.**
Q. It would have to be 40, 50, 60?
A. **It would have to be -- no, no, no. It would have to be closer to 20 degrees. It's only four.**
Q. Okay. How about a little bit north of that slope, does it get steeper?
A. **It gets deeper, but I have no data. No profile line crosses -- Central Avenue is the western-most line we survey, because our interest is the beach.**
Q. All right. And at the -- the aerial photograph that this data's superimposed upon --
A. **Correct, yes.**
Q. -- is what?
A. **Wish I could tell you that. Base aerial photography 2007.**
Q. Okay. All right. The -- is it -- is it true that Hereford Inlet's no longer a natural inlet?
MR. HUNKINS: Object to the form.

A. **No. No. It's natural. It's a natural inlet.**
Q. Even with this mile-long revetment?
A. **It's not in the inlet. It's on land.**
Q. Well, it effects the motion -- the movement of the inlet; doesn't it?
A. **It constricts where it can be relative to the fast land, which people live on.**
Q. Okay.
A. **To the extent that the inlet would take half of North Wildwood had nothing been done, oh, well, I guess you'd have to discuss that with the folks that live there.**
Q. But that's what a natural inlet would do; isn't it?
MR. HUNKINS: Objection.
A. **Well, that's what all inlets do.**
MR. HUNKINS: Object to the form.
Q. So really the entire south wall of the inlet throat is man-made; isn't it?
MR. HUNKINS: Object to the form.
MR. ROZELL: Object to the form.
MR. HUNKINS: Wait, what's man-made; the revetment, or the sand, or what?
Q. The inlet throat is a revetment?

MR. HUNKINS: Object to the form.
A. **The only place the inlet revetment is in continual contact with the water is well to the west and north, beyond the parking lot promontory.**
Q. And that's because of this spit?
MR. HUNKINS: Object to the form.
A. **Well, the sand is being deposited in this cycle in the southern section of the inlet --**
Q. All right. So the revet --
A. **-- shoreline.**
Q. I'm sorry. I didn't mean to interrupt you. So then the revetment is constraining the spit?
MR. HUNKINS: Object to the form.
A. **No. A spit is being built into the inlet. If the revetment was there or not, there'd still be a spit, because the previous cycles prove that.**
Q. But it wouldn't be in the same place in relation to that projection; would it?
MR. HUNKINS: Object to the form.
MR. ROZELL: Object to the form.
A. **They seldom are.**
Q. Okay. Can you tell me if on Farrell-14 your borrow areas -- what are the borrow areas that are marked on that map?
A. **After what seemed like endless negotiations**

with the CBRA, which is the Coastal Barrier Resources group, and National Fish and Wildlife Service, and the Army Corps of Engineers, these are the areas permitted from which to take sand to nourish beaches in the area. Wildwood is allowed to use the southern two, and Stone Harbor gets the Northern three, little pieces.

Q. These are all the places that are cross-hatched on here?

A. Yes.

Q. Okay. And does that dredging effect the flow of the channels in any way?

MR. HUNKINS: Object to the form.

A. This has been going on since 19 -- no, 2003. So thus far, the answer is no.

Q. Hereford Inlet is not dredged by the U.S. Coast Guard?

A. Not only not dredged, not maintained.

Q. And in fact, the channels aren't even marked; are they?

A. That's what I mean by maintained.

Q. Okay. Why is that?

A. They choose not to. You have to ask them.

Q. Okay. Would you agree with me that -- that a revetment or a seawall will effect the slope of the

sand that's deposited in front of it?

MR. HUNKINS: Object to the form.

MR. ROZELL: Object to the form.

A. Not necessarily. I don't agree.

Q. Will you agree that it can?

MR. HUNKINS: Object to the form.

MR. ROZELL: Object to the form.

MR. HUNKINS: I thought he just answered that. I object to the question.

A. Change it? It could.

Q. In fact, you've seen studies that suggest that it -- that a seawall will make the slope of the sand in front of it steeper --

MR. HUNKINS: Object to the form.

Q. -- haven't you?

A. Quite the reverse. The beach goes away and becomes a very flat plain out in front of the seawall.

Example, Mantaloking, January 2016. The beach melted under Jonas wave attack and the sand was spread out in a very flat surface offshore. They have been working tirelessly to have a recreational beach in front of Mantaloking and Brick Township ever since.

Q. Okay.

VIDEOGRAPHER: Excuse me, counsel. Need to go off the record for one second. Time us now 2:38 p.m.

(Discussion off the record.)

VIDEOGRAPHER: Time is now 2:38 p.m. We are back on the record.

MR. GRASSI: All right. I'm through asking questions. Thank you.

THE WITNESS: Okay.

FURTHER EXAMINATION BY MR. D'AMATO:

Q. I just have a couple here.

We were talking off the record about the helicopter that Mr. Grassi and I retained and the professional photographer who took photos from the air on March 1, 2016.

I grabbed a couple of them. I'm going to hand them to you. Can you pick one that you feel most comfortable with, if you can pick one, that you could put an X on as to where the incident involving Mr. Sunderland and Mr. Smith and their children took place?

And again, it's not that I'm asking you to do it scientifically, but just so we -- for future purposes, with the aerial photograph.

A. Here.

MR. HUNKINS: Object to the form. This is obviously an estimate, right?

MR. D'AMATO: Of course.

A. What are the black lines?

Q. That's the bottom of the helicopter.

A. That's the frame, air frame, hum?

Q. Air frame, yeah. Is that what you call it?

A. Yeah. Okay. It's the easiest one to use.

Q. Okay. All right. Thanks.

A. Do you want to mark it?

Q. Yes, thank you. The witness has taken over the deposition. Here we go.

Oh, you want to use two?

A. No. I'm just giving you the last one, because it was better.

Q. This one here, right?

A. That one there, yes.

(Photograph received and marked for identification as Exhibit Farrell-18.)

Q. Here, okay. And this is Farrell-18.

A. Okay.

Q. There's your red pen right in front of you.

A. Red is acceptable?

Q. Yes.

A. To the best of my ability to estimate the

distance out into the inlet, the distance along the shoreline is compared to the X on Farrell-16 --

Q. Okay.

A. -- Mr. Sunderland's X transferred onto our Google Earth picture of the same date.

Q. Understood.

A. So the shoreline has retreated since the incident. There is a fairly wide inter-tidal beach now much more elongated and straight. And the dunes show signs of hur -- northeast storm Jonas erosion, which is what did all this, actually.

Q. Okay. All right.

Now, my second question relates to your report, which we marked for identification. It's under the pile there.

There you go.

If I may, let me point where I'm going to ask you a question about, where it says the slope there.

A. Yes.

Q. Okay. Let me quote from your report. Quotes, "The slope of sand that forms the margin of the channel is inherently unstable. In my opinion, Mr. Sunderland and Mr. Smith stepped onto the channel margin slope and the slope gave way. This is not

unlike what a hiker might experience while crossing a steep slope of a rock scree."

A. Yeah.

Q. "The broken rock pieces give way and the hiker will slide down with it, sometimes ending up more than a couple of feet down the hill. Underwater, the swift currents rushing by the channel slope makes the situation that much more unstable, as the angle of slope increases," end of quote.

I believe in all your testimony here today, you've explained the basis of this opinion, but I just want to give you an opportunity. Is there anything else that you would like to tell us as to the basis of the opinions that I just read to you, other than what you've just said here today?

MR. HUNKINS: Object to the form.

A. Well, based on the evidence I've been able to review in the case, and the testimony of Mr. Sunderland and Harry Wozunk as to what they experienced, and I have to take the word of Mr. Sunderland as probably the most accurate reproduction of the events that he experienced, I can't add anything further than what I put in this report as to any of the triggers, or the effects, or the extensions of what was going on underwater as they

entered that critical phase of being entered into the tidal flow.

Q. Okay. I didn't mark it.

(Discussion off the record.)

(2012 Annual Report received and marked for identification as Exhibit Farrell-19.)

Q. Let me show you, which I know you're familiar with, what we've marked for identification as Farrell-19, which is, it says at the bottom, prepared by the Richard Stockton Coastal Research Center, 2012 Annual Report to the City of North Wildwood on Condition of the City Beaches. All right?

I would assume that you had substantial involvement in the preparation of that report?

A. Yes, sir.

Q. Okay. If you could go to page four. Okay? And there's a photograph, an aerial photograph that says North Wildwood Quarterly Survey Profile Lines.

Are these the ones that you were referring to us before, or are these additional ones?

A. These are -- these are on the oceanfront beach.

Q. Correct.

A. There's quite a -- there's -- every 200 feet, there's one. There's like 53 of them altogether.

Q. Okay. Now you've explained what I needed to know.

A. We selected a subset for illustrative purposes, because we didn't want to waste all their time, and I know they wouldn't look at them all.

Q. All right. Page five, it says figure two, another color photograph. Okay?

A. Um-hum.

Q. What does this color photograph demonstrate?

A. This is another one of these digital elevation models. The post Sandy beach in November of 2012, this is an elevation model where the deeper water is in purple and blue, and the inter-tidal is in yellow, and the dunes are in red or orange, where they're higher in elevation.

So this is basically the topography that we surveyed after Hurricane Sandy.

Q. Okay. And again, it's -- this particular figure deals with the beach, itself, not The Inlet Beach, excuse me?

A. Correct.

Q. Okay. One second.

MR. D'AMATO: I have nothing else. Thank you very much for your time.

MR. HUNKINS: I have a couple of

follow-ups.

MR. D'AMATO: Go ahead, sure.

EXAMINATION BY MR. HUNKINS:

Q. Doctor, I think we read this report a couple of times already, but I'm reading two sentences, it's from your report.

A. Okay.

Q. "Within a reasonable degree of coastal engineering probability, water and sand conditions that contributed to the incident in this case were completely natural and unaffected by any improvements in the area. Neither the seawall nor any beach replenishments nor any other improvements played a role."

Is that still your opinion?

A. Yes, sir.

Q. Again, within a reasonable degree of engineering and -- coastal engineering science, why is it that the seawall did not play a role where this incident occurred, where Mr. Sunderland said it happened? Why in your opinion did the seawall play no role?

A. Because it's too far away from the incident position, because its effects are dominated by proximity to it, within a couple hundred feet or

less. And the incident took place south and east of Central Avenue out on a beach that is well over 250 feet wide at that point. That, and the absence of testimony by witnesses that there was any large-scale slope failure that showed with evidence as illustrated in one of the photographs supplied to me showing that.

Q. Okay. And why, in your opinion, did the revetment not play a role in the conditions where Mr. Sunderland went into the water?

A. Again, proximity. He -- they weren't -- they were not in the area where the accelerated currents are chewing away at the beach more than not.

So in other words, this is -- this is a gradual fade away, as you go away from the rock -- rock-protected parking lot, the projection, as it's been called. The further away you get from that, the probability of any influence of a revetment or rock wall just declines to zero fairly quickly.

Q. Would your opinion be the same with regard to the three jetties that were referred to on some of these photographs?

A. They have absolutely nothing to contribute in any way.

Q. You did testify that there's wide variation

in the beach over the years, based on recurrent storms and there was a cycle you referred to. Do you recall that?

A. Yes.

Q. And are those effects allowed to happen because there's no control structure like there is at Barnegat Inlet?

A. These -- these cycles occur in spite of man's efforts at any type of control. Historically, like I said, we went back to 1899 and found multiple cycles. The most recent one concluded in 1965, with the loss of the spit, and the channel almost parallel with the uplands. And, of course, post 1962, a lot of rock construction went on everywhere on the Jersey coast. So that's just a guess as to when work was done in North Wildwood.

So the answer to the question is, essentially, these things have a life of their own, and absent very extensive in-the-water construction, will continue to occur.

Q. Is it your opinion that the conditions that resulted in Mr. Sunderland going into the water and Mr. Smith going into the water are the result of the natural action of the tides?

A. The natural action between the ebb and the

flow tide right at the unfortunate location they were actually at at the time they went in the water.

Q. Thank you. And a few minutes ago, I might have said Mr. Sunderland when I should have said Mr. Smith. Because after all, Mr. Smith is the person who's suing. So would all your questions be the same with regard to Mr. Smith?

A. Correct.

MR. HUNKINS: All right. Thanks. That's all I have.

MR. D'AMATO: One final question.

MR. ROZELL: I may have a couple, too.

MR. D'AMATO: No. Go ahead, go ahead.

MR. ROZELL: Do you have a microphone?

VIDEOGRAPHER: Time is now 2:53 p.m. We're going off the record.

(Discussion off the record.)

VIDEOGRAPHER: Time is now 2:53 p.m. We're back on the record.

EXAMINATION BY MR. ROZELL:

Q. Dr. Farrell, I believe you testified earlier that the location of the channel that goes through Hereford Inlet can change from time to time; is that correct?

A. Yes.

Q. And I believe you -- did you testify that you didn't say on a day-to-day basis, but possibly on a week-to-week basis?

A. The changes are fairly quick. The most dramatic change I ever personally witnessed was between an inspection we did prior to the 2009 beach fill, back in -- when problems were just being noticed by the city, and a visit to survey the potential borrow zone in 1998. And the previous trip, I came down along the rock wall, past the parking lot promontory, and went straight out the channel to the Atlantic Ocean. December of 1998, I'm doing the same run, I come down, and I see this gray thing in front of me. As I get closer to it, it's all sand. And I had to change course to the port side by 40 degrees to avoid running aground on what had not been there six months earlier.

So that was the initiation of this series of growth that lead to the cycle we're presently in of the spit growth. So that was pretty dramatic. That was six months.

Q. So the -- so the edges or the sides of the channel can move?

A. They can prograde and erode, and have been demonstrably shown to do so in this series of

pictures supplied from the county.

Q. And now, how about the slopes on the sides of the channel, as far as the steepness goes, can that change?

A. Unfortunately, there aren't a lot of measurements on slope angles. There just aren't. The reason being, the depth recorder kind of loses its ability to accurately depict the slope unless you were going perfectly straight in perpendic -- you know, perpendicular to the slope. So you're going right up the slope, you'll get a pretty good record. But if you're going alongside of it, the echos going off the side slopes, so you'll get -- it gets confused and gives you bad data. So we try not to do that. So that's why we do the cross-sectional profiles, so that we have actual people going out with a -- a rod that goes to the bottom, you hit the prism, you calculate the elevation, you got the distance. So you end up with a slope when you put all this together.

Q. So based on that, and based on your experience --

A. They change.

Q. -- the slopes do change?

A. Yes.

Q. Are there times where the slopes can be fairly flat?

A. Locations where they tend to be flatter than others, yes.

Q. Is there any way to predict on a daily or weekly basis where the side -- where the edge of a channel or what the slope is going to be, or where the slope -- where the slope is going to be?

A. Well, for the layperson, no. But if you look out and watch the wave break, if you're a surfer, you probably could figure it out.

Waves break in water at some fraction of their wave height. And if they're breaking out there 70, 80 feet out from the water's edge, you got a pretty good idea that it's pretty flat slope going out. If they break right on the beach, you know, probably deeper right past where the wave breaks.

Q. Okay.

A. So yes, there is a way to anecdotally come to the conclusion of slope on a beach. But as far as quantitatively measuring it, I mean, you've got to actually walk out there and take points.

Q. So I mean, where the waves are breaking may or may not be accurate as to where --

A. It may not -- well, it's certainly not

accurate. It's just an estimate.

MR. ROZELL: Okay. I don't have any other questions.

THE WITNESS: Thank you.

VIDEOGRAPHER: Excuse me, counsel. I just need a moment to change the DVD. Time is now 2:57 p.m. We are going off the record.

(2012 Annual Report received and marked for identification as Exhibit Farrell-20.)

(Discussion off the record.)

VIDEOGRAPHER: Time is now 2:58 p.m. We are back on the record.

BY MR. D'AMATO:

Q. Doctor, I'm going to hand this to you in a second. The title page is New Jersey Beach Profile Network, Cape May County, Great Egg Harbor Inlet to Stowe Creek. And let me just hand it to you, and I'm going to be asking you a question about page 66.

Have you ever seen this before?

A. Yes. Question is, what year is it from?

Page 66? Okay. Wow, we're looking at, I'd say, 2002, 2000 --

Q. Here's the complete report. Can I see the front of yours? Is it -- yeah. Here's the complete report. It's 2012 annual report. Here, I'll hand

you --
A. Okay. That's all right. This will work. Oh, it's actually -- all right. Go ahead.
Q. Now, you see on page 66?
A. Um-hum.
Q. Why don't you read out loud what I've highlighted? I'm going to ask you a quick question about that.
A. "Inlet activity at Hereford Inlet also compounds the rate of deposition and erosion for North Wildwood, changing the inlet shoreline from a rock wall facing a deep inlet channel adjacent to a wide oceanfront beach to a situation where the main channel migrates to the north causing a wide ocean beach to march into the inlet creating a vast spit of land along the inlet rock revetment. This process is currently ongoing, having started in late 1995. The North Wildwood Beach has retreated over 800 feet since 1989."
Q. Do you agree with the author's statements there?
A. Yes, I do.
Q. Okay. Now, let -- are you familiar with an expert by the name of Carl F. Nordstrom?
A. Oh, yes, I am.

Q. Okay. Let me hand to you Exhibit 21.
(Article received and marked for identification as Exhibit Farrell-21.)
Q. And this is an article that was published in 1988, and it's entitled Effects of Shore Protection and Dredging Projects on Beach Configuration Unjetted Near Tidal Inlets in New Jersey. And I'm going to hand this to you, and I'm going to direct your attention to page 449, figure six, where he has four aerial photographs of Hereford Inlet from 1952 to 1977. And he says, quotes, "Rapid erosion of the tip of the updrift barrier island occurred after construction of the new bulkhead and groins in 1967. Scale of photo D is slightly larger than the other three."
Just orient yourself, and when you're ready, I'll ask the question.
VIDEOGRAPHER: Time is now 3:01 p.m. We're going off the record.
MR. D'AMATO: Okay.
VIDEOGRAPHER: Yeah, I'm going to have to change it.
MR. D'AMATO: That will give him a chance to take a look at the document.
(Discussion off the record.)

VIDEOGRAPHER: This begins DVD number three. Time is now 3:04 p.m. We are back on the record.
BY MR. D'AMATO:
Q. Doctor, is that the first time you read that abstract by Mr. Nordstrom?
A. No.
Q. All right. How are you familiar with it?
A. Well, I've -- I have it in the library, so we, you know, have it as a reference.
Q. Okay. Where is Mr. Nordstrom presently?
A. Rutgers University.
Q. Okay. Do you have any interaction with him by virtue of your position?
A. I was on a thesis committee for one of his most recent Ph.D. students, one Daniel Barone, who worked for me, so he put me on the committee.
Q. Yeah. I think I know Mr. Barone, yeah.
The -- the statement that he makes right here, he's referring to the construction of the new bulkhead and groins in 1967.
Are you familiar with that?
A. He's talking about Stone Harbor.
Q. Okay. But are you familiar with this?
A. Yeah.

Q. Okay. Can you -- let -- simply stated, how would the new bulkhead and groins in 1967 have caused this rapid erosion that he's referring to in the Hereford Inlet, Stone Harbor side?
MR. HUNKINS: Object to the form.
A. Well, the Stone Harbor side is two and a half miles away --
Q. Okay.
A. -- for starters. After the 1962 northeaster, Stone Harbor elected to put in a timber bulkhead and a rock revetment toe in front of the timber to protect it from waves direct attack.
Q. Okay.
A. In addition, at 123rd Street, which is basically south of the development, they built a rock groin or jetty out to sea.
Q. Okay.
A. The goal was to retain sand in Stone Harbor, not let it go into Hereford Inlet.
Well, the southern bit of Seven Mile Island, which is Avalon, Stone Harbor, is called South Point. It's a natural area; bird nesting, blah, blah, blah, people walk it, that's about it.
That piece began to deteriorate because no sand was coming around to nourish -- to feed that

beach, as sand went off into Hereford Inlet.
Q. Got you.
A. So that's what he's referring to. The -- the structures that were built in the beach front of Stone Harbor had a negative effect on South Point.
In fact, by 1990, South Point was gone completely. And Hereford Inlet was one vast area of inter-tidal shoals and bars and sand bodies everywhere. It's amazing. Then the Army Corps pumped sand -- well, actually in 1997, Stone Harbor did a state job, we guided. In 2003, the Army Corps took over Avalon, Stone Harbor with the federal project they built.
Q. Okay.
A. And they pumped a lot of sand up onto Stone Harbor, which then went over and around the jetty, and -- which was still there. And within five years, taking us to about 2007, eight, South Point was 7,000 feet longer than it was in 1990.
MR. HUNKINS: Okay. Hold on one second. And your question was?
A. Yeah.
Q. No, he's explaining his answer.
MR. HUNKINS: Yeah, I lost the -- I don't know what --

A. Well --
Q. He's explaining the difference.
MR. HUNKINS: What the question was.
Q. I understand what you're saying. Go ahead. Let him finish up, that's all.
A. So basically, basically the process that Nordstrom is referring to in the late eighties is -- is the net effect of the restriction of sand movement by control structures. And the sand on New Jersey's beaches has always been kind of a nagging problem anyway. And so this federal program of beach nourishment that New Jersey adopted in a big way in 1990-ish has brought about 160 million yards of new sand never on New Jersey's beaches back on them.
Q. Okay.
A. So a lot of these problems that came out of structures getting built really kind of went away, especially in Stone Harbor.
Q. I got it. Thank you. I'm finished, and really, thank you for your time.
Sandy, I will call you later. Okay? We have to clean up here and get all these exhibits in order. Okay?
MS. SMITH: Okay. Thank you.
MR. D'AMATO: Right. Okay.

VIDEOGRAPHER: Are there any follow-up questions?
MR. HUNKINS: No.
MR. ROZELL: Uht-uht.
VIDEOGRAPHER: This concludes the deposition. Time is now 3:09 p.m. We are off the record.
(Deposition concluded at 3:09 p.m.)

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, STEWART FARRELL 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.

Lynn Smith, CCR
Certified Court Reporter
License No. XIO1520

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Exhibit 12

The Coastal Research Center

Ph. 609-652-4245
Fax 609-748-0656

30 Wilson Avenue
Port Republic, NJ 08241

www.stockton.edu/crc

NEW JERSEY'S DISTINCTIVE PUBLIC UNIVERSITY

June 23, 2016

Brian Hunkins, DAG
Dept. of Law & Public Safety
Division of Law, Tort Litigation Section
Hughes Justice Complex
25 Market St., P.O. Box 116
Trenton, NJ 08625

Dear Mr. Hunkins,

I have reviewed multiple depositions, photographs and videos in this case as well as the report of plaintiff's expert Dr. Richard Weggel (Smith v. North Wildwood, et al., Docket No. CPM-L-331-14). I reviewed the map on which Mr. Sunderland marked the location where he and Mr. Smith went into the water. I am very familiar with the beaches at North Wildwood and along the Hereford Inlet because of all the work I have done in the area over the years. I am personally familiar with the water and sand conditions and I have expertise with regard to the nature and cause of those conditions. Within a reasonable degree of coastal engineering probability, the water and sand conditions that contributed to the incident in this case were completely natural and unaffected by any improvements in the area. Neither the seawall nor any beach replenishments nor any other improvement played a role. The seawall does at times create a whirlpool or vortex in the immediate vicinity of the seawall. The seawall has no effect in the area where Mr. Sunderland says he and Mr. Smith went into the water. In the area where Mr. Sunderland and Mr. Smith went into the water, there is a channel that has been created by water flowing into and out of the inlet with the tides. The water can be turbulent in the area of this channel where the incident occurred specifically where the ebb currents meet a sand wedge deposited along the beach at or near low tide elevations that is formed by the flood tide. The slope of sand that forms the margin of the channel is inherently unstable. In my opinion, Mr. Sunderland and Mr. Smith stepped onto the channel margin slope and the slope gave way. This is not unlike what a hiker might experience while crossing a steep slope of rock scree. The broken rock pieces give way and the hiker will slide down with it, sometimes ending up more than a couple of feet down the hill. Under water, the swift currents rushing by the channel slope makes the situation that much more unstable as the angle of slope increases.

I disagree with Dr. Weggel to the extent that he may be saying that a shelf of sand was created and collapsed. I have not seen any evidence of that occurring in the area of the incident and had it occurred, witnesses would have described a subsidence of the sand above the waterline. Even if that had occurred, however, it would have been completely the result of interacting natural forces. It would not have been the result of any improvements in the area.

Sincerely,

Stewart Farrell

Dr. Stewart Farrell
Executive Director
Coastal Research Center

Exhibit 13

CONDITIONS IN HEREFORD INLET, NORTH WILDWOOD, NJ, LEADING TO THE DROWNING DEATH OF MR. BRAD SMITH, 27 JULY 2012.

prepared for
D'Amato Law Firm
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234

prepared by
J. Richard Weggel, Ph.D., P.E., D.CE.
627 Rodman Avenue
Jenkintown, PA 19046

16 April 2016

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INTRODUCTION

On 27 July 2012 Mr. Brad Smith and his daughter Brandi were walking along the Hereford Inlet shoreline in North Wildwood, NJ, along with Mr. Scott Sunderland and his daughter Ally. While walking in ankle-deep water, the beach beneath their feet gave way and they were swept into the inlet. Mr. Sunderland and his daughter were able to make their way back to shore. A jet-skier was able to rescue Brandi Smith; however, Mr. Smith was carried offshore. His body was recovered three days later; the cause of death was accidental drowning. The location where they were walking when the incident occurred was on the inlet beach at approximately Central Street extended. This report presents an analysis of conditions in Hereford Inlet which led to the drowning of Mr. Smith and the likelyhood that similar conditions could reoccur.

TIDAL INLET PROCESSES

Tidal Inlet Hydraulics

Tidal inlets are waterways that connect the ocean with inland bays. The flow of water through inlets is driven by both astronomical tides and storm tides. Astronomical tides are the result of the gravitational attraction of both the moon and sun. The rotation of the earth-moon-sun system about the center of mass of the three bodies results in two tidal bulges, one on each side of the earth. Twice each month when the moon and sun are nearly aligned, the high tides produced by them are superimposed leading to higher than average high tides. These are termed "spring tides." During other times of the month lunar and solar high tides occur at different times during the day. When they oppose each other the lower than average tides are termed "neap tides."

During high tide in the ocean water flows from the ocean to the back bay and the bay's water level rises. However, by the time the water level in the bay has reached its maximum, the water level in the ocean has begun to go down and the direction of flow reverses flowing from the bay back to the ocean. Thus the water level in the bay is always trying to "catch up" with the water level in the ocean.

The direction of flow in the inlet reverses over a tidal cycle. When the water level in the ocean is above that in the bay, the flow (termed flood flow) is from the ocean into the bay. When the water level in the bay is higher than the water level in the ocean the flow (termed ebb flow) is from the bay to the ocean. Figure 1 is a schematic diagram of the ocean water level, the bay water level and the flow velocity in the inlet (Escoffier, 1977). (Also, see the blue bidirectional arrow on Figure 2.) The maximum ebb current velocity occurs when the ocean tide level is below the bay tide level. Maximum ebb velocity generally occurs on a falling ocean tide when the ocean tide is below mean sea level.

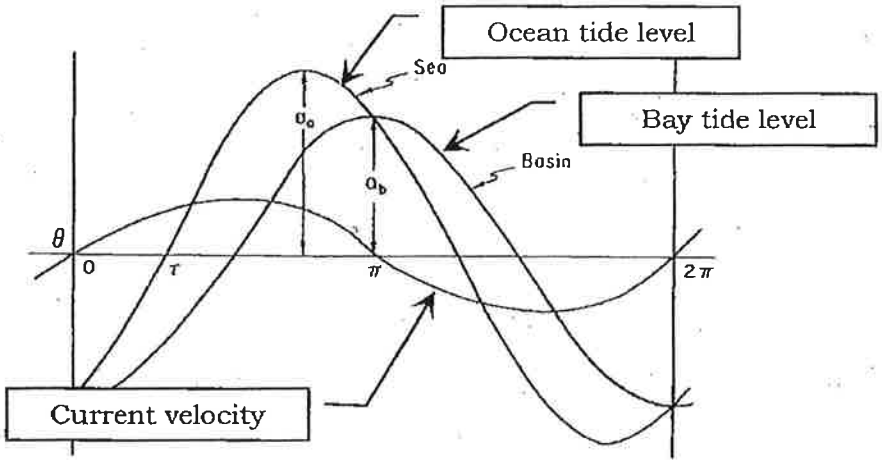


Figure 1 Schematic of Ocean Water Level, Bay Water Level and Tidal Current Velocity (Escoffier, 1977).

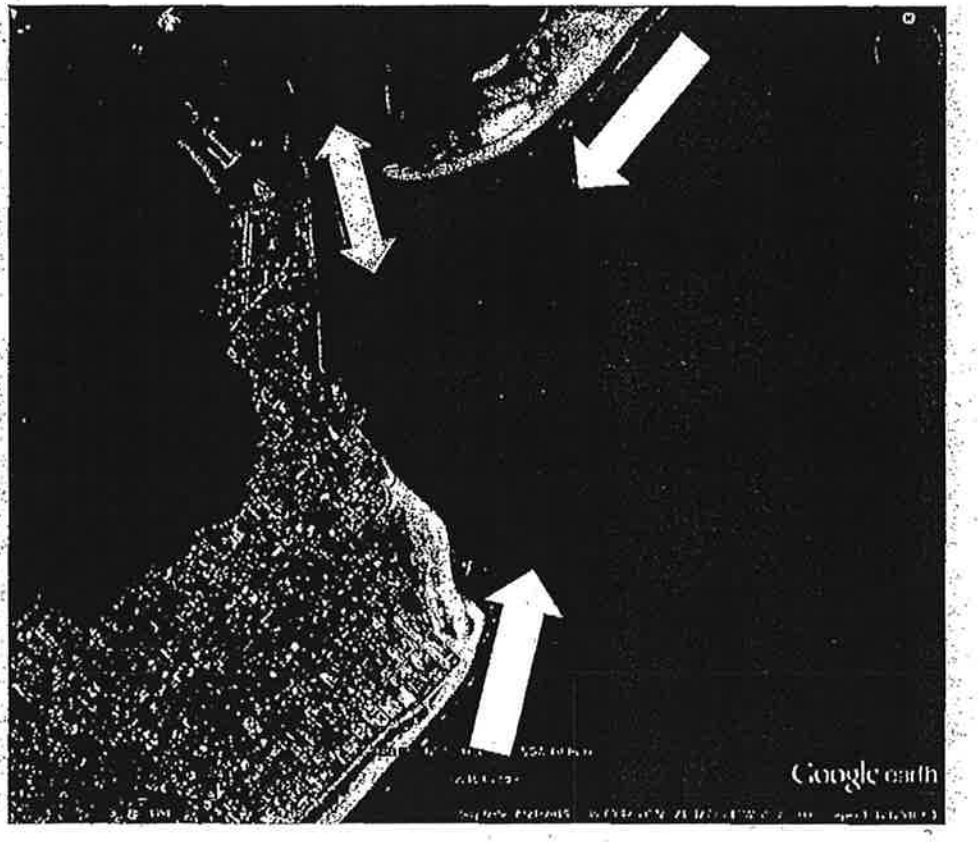


Figure 2 Hereford Inlet Showing Longshore Sediment Contributions from North Wildwood and Stone Harbor Beaches (White Arrows) and Flood and Ebb Currents (Bidirectional Blue Arrow) (Google Earth, 21 June 2015).

Inlet Sediment Processes

Tidal inlets are sediment traps. Much of the erosion that occurs along ocean coastlines is due to sand being carried into and retained by inlets. Sand is carried along ocean beaches by a process termed longshore transport which is the result of waves breaking at an angle with the shoreline. Breaking waves lift sediment into the water column by agitating the sand on the bottom. If the waves approach the shoreline at an angle, they also exert a stress on the water which carries the suspended sand along the shoreline. Thus, waves approching the shoreline from the southeast will drive the current and sand northward. Waves approaching from the northeast will carry sand southward. See the white arrows on Figure 2.

NORTH WILDWOOD AND HEREFORD INLET PROCESSES

When waves approach North Wildwood from the southeast, they carry sand into Hereford Inlet. Thus the ocean beach in North Wildwood is the source of sand for North Wildwood's Hereford Inlet beach. However, when waves approach from the northeast they carry sand from Stone Harbor's beaches into the inlet. Generally, more sand enters the inlet from Stone Harbor than enters from North Wildwood. Along southern New Jersey beaches sand transport is predominantly southward because storm waves during the winter months most often approach shore from the northeast. During the summer months, waves most often approach from the southeast to carry sand northward, however, at a lesser rate because the waves are generaly smaller. Thus, at Hereford Inlet more sand enters the inlet from the Stone Harbor side. The sand entering from Stone Harbor pushes the inlet navigation channnel southward against the North Wildwood side. Thus the deep channel hugs the southerly side of the inlet. This navigation channel alignment is apparent from inlet surveys and aerial photos. Deep water almost always exists adjacent to the southerly inlet shoreline due to the influx of sand from Stone Harbor.

The Hereford Inlet beaches are reworked by ebb and flood currents exiting and entering the inlet. During flood flow, sand is carried into the inlet; during ebb flow sand is carried out. Some of the sand carried out is deposited on an ebb shoal when the ebbing current is slowed as it disperses in the ocean. The ebbing flow reworks the sand adjacent to the North Wildwood inlet shoreline and results in steep underwater slopes as evidenced by the deep water close to shore.

TIDES

Tides at Hereford Inlet are semi-diurnal with two highs two lows per day. The period of the primary tidal constituent is approximately 12 hours and 25 minutes. Astronomical tides (lunar and solar constituents excluding storm tides) are predicted for the ocean pier in Wildwood Crest, NJ, by the National Oceanographic and Atmospheric Agency's, National Ocean Service (NOAA, 2016). Tidal datums at Wildwood Crest are shown in Figure 3. The nearest location where tides are measured is Atlantic City, Tides at Hereford Inlet are

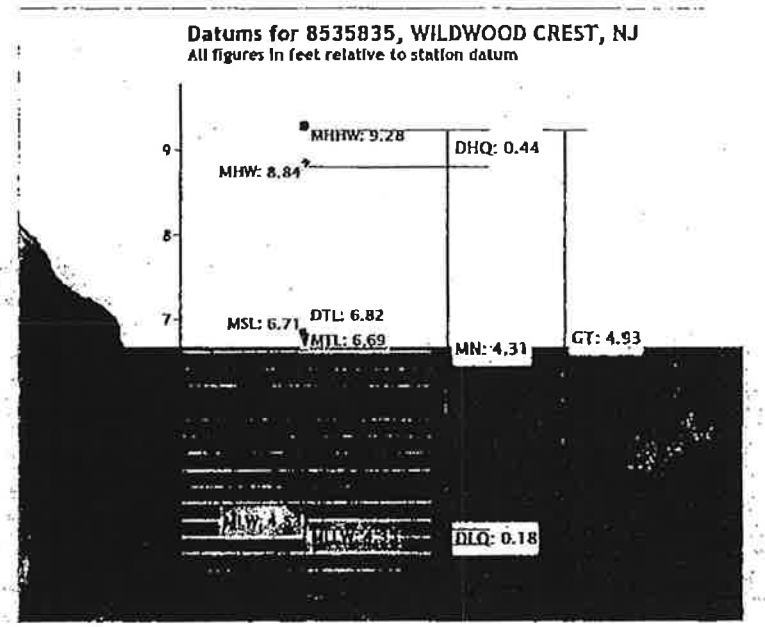


Figure 3 Tidal Datums at Wildwood Crest, NJ.

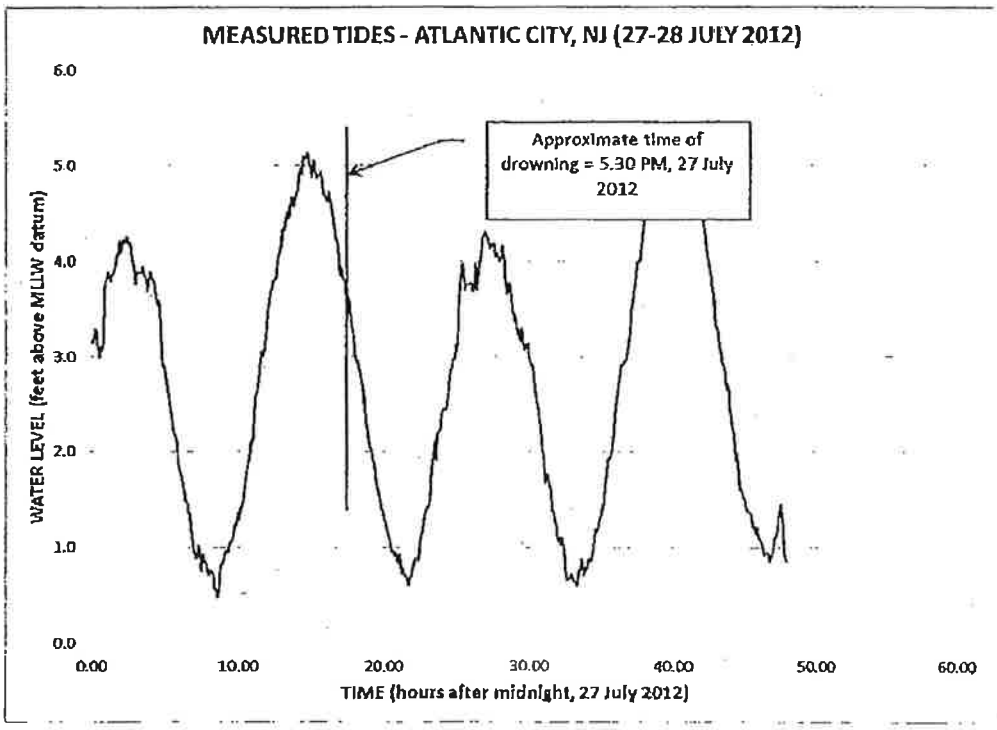


Figure 4 Tides Measured at Atlantic City, NJ, Showing Approximate Time of Drowning.

nearly synchronous with tides at Atlantic City differing by only about 3 to 5 minutes. Based on the description of events surrounding the drowning of Mr. Smith, the inlet current was flowing seaward and carried him into the ocean. Figure 4 shows the tide measured at Atlantic City at about the time of the drowning. The estimated time of the event, based on the deposition of Mr. Scott Sunderland and the tidal curve, is 5:30 PM on 27 July 2012 – during a falling tide when the water level was a little above mean sea level (MSL). This is approximately the time just preceding maximum ebb flow.

NORTH WILDWOOD INLET BEACH CONDITIONS AT THE TIME OF DROWNING

It is the writer's opinion that Brad Smith and his companions were swept into the inlet due to the failure of the underwater slope near the inlet beach. A deep hole adjacent to the North Wildwood inlet shoreline is a persistent feature along this beach. Mr. Smith and his companions walking in shallow water on the beach next to the deep channel exerted a surcharge (downward force) on the top of the slope which resulted in the beach sloughing into the channel carrying Mr. Smith and his companions into the ebbing current.

The Stockton Coastal Research Center (CRC) takes periodic surveys of Hereford Inlet for the New Jersey Department of Environmental Protection, Bureau of Coastal Engineering . Figure 5 is a CRC survey made around the time of Mr. Smith's drowning. Data were taken on 25, 26, 30 and 31 July 2012 to produce this survey. Shown on the figure is an area of closely spaced bathymetric contors indicating a steep slope at the approximate location where Mr. Smith was swept into the inlet. Figure 6 is a detail of that area. (Additional CRC surveys that show deep holes and steep slopes adjacent to the shoreline are presented in Appendix A.) In addition to the CRC surveys, the U.S. Army Corps of Engineers (COE) conducted Hereford Inlet bathymetric surveys in 2010, 2012 and 2014. Figure 7 shows the 2012 COE survey and Figure 8 is a detail from that survey. Four cross-sections from the 2012 survey are shown in Figure 9. (The three COE surveys along with profiles through the inlet for each survey are presented in Appendix B.)

The stable angle of an undisturbed, submerged, quartz sand slope ranges within a few degrees of 33° (Evans, 1995). The factor of safety for an undisturbed underwater slope is given by (Eckert & Callender, 1987),

$$F = \frac{tan(\varphi)}{tan(\theta)}$$

where F = the factor of safety, φ = the submerged angle of repose of the slope (approximately 33°) and θ = the angle the slope makes with a horizontal. A factor of saftey greater than 1.0 indicates a stable slope. A factor of safety less than 1.0 indicates an unstable slope. The factor of safety against a slope failure during a falling tide when seepage from the beach into the inlet is occurring is given by (Eckert & Callender, 1987),

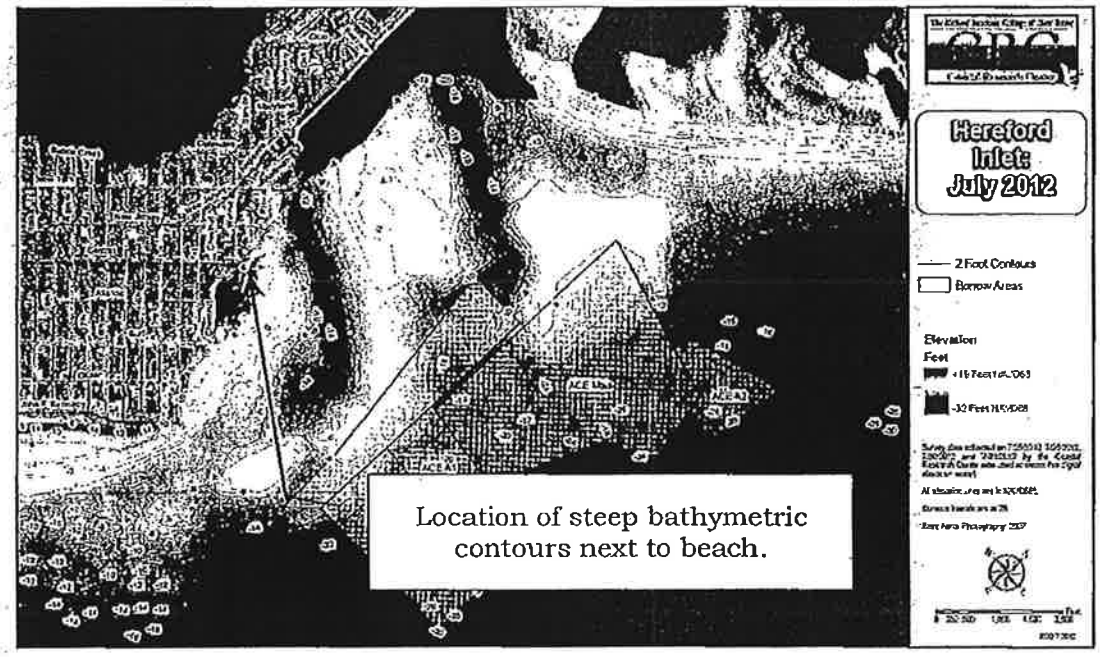


Figure 5 Hereford Inlet Survey, July 2012 (Stockton Coastal Research Center, 2012a)

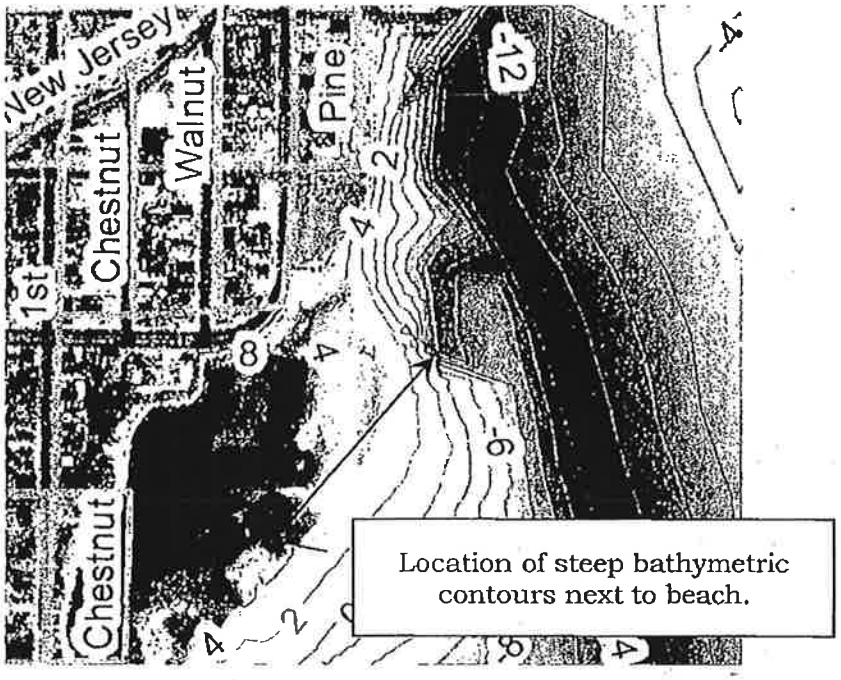


Figure 6 Detail of July 2012 Stockton Coastal Research Center Survey (Stockton Coastal Research Center, 2012a).

$$F = \frac{\gamma_b \tan(\varphi)}{\gamma \tan(\theta)}$$

where γ = the unit weight of the saturated sand (approximately 124.6 lb/ft^3) and γ_b = the weight of the submerged sand (approximately 60.6 lb/ft^3).

Table 1 presents slope angles obtained from the CRC and COE surveys along with the factors of safety given by the above two equations. The slopes for the CRC surveys were scaled from the contour lines on the figures in Appendix A. The slopes for the COE surveys were taken directly from cross-sections through the inlet as surveyed by the Corps. Example cross-sections from the 2012 COE survey are shown in Figure 9. The locations of the COE cross-sections of Figure 9 are shown in Figures 7 and 8. Table 1 shows three cases with seepage-induced by ebb flow where the factor of safety was below or close to 1.0 (values highlighted in last column). In one case the slope was unstable even in the absence of seepage (value highlighted in fourth column). Note that the factors of safety in Table 1 do not accout for any surcharge on top of the slope. Figure 10 shows a detail of Profile C from the 2012 COE survey where the slope angle is 48.6° - the condition highlighted on Table 1.

Table 1 Slope Angles and Factors of Safety for Unloaded Slopes from CRC and COE Surveys.

Survey *	$\Delta z/\Delta x$ **	θ	$F = \tan\varphi/\tan\theta$	$F=\gamma_b\tan\varphi/\gamma\tan\theta$
CRC Mar 2011	0.200	11.3°	3.25	1.58
CRC Jul 2012	0.184	10.4°	3.53	1.71
CRC Dec 2012	0.161	9.1°	4.05	1.96
COE 2008 – B	0.230	12.9°	2.83	1.38
COE 2008 - C	0.205	11.6°	3.16	1.54
COE 2008 - D	0.148	8.4°	4.39	2.14
COE 2012 - B	0.070	4.0°	9.28	4.51
COE 2012 – C	1.134	48.6°	0.57	0.28
COE 2012 – D	0.108	6.2°	5.98	2.91
COE 2014 – B	0.138	7.9°	4.68	2.28
COE 2014 - C	0.291	16.2°	2.23	1.08
COE 2014 - D	0.314	17.4°	2.07	1.01

* COE survey indicates profile line from which slope angle was obtained.
** Tangent(θ)

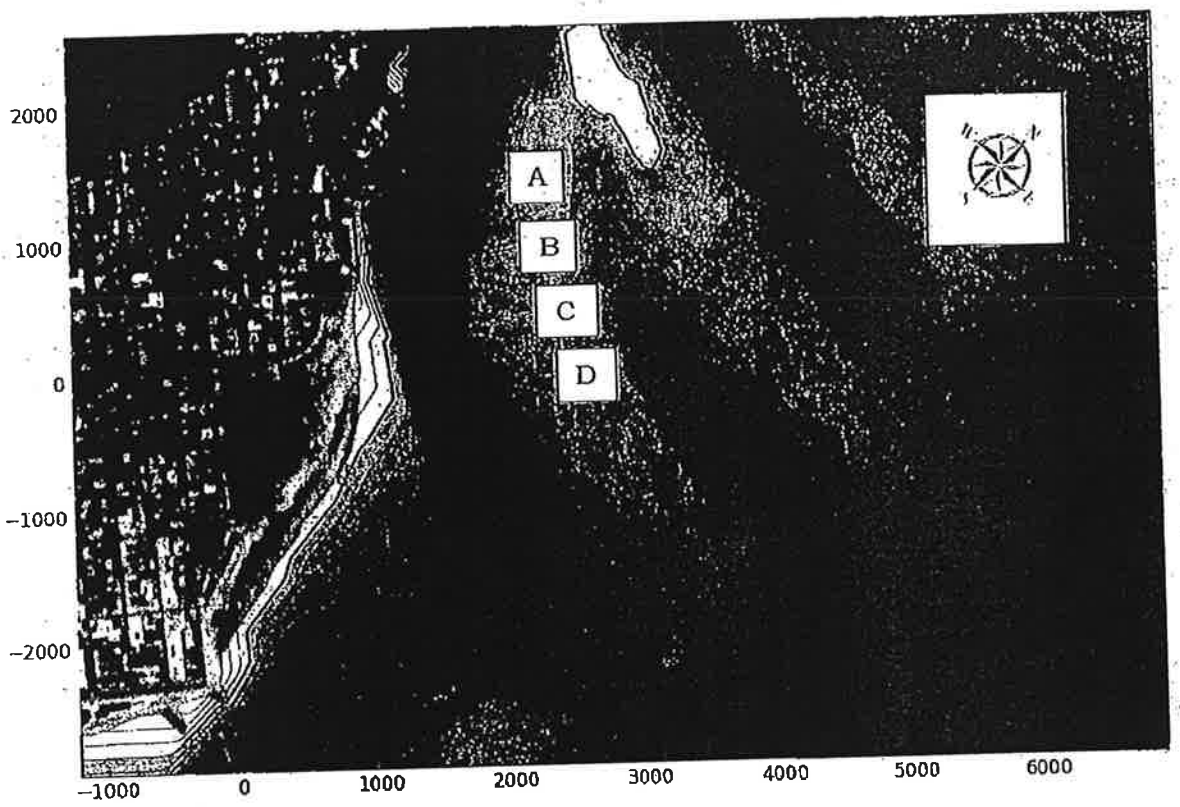


Figure 7 US Army Corps of Engineers Survey, December 2012.

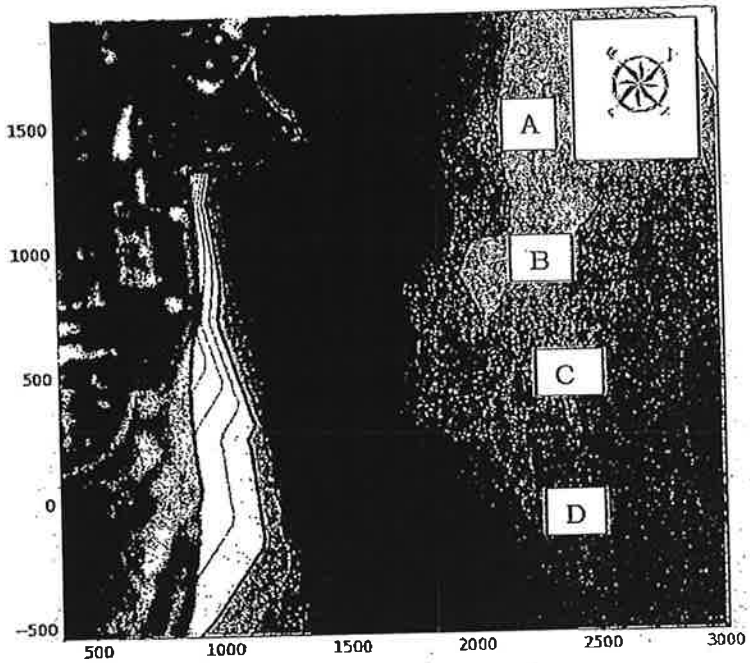


Figure 8 Detail from US Army Corps of Engineers Survey, December 2012.

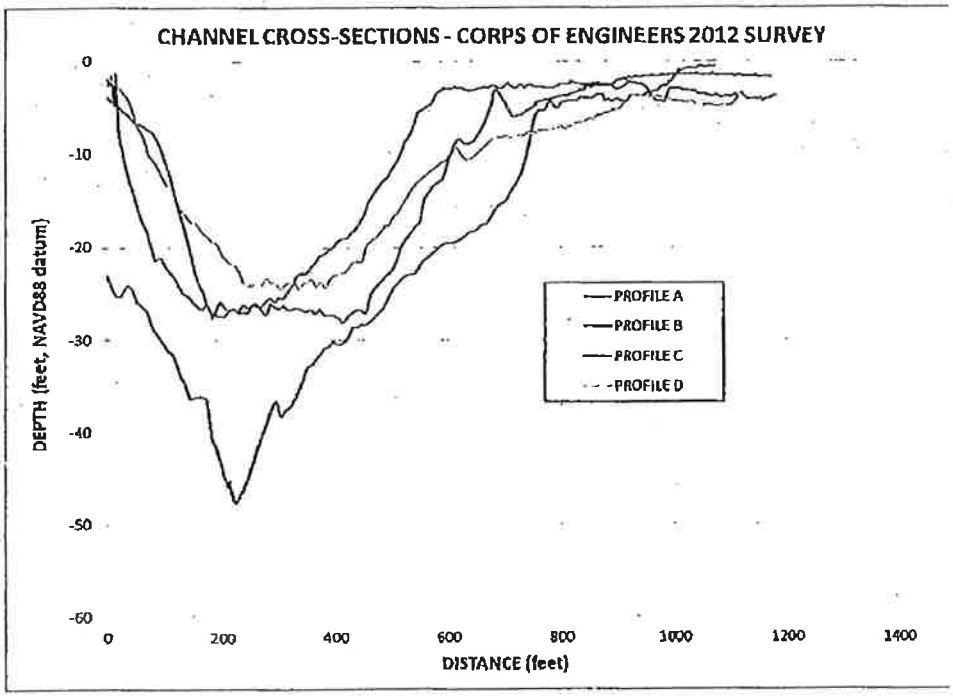


Figure 9 Corps of Engineers 2012 Survey Cross-Sections.

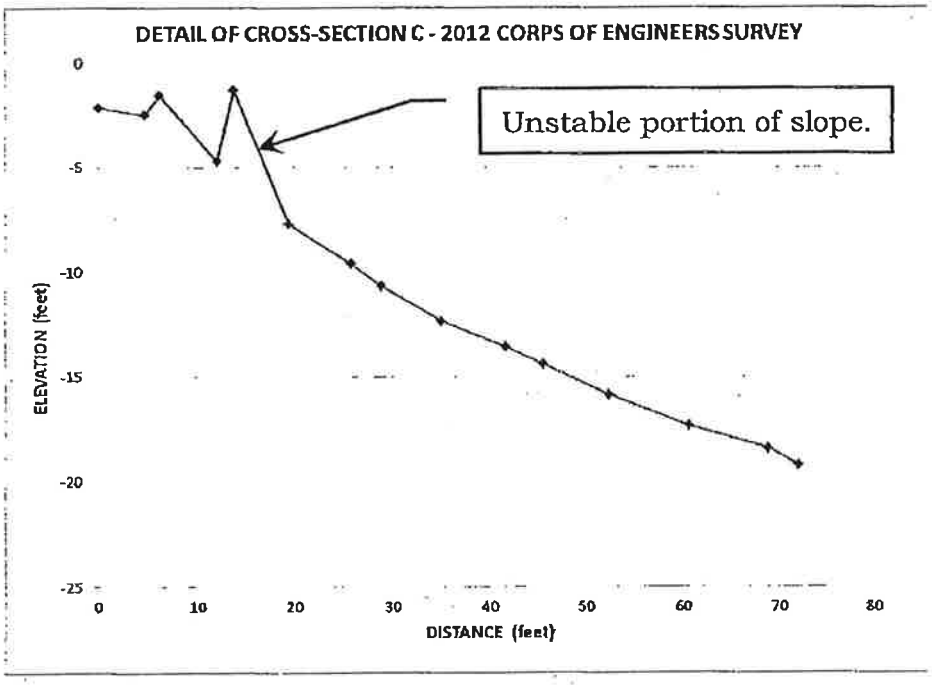


Figure 10 Detail from Cross-Section C, Corps of Engineers 2012 Survey.

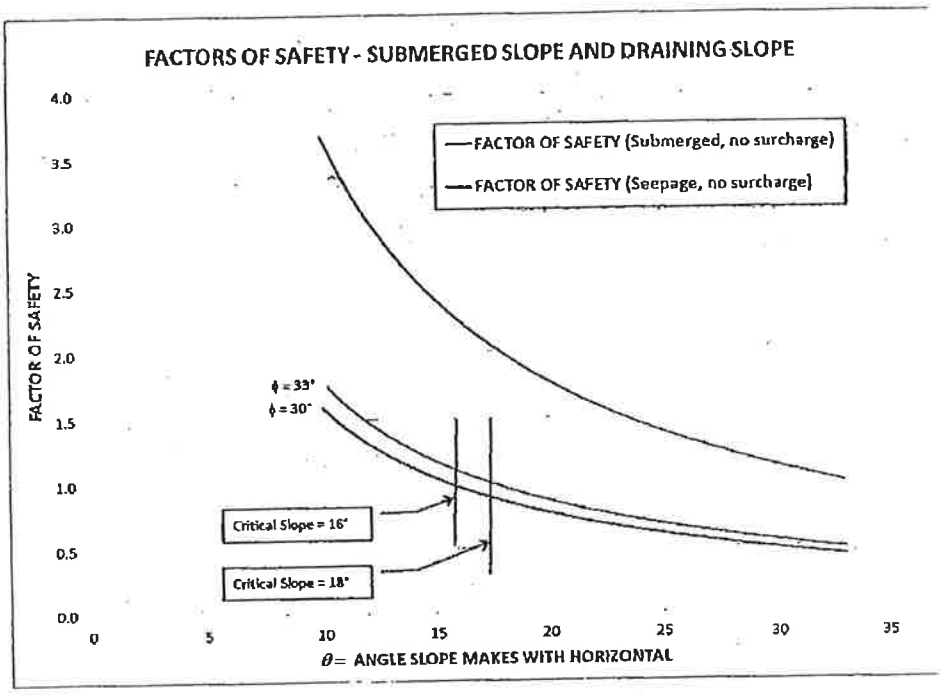


Figure 11 Factors of Safety for Various Submerged Slopes with and without Seepage (no surcharge).

Figure 11 shows the relationship between the factor of safety and the slope angle for both the submerged and seepage equations given above. The curved red lines are for the case where seepage from the slope into the channel occurs. The critical slope for a submerged angle of respose is 33° is 18°. Thus any slope steeper than 18° will be unstable. If the angle of repose is only 30° the critical slope is 16°. The critical angle for the submerged case without seepage is 33 ° - the submerged slope's angle of repose.

The surveys on which the preceding analyses are based probably did not measure the steepest underwater slopes because of the limited spatial distribution of the soundings. In addition, the surveys do not account for steepening of nearshore, underwater slopes during high ebb flow velocities. Neither does the analysis account for any load applied to the top of the slope. A person walking along the top of the slope will exert a downward force (surcharge) which reduces the factor of safety. If the factor of safety is reduced to less than 1.0, the slope will fail and slide into the inlet carrying with it anyone walking on top of it

A slope stability analysis which included a surcharge was made using Bishop's Simplified method of slices - a widely used geotechnical engineering procedure. A schematic of the procedure is shown in Figure 10. A circular failure plane is assumed and the soil above the failure plane subdivided into vertical slices. The moments of the forces acting on the slices about the center of the failure plane are summed and the factor of safety is the ratio of the sum

of the overturning moments divided by the sum of the restoring moments. A uniform surcharge was assumed over 4-foot wide top of the slope, shown as p on Figure 12. The equation for the factor of safety for a non-cohesive sediment such as beach sand is (Cernica, 1982),

$$F = \frac{\sum_{i=1}^{i=n}[(W_i - u_i b_i)tan\varphi]\left[1/cos\alpha_i(1+\frac{tan\alpha_i tan\varphi}{F})\right]}{\sum_{i=0}^{i=n} W_i sin\alpha_i}$$

where the subscript i indicates the slice, W_i = the weight of slice i, u_i = the pore water pressure, b_i = the width of the slice and a_i = the angle with a vertical of a line drawn from the center of rotation to the bottom of the slice. See Figure 12. An iterative procedure is required since F appears on both sides of the equation. The location of the center of rotation to find the minimum factor of safety is a trial and error procedure.

The surcharge used in the analysis assumed two adults, each weighing 180 lbs with their weight distributed over 4 feet at the top of the slope. A distribured force of (2)(180)/4 = 90 lbs/ft results. (Note that the force will likely be more concentrated than a uniformly distributed one.) Figure 13 summarizes the results of the slope stability analysis for three values of the slope's submerged angle of repose, φ = 30°, 31° and 33°. The lower envelope of the points indicates the stable slope. The three lines generally cross the factor of safety line of 1.0 at between 17° and 19°. Consequently, if the slope is steeper than about 17° the slope is likely to fail if a surcharge is imposed.

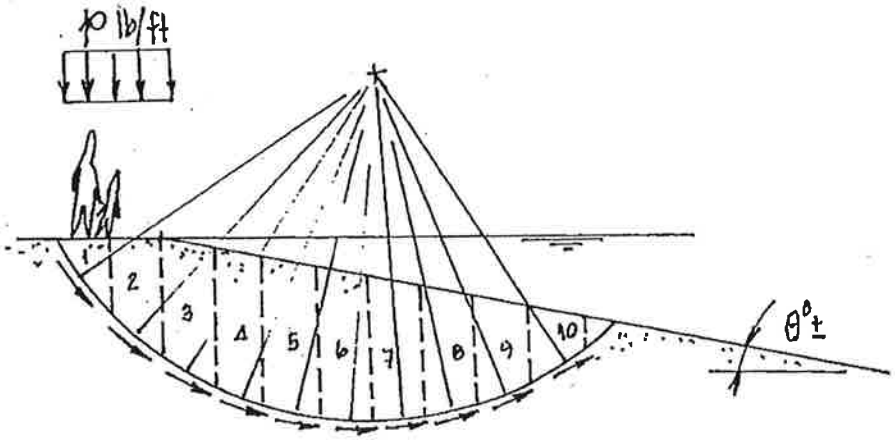


Figure 12 Schematic of Bishop's Simplified Method of Slices for Slope Stability Analyses.

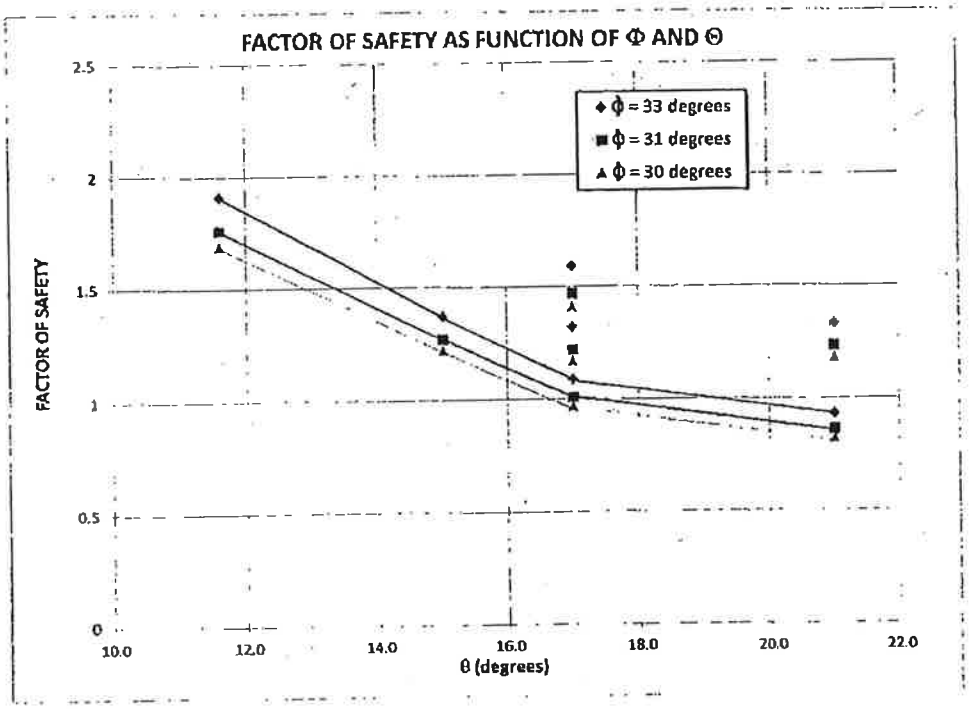


Figure 13 Factors of Safety as a Function of θ and φ for Slopes with Surcharge.

SUMMARY AND CONCLUSIONS

On 27 July 2012 Mr. Brad Smith and his daughter Brandy and Mr. Scott Sunderland and his daughter were walking in ankle deep water along the shoreline adjacent to the navigation channel in Hereford Inlet, North Wildwood, NJ. The submerged slope along the top of which they were walking was lilely not visible. The slope failed and slid into the inlet carrying Mr. Smith and his companions into the ebb flowing current. The Hereford Inlet shoreline is subject to strong ebb currents which scour the edge of the navigation channel steepening it to the point of instability. The imposition of any surcharge such as pedestrians walking on top of the slope will lead to its failure. A slope stability analysis indicates that if the submerged slope is steeper than about 17° it is subject to failure by the impostion of a surchage. The steep navigation channel hugs the North Wildwood side of the inlet due to the sand transported into the inlet from the Stone Harbor side. This is a persistent condition observable in the several bathymetric surveys of the inlet conducted by the Stockton Coastal Resarch Center and the U.S. Army Corps of Engineers. (See Appendixes A and B.) The slope stability conditions and their location on the inlet shoreline that led to the drowning are likely to occur again because of the persistence of the navigation channel's location along the North Wildwood inlet shoreline and the high ebb tide currents. The location of the unstable slope is generally unpredictable and will vary from time to time. Figure 14 is a photograph of the inlet shoreline taken on 1 March 2016 that shows the

presence of the deep channel adjacent to the inlet beach. The area indicated on the photograph is where an ebbing current can undermine the slope causing a failure of the kind leading to Mr. Smith's drowning.

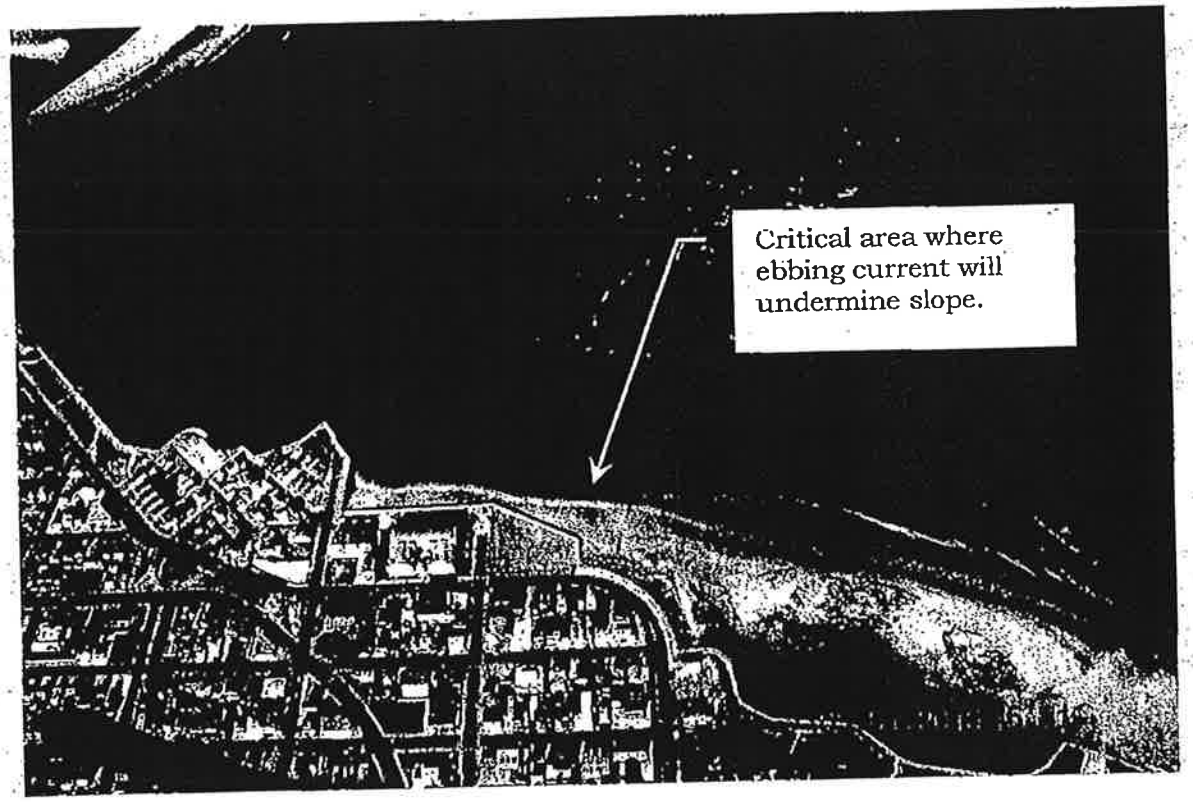


Figure 14 Aerial Photograph of Hereford Inlet Shoreline Showing Location of Area Susceptible to Undermining, 1 March 2016.

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Stockton Coastal Research Center (2011) "Hereford Inlet, March 2011," The Richard Stockton College of New Jersey, Coastal Research Center, March 2011.

Stockton Coastal Research Center (2012a) "Hereford Inlet, July 2012," The Richard Stockton College of New Jersey, Coastal Research Center, July 2012.

Stockton Coastal Research Center (2012b) "Hereford Inlet, March 2011, Digital Elevation Model" The Richard Stockton College of New Jersey, Coastal Research Center, December 2012.

APPENDIX A

Stockton Coastal Research Center Surveys

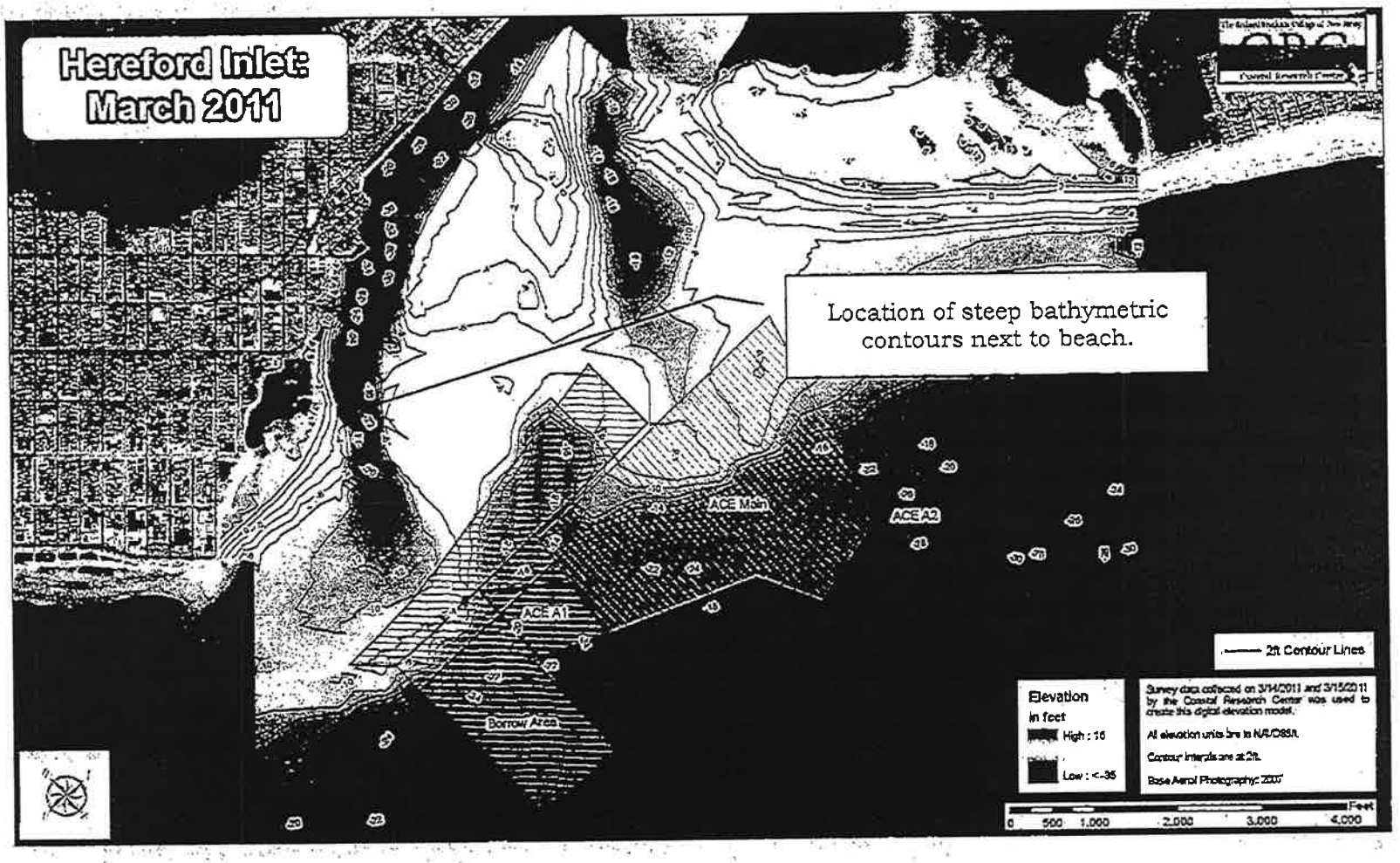


Figure A-1 Hereford Inlet Survey, March 2011 (Stockton Coastal Research Center, 2011a).

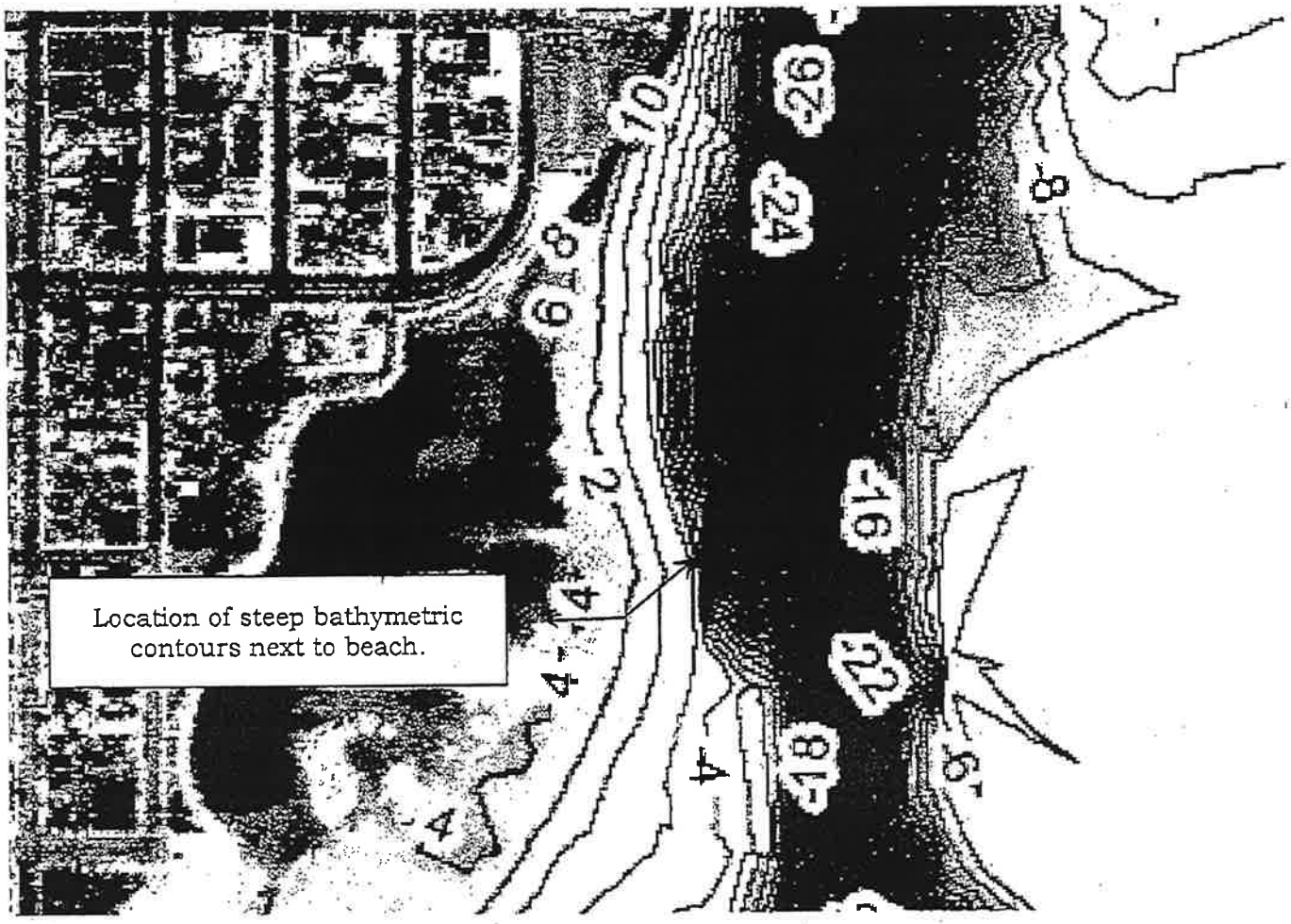


Figure A-2 Detail of March 2011 Stockton Coastal Research Center Survey (Stockton Coastal Research Center, 2011).

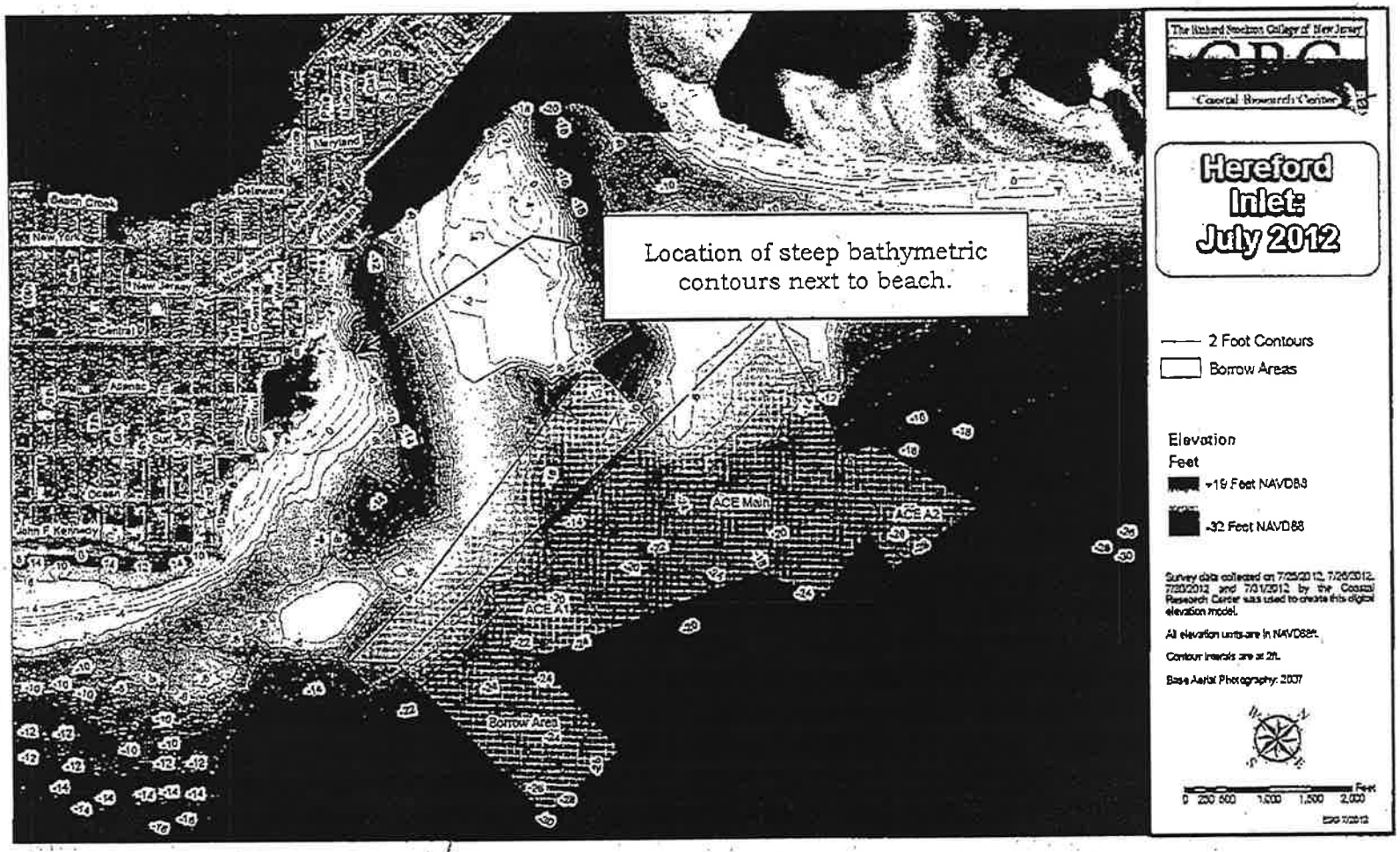


Figure A-3 Hereford Inlet Survey, July 2012 (Stockton Coastal Research Center, 2012a).

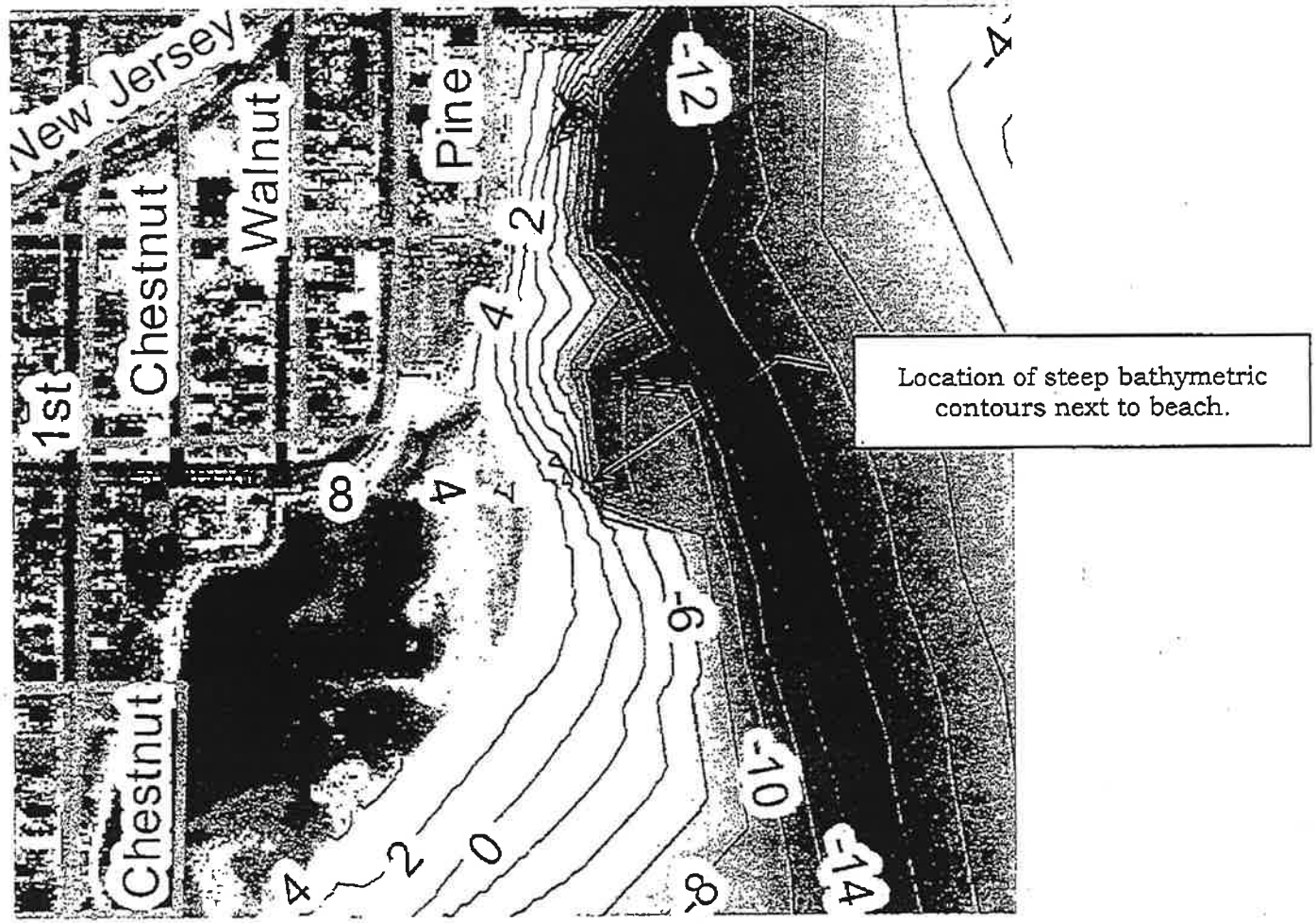


Figure A-4 Detail of July 2012 Stockton Coastal Research Center Survey (Stockton Coastal Research Center, 2012a).

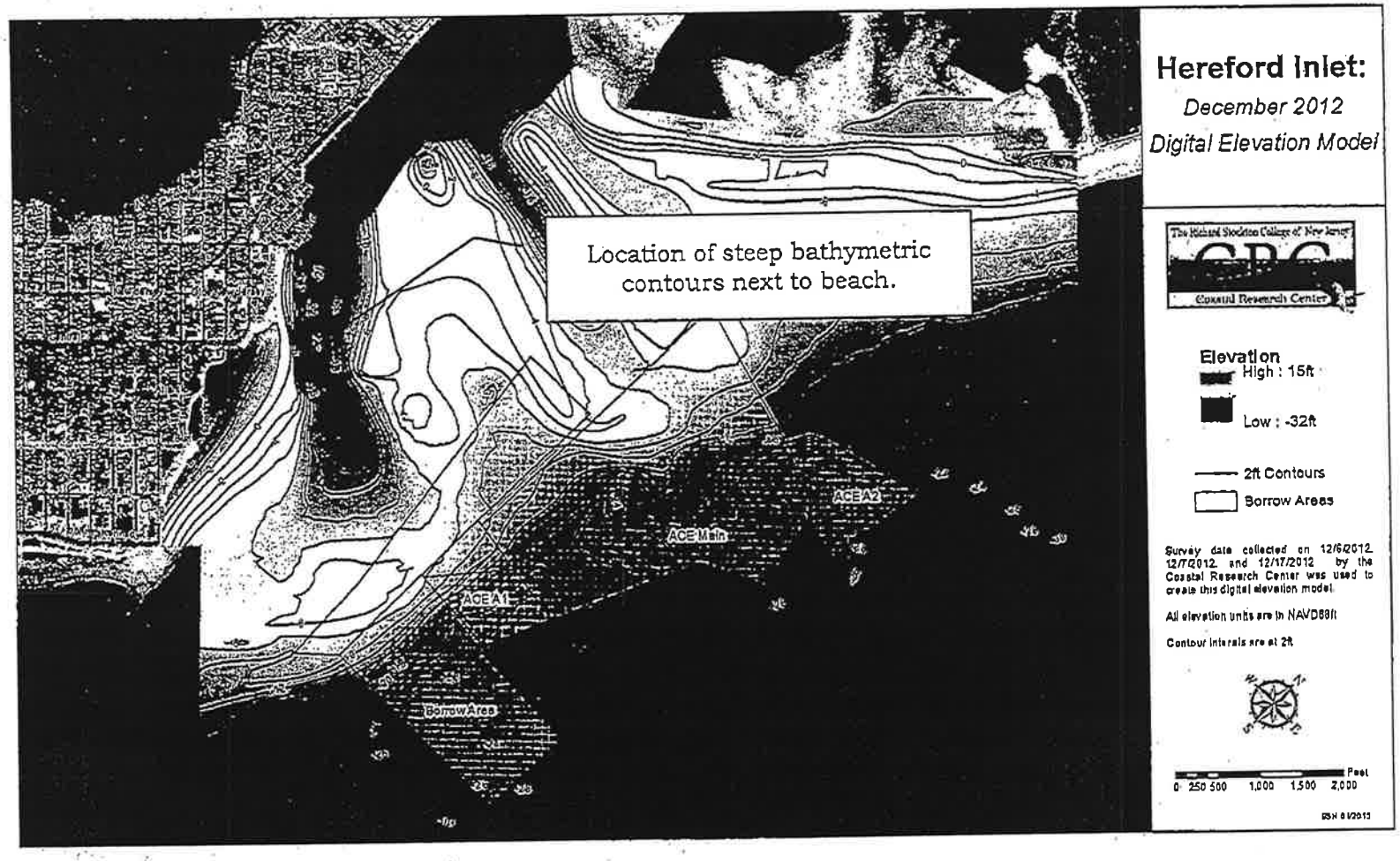


Figure A-5 Hereford Inlet Survey, December 2012 (Stockton Coastal Research Center, 2012b).

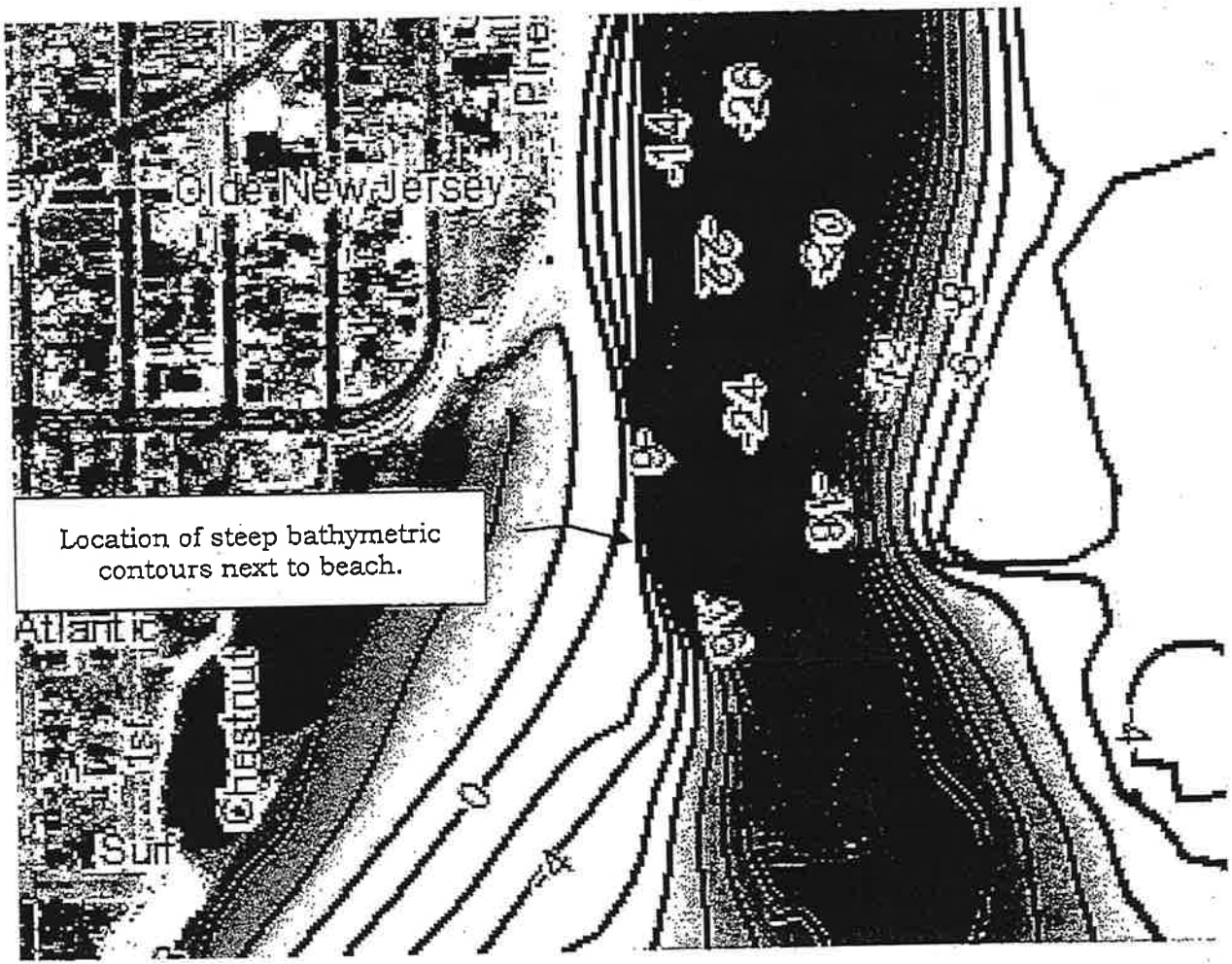


Figure A-6 Detail of December 2012 Stockton Coastal Research Center Survey (Stockton Coastal Research Center, 2012b)

APPENDIX B

U.S. Army Corps of Engineers Surveys and Cross-Sections.

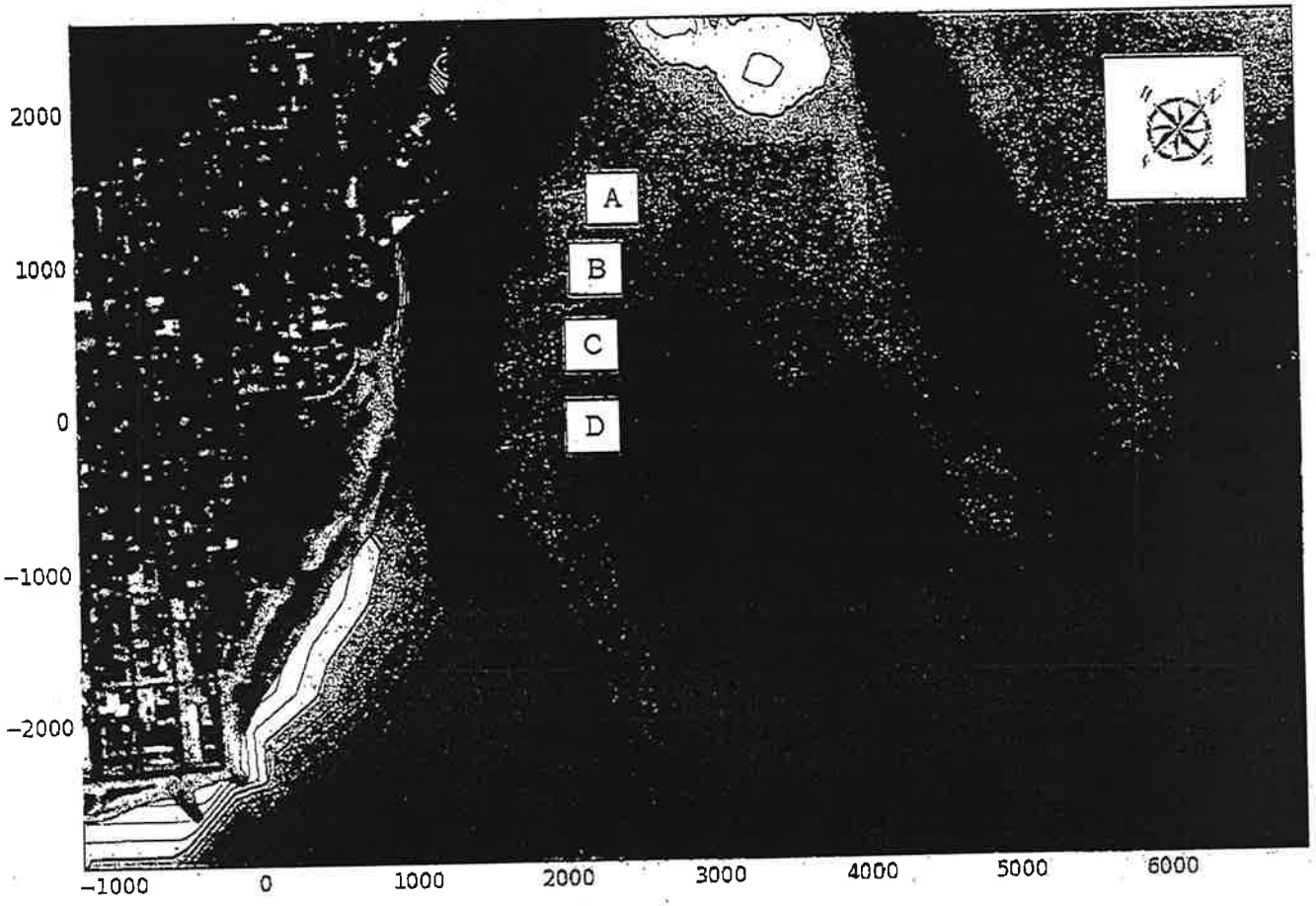


Figure B-1 Corps of Engineers' Survey, August 2010.

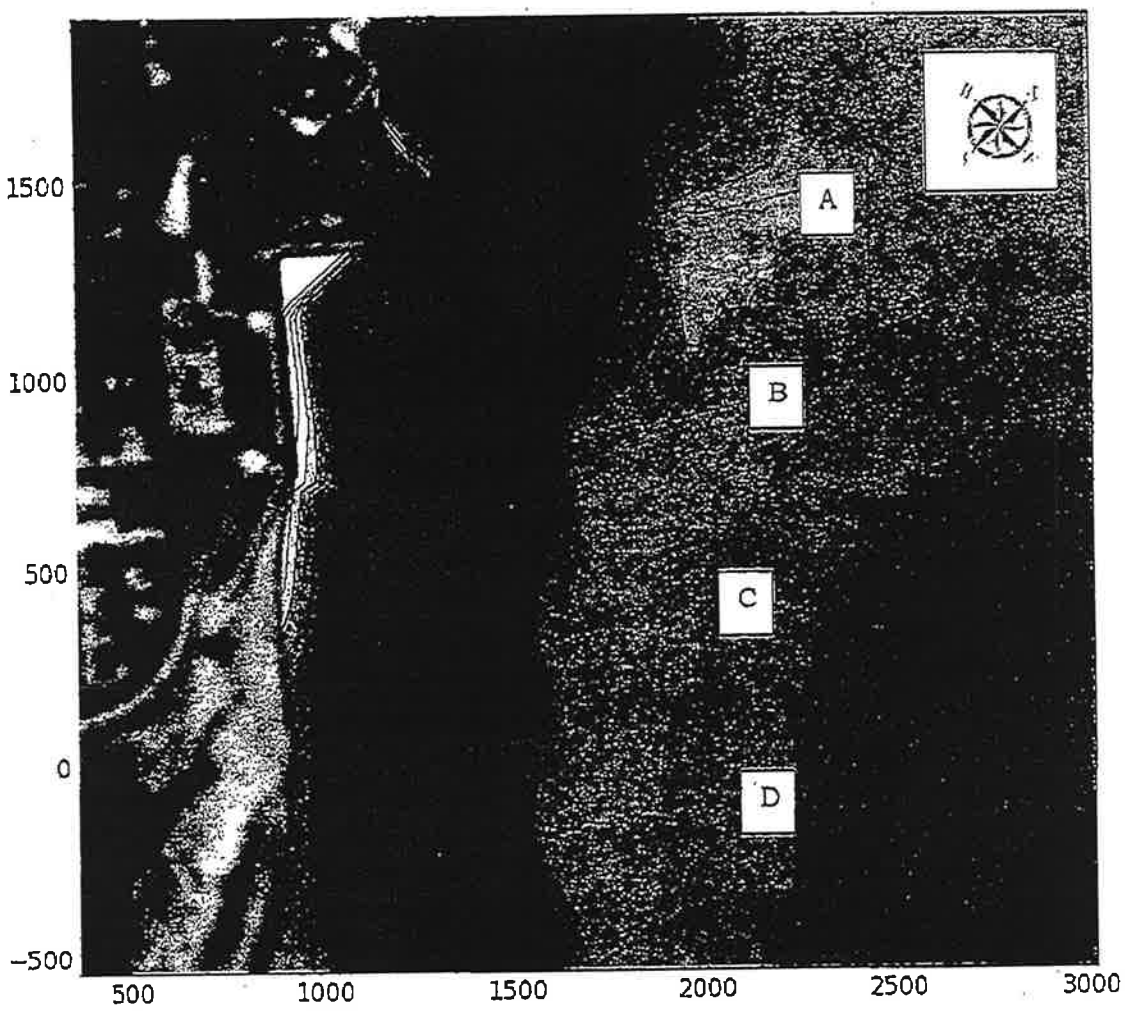


Figure B-2 Detail of Corps of Engineers' Survey, August 2010.

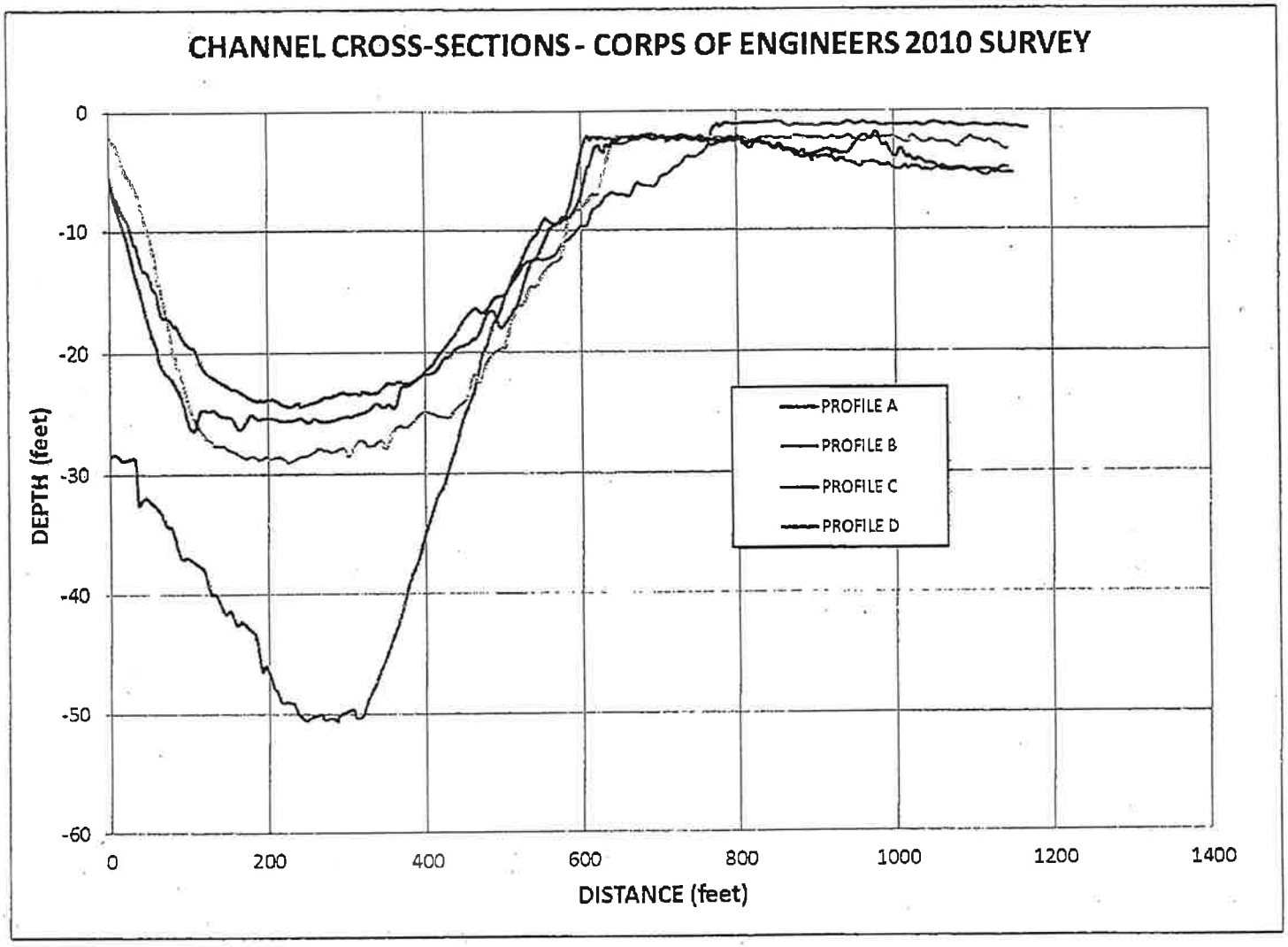


Figure B-3 Corps of Engineers' Profiles, 2010 Survey.

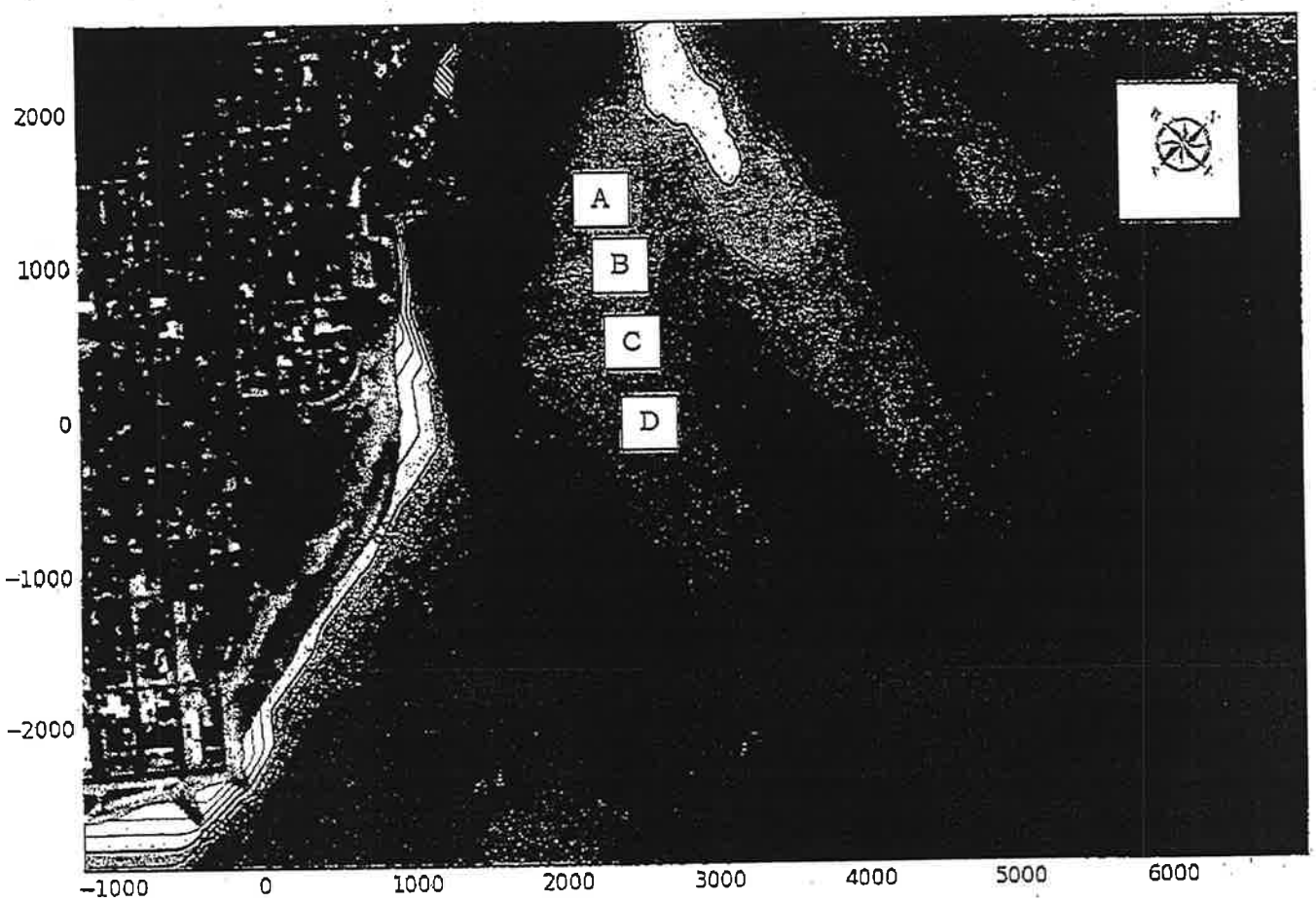


Figure B-4 Corps of Engineers' Survey, December 2012.

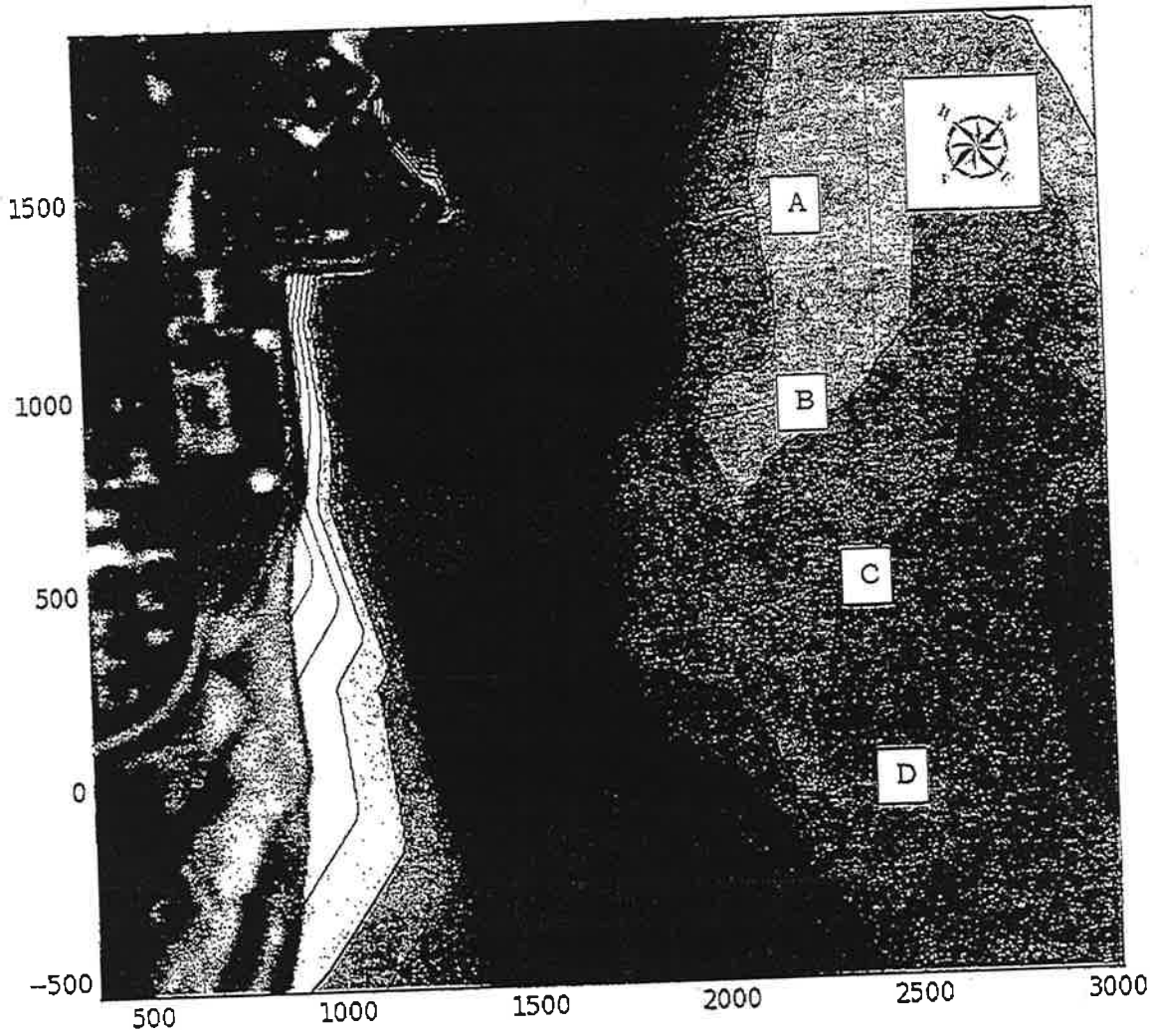


Figure B-5 Detail of Corps of Engineers' Survey, December 2012.

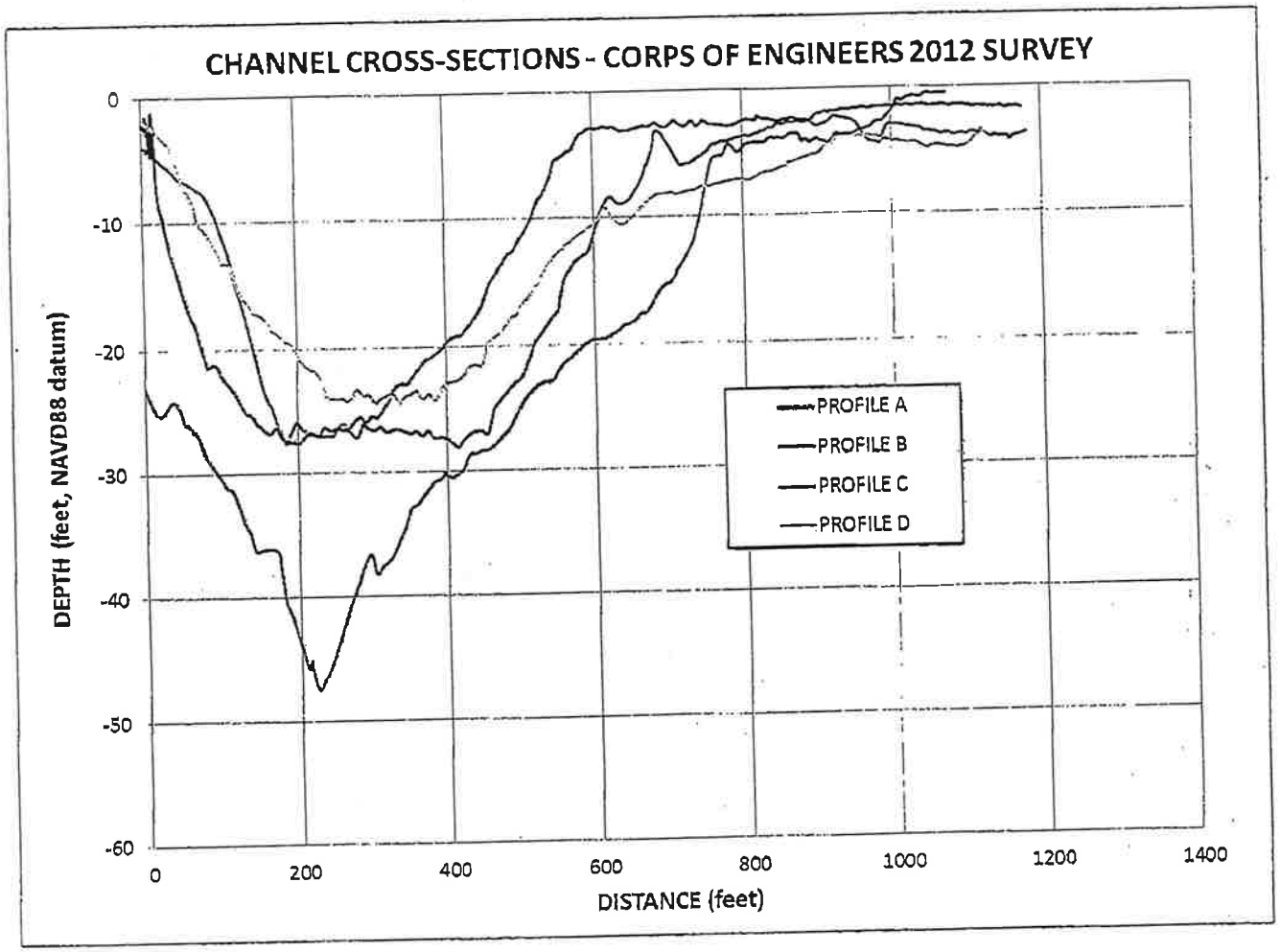


Figure B-6 Corps of Engineers' Profiles, 2012 Survey.

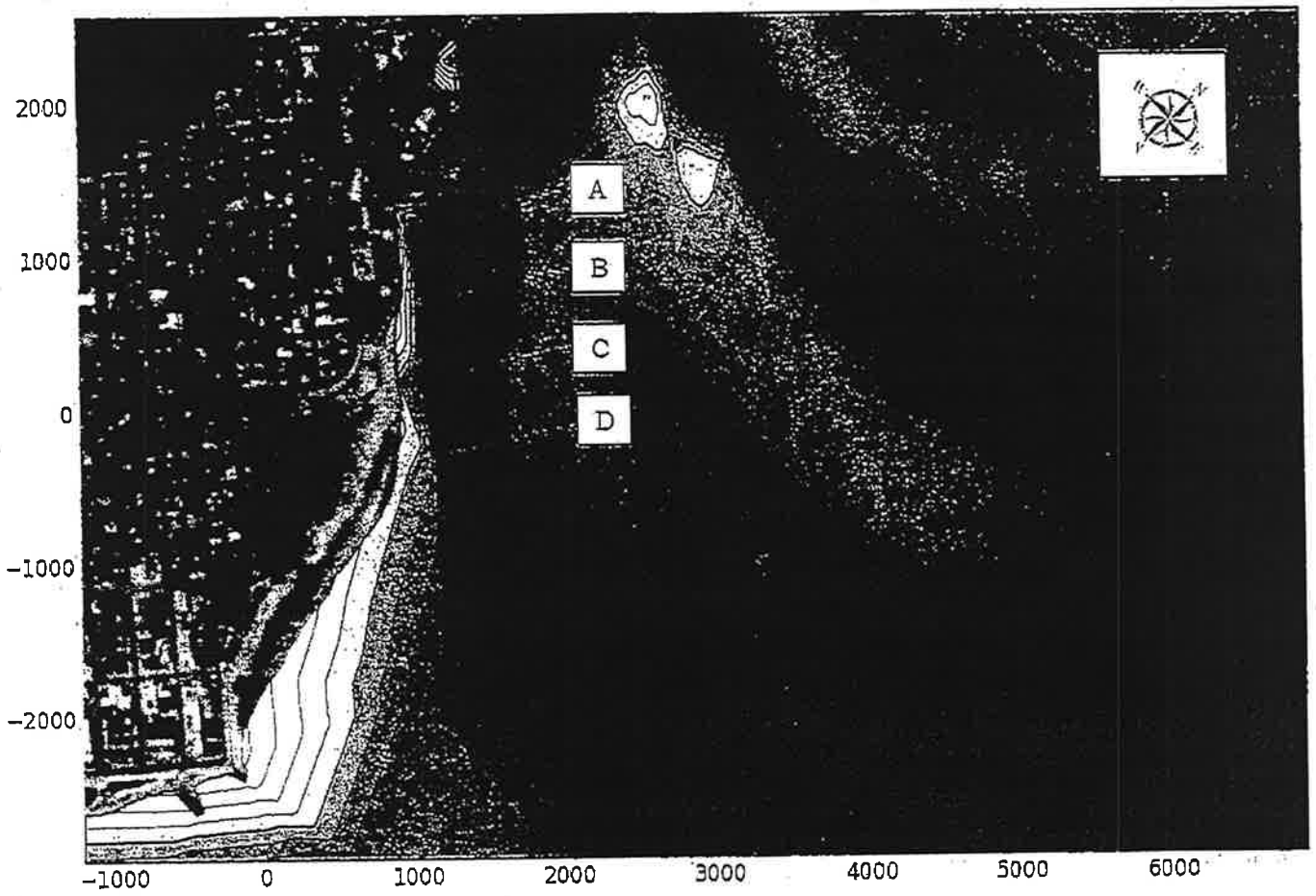


Figure B-7 Corps of Engineers' Survey, August 2014.

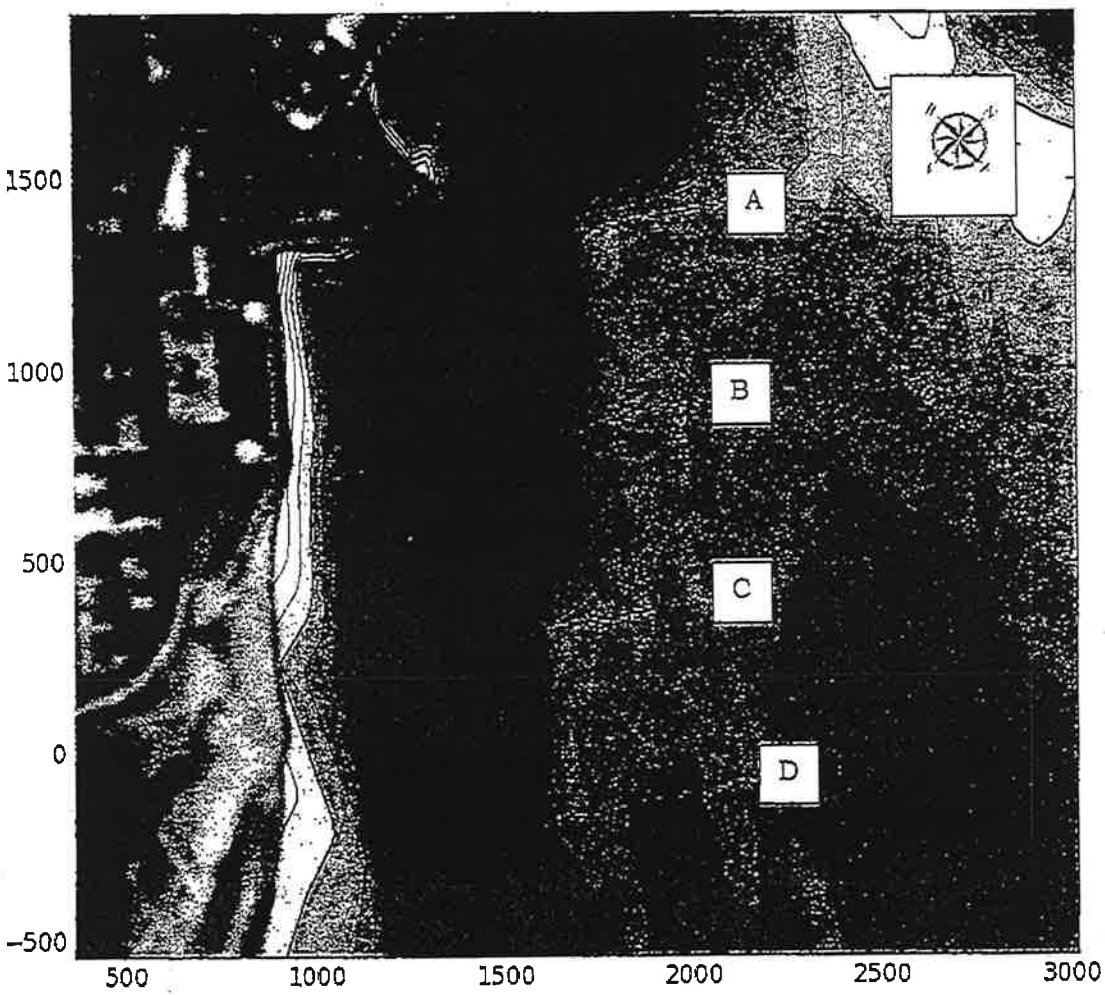


Figure B-8 Detail of Corps of Engineers' Survey, August 2014.

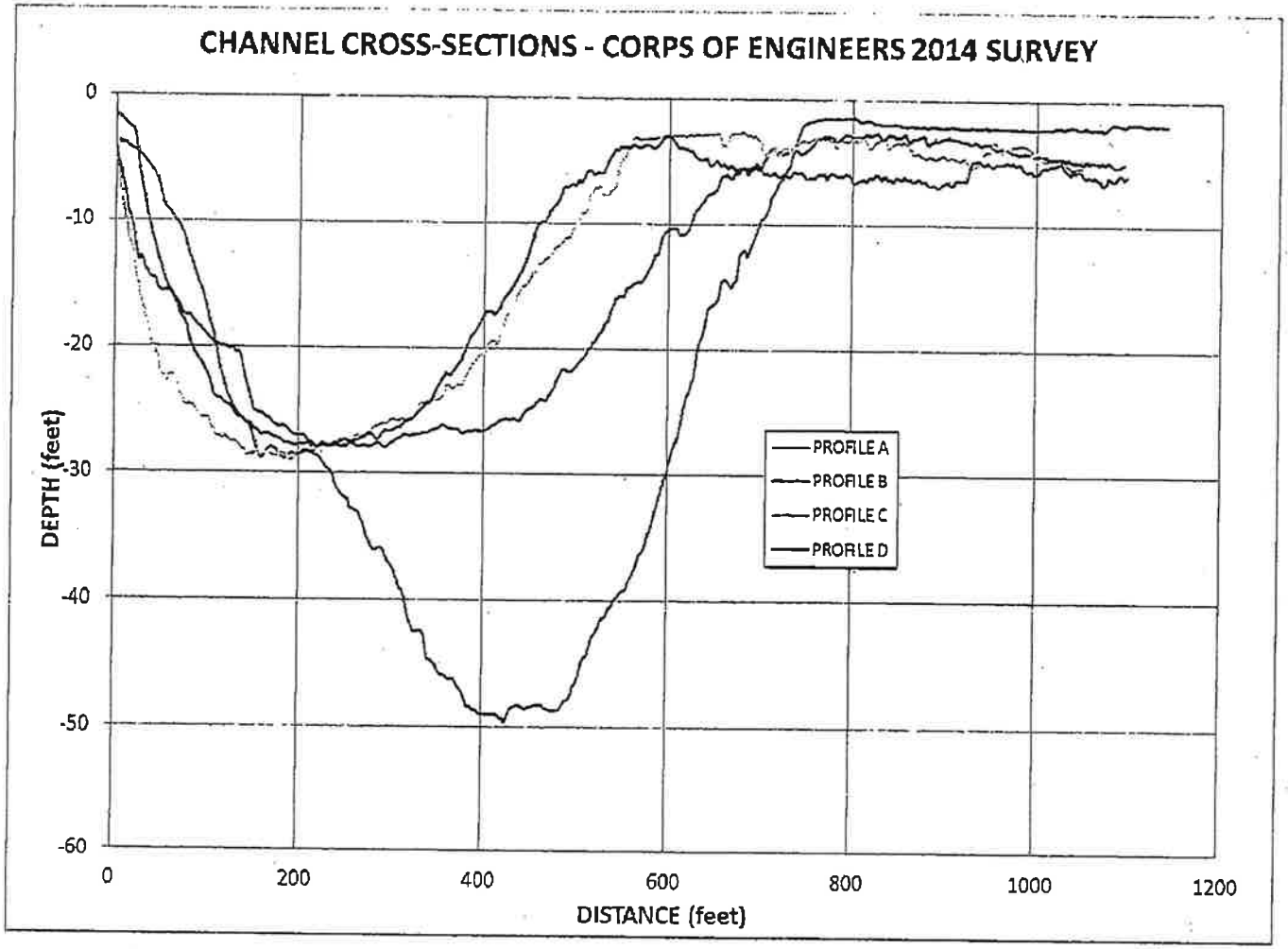


Figure B-9 Corps of Engineers' Profiles, 2014 Survey.

Exhibit 14

No *Shepard's* Signal™
As of: May 23, 2016 2:25 PM EDT

In re Estate of Fassett

Superior Court of New Jersey, Appellate *Division*

February 16, 2012, Argued; March 2, 2012, Decided

DOCKET NO. *A-3310-10T3*

Reporter
2012 N.J. Super. Unpub. LEXIS 464; 2012 WL 670973

IN THE MATTER OF THE ESTATE OF VIVIAN FASSETT.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE *DIVISION*.

PLEASE CONSULT NEW JERSEY *RULE 1:36-3* FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] On appeal from the Superior Court of New Jersey, Chancery *Division*-Probate Part, Ocean County, Docket No. 188933 (consolidated with L-126-11 and C-2-11).

Core Terms

the will, undue influence, executing, testator, decedent's, Probate

Counsel: Thomas Bolling, appellant, argued the cause Pro se.

Cheryl Capers, respondent, argued the cause Pro se.

Marie Hardy, respondent, argued the cause Pro se.

Judges: Before Judges Cuff and Waugh.

Opinion

PER CURIAM

On December 6, 2010, the Surrogate of Ocean County admitted to probate the last will and testament of Vivian Fassett and issued letters testamentary to Cheryl Capers and Marie Hardy as co-executrixes of the Fassett estate. Thomas Bolling, a brother of Fassett, filed a complaint seeking several forms of relief, including an order setting aside the will, an order barring disposition of Fassett's remains as directed in her will, an accounting, and money damages. Bolling appeals from the March 1, 2011 order dismissing the complaint, directing Capers and Hardy to proceed with their duties as executrixes, authorizing Capers and Hardy to proceed with the disposition of decedent's remains in accordance with her instructions, and ordering Capers and Hardy to provide an accounting.[1]

On appeal, Bolling argues that the trial court erred in upholding the will and authorizing the executrixes to proceed with the funeral arrangements because the will was fraudulent and decedent was under undue influence when she signed the will. Due to our denial of Bolling's application to stay disposition of decedent's remains, this appeal is limited to his contentions that the October 30, 2010 will executed by Fassett is the product of undue influence and she was not competent to execute the will at that time. Capacity to make a will and undue influence are separate concepts governed by different legal principles and will be discussed in turn.

After a will has "been admitted to probate, it may be challenged by the timely filing of a complaint in the Probate Part." *In re Estate of Stockdale, 196 N.J. 275, 302, 953 A.2d 454 (2008)* (citing *R. 4:85-1*). In an attack against the validity of a will, "[t]he legal presumption is that the testator was of sound mind and competent when he executed the will." *In re Will of Livingston, 5 N.J. 65, 71, 73 A.2d 916 (1950)*. Generally, "'the law requires only [*3] a very low degree of mental capacity for one executing a will.'" *In re Will of Liebl, 260 N.J. Super. 519, 524, 617 A.2d 266 (App. Div. 1992)*, (quoting *In re Will of Rasnick, 77 N.J. Super. 380, 394, 186 A.2d 527 (Cty. Ct. 1962)*), *certif. denied, 133 N.J. 432, 627 A.2d 1138 (1993)*. The trial court must determine whether the testator comprehended the property of which she would dispose, the recipients of her property,

[1] Bolling sought a stay pending appeal of that part of the March 1, 2011 order [*2] permitting Capers and Hardy to proceed with the cremation of decedent. By order dated March 10, 2011, we denied a stay.

the act of executing the will, and the relation among these factors. Will of Livingston, supra, 5 N.J. at 73.

> A will may be contrary to the principles of justice and humanity; its provisions may be shockingly unnatural and extremely unfair, nevertheless if it appears to have been made by a person of sufficient age to be competent to make a will and also to be the free and unconstrained product of a sound mind, the courts are bound to uphold it.
>
> [In re Estate of Hoover, 21 N.J. Super. 323, 325, 91 A.2d 155 (App. Div. 1952), certif. denied, 11 N.J. 211, 93 A.2d 819 (1953).]

Bolling, as the party who challenges the capacity of his sister to make a will, has the burden of proof to overcome the presumption that his sister had the capacity to execute the October 30, 2010 will. That she died within thirty days of executing the will is not dispositive [*4] of her capacity on October 30. Bolling had the obligation to adduce competent evidence that his sister did not comprehend the nature and scope of her assets, the identity of the persons to receive these assets, the fact that she was executing a will, and that the document would distribute those assets to the persons she had identified. Competent evidence is evidence that is trustworthy, reliable, and probative of the fact or facts at issue and admissible in court in accordance with the Rules of Evidence. *See* Calabro v. Campbell Soup Co., 244 N.J. Super. 149, 169, 581 A.2d 1318 (App. Div. 1990) (Competent evidence is evidence that is "'[l]egally qualified or adequate.'" (quoting *Webster's Ninth New Collegiate Dictionary* at 268 (1983))), *aff'd*, 126 N.J. 278, 597 A.2d 83 (1991).

Measured by this standard, Bolling did not carry his burden. He submitted to the Probate Judge various documents that provided information about his sister's condition at various points in time. For example, a document dated August 26, 2010, reported that his sister "has lung ca[ncer] on heavy meds & confused." The document, however, was not authenticated and also recited her condition two months before she executed the October 30, 2010 will. [*5] Significantly, the record before the Probate Judge contained no properly authenticated documentation or other admissible evidence of her testamentary capacity on October 30, 2010.

A will may be overturned, however, if tainted by "undue influence." Haynes v. First Nat'l State Bank, 87 N.J. 163, 176, 432 A.2d 890 (1981). Not all influence, however, amounts to undue influence. Will of Livingston, supra, 5 N.J. at 73. "Persuasion or suggestions or the possession of influence and the opportunity to exert it, will not suffice." *Ibid.* Rather, the influence must amount to a "mental, moral or physical exertion which has destroyed the free agency of a testator by preventing the testator from following the dictates of [her] own mind and will and accepting instead the domination and influence of another." *Ibid.* Generally, "[t]he burden of proving undue influence is upon the person asserting it and it must be clearly established." Id. at 71; *see also* Estate of Hoover, supra, 21 N.J. Super. at 325 (undue influence "must be sustained by clear and convincing evidence.").

"[O]nce a presumption of undue influence has been established[,] the burden of proof shifts to the proponent of the will, who must, under normal [*6] circumstances, overcome that presumption by a preponderance of the evidence." Haynes, supra, 87 N.J. at 177-78. Hence, "if the will benefits one who stood in a confidential relationship to the testator and if there are additional 'suspicious' circumstances, the burden shifts to the party who stood in that relationship to the testator." Estate of Stockdale, supra, 196 N.J. at 303. The suspicious circumstances may be slight. *Ibid.*

Here, too, the information submitted by Bolling failed to carry the requisite burden to establish undue influence by anyone, let alone require a shift of the burden of proof to Capers and Hardy, the proponents of the will.

It is also noteworthy that the judge did not consider Bolling's challenge on the papers. Bolling, Capers and Hardy appeared before him twice. At the first hearing, another of decedent's brothers appeared by telephone. At the second hearing, Anetha Ginwright, the mother of Fassett, attended the hearing. Judge Peterson had the opportunity to review the documents submitted and the sworn testimony of Bolling, his brother, Capers, Hardy, and Ginwright. The judge's findings on the issues of testamentary capacity and undue influence are entitled to [*7] great weight because he had the opportunity to see and hear the witnesses and form an opinion about the credibility of their testimony. Will of Livingston, supra, 5 N.J. at 78. We will not disturb these findings unless they are manifestly unsupported by or inconsistent with the competent evidence submitted at trial. Will of Liebl, supra, 260 N.J. Super. at 524. Our review of the is record reveals no basis to disturb the March 1, 2011 order.

Affirmed.

Exhibit 15

✥ Positive
As of: December 30, 2015 3:06 PM EST

Lynch v. Thorwart

Superior Court of New Jersey, Appellate Division

June 3, 2010, Argued; June 29, 2010, Decided

DOCKET NO. A-1404-09T1

Reporter
2010 N.J. Super. Unpub. LEXIS 1430; 2010 WL 2696742

JOHN F. LYNCH, ADMINISTRATOR AD PROS OF THE ESTATE OF ANNE MARIE LYNCH, Plaintiff-Appellant, v. RONALD THORWART, SHAUN GARRITY, DAVID GARRITY, Defendants, and CITY OF OCEAN CITY, Defendant-Respondent.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY *RULE 1:36-3* FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] On appeal from the Superior Court of New Jersey, Law Division, Cape May County, Docket No. L-370-08.

Core Terms

ramp, jet ski, supervision, attendant, launch, boat, boat safety, City's, certificate, municipal, prong, uncle, negligent supervision, municipal ordinance, watercraft, immune

Counsel: Richard C. Borton argued the cause for appellant.

James R. Birchmeier argued the cause for respondent (Powell, Birchmeier & Powell, attorneys; Mr. Birchmeier, on the brief).

Judges: Before Judges Axelrad and Fisher.

Opinion

PER CURIAM

Plaintiff John F. Lynch, in his administrative capacity for the Estate of Anne Marie Lynch ("Lynch"), appeals summary judgment dismissal of the complaint he filed against the City of Ocean City (the "City") based on negligent supervision and failure to enforce its municipal ordinance requiring completion of boat safety training. Plaintiff commenced his action against the City and other defendants [1] as a result of the death of his sixteen-year-old daughter who was fatally injured while operating a jet ski that she had launched from the City's boat ramp. The court found the City was immune pursuant to the Tort Claims Act ("the Act"), *N.J.S.A. 59:2-4*, failing to enforce any law, and also the undisputed facts did not support a claim of negligent supervision by the City's employee under *N.J.S.A. 59:3-11*. We affirm.

Viewed most favorably for plaintiff, *Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523, 666 A.2d 146 (1995)*, the motion record reveals the following. On the date of the accident, Lynch's uncle gave her a jet ski he had borrowed from a friend. It is undisputed that both Lynch and her uncle were inexperienced in the operation of jet skis and neither had taken a boat safety course as required by the City's ordinance 18-7.2h, providing in part:

> A person shall not operate a personal watercraft on the tidal waters within the jurisdiction of the City of Ocean City without having successfully completed a boat safety course approved by the Superintendent of the State Police . . . or a written test . . . .

Lynch launched the jet ski from the City's municipal boat ramp located on Tennessee Avenue after paying the municipal attendant the $ 10 ramp fee required for all vessels, including jet skis. Lynch operated the jet ski through the waterway and then collided with a dock in the 17th Street Lagoon, striking her head on the piling and sustaining a fatal injury.

It is undisputed the employee working at the boat ramp, James Lawrence, now deceased, did not inquire of Lynch or her uncle whether [*3] either had the appropriate training or competency to operate a jet ski. There were handouts for

[1] Plaintiff dismissed or otherwise resolved his claims against the [*2] other defendants.

boating safety and licensure in the municipal building next to the ramp and the attendants generally facilitated the orderly launching at the boat ramp. However, the record reflects that such employees were not required to determine who would use the watercraft and their duties did not include checking for experience or a boat safety certificate as these employees were not responsible for enforcement of the municipal ordinance or maritime safety requirements.

Plaintiff produced reports by marine safety expert Marjorie Murtagh Cooke. According to her initial report, the City "failed to maintain their standard of safety at their Tennessee Avenue boat ramp by not ensuring that operators launching [personal watercraft] at their boat ramps have successfully completed a boat safety course as required by both the State and their own municipal ordinance." Expounding upon that opinion, Cooke indicated that if the boat ramp attendants had checked both Lynch and her uncle to see if they had successfully completed the boat safety course, permission to launch the jet ski would not have been granted. In [*4] her supplemental report, Cooke opined that the City "not only had an obligation to ask potential ramp users whether they possessed the required safety certificate . . . but to train their employees to notify the Marine Police if the necessary papers could not be produced, as required." The plaintiff's expert expressed the "professional opinion" that:

> the City of Ocean City *failed to adequately enforce their requirement for possession of a boating safety certificate* by specifically choosing not to adequately train their employees to notify their patrons, request the necessary certificate and follow-up with the Marine Police as necessary.
>
> [Emphasis added.]

Judge Daryl F. Todd, Sr. found the City immune from liability based on N.J.S.A. 59:2-4, which provides that "[a] public entity is not liable for any injury caused by adopting or failing to adopt a law or by failing to enforce any law." As the court noted, the requirement of a boat safety course or of proof of such course by a safety certificate deals with enforcement of the law. The court found the situation to be similar to that of *Sharra v. City of Atlantic City, 199 N.J. Super. 535, 489 A.2d 1252* (App. Div. 1985), in which we held the failure of [*5] the city's director of public works to establish bicycle lanes on the boardwalk pursuant to a municipal ordinance granting such right did not give rise to liability to an injured cyclist based on N.J.S.A. 59:2-4. Judge Todd also found no negligence on Lawrence's part, noting that:

> [t]his is not a case of somebody who was injured at the launch because of the failure to supervise a launch. The accident happened in an area beyond the control of the employee on duty. He was land-based and had the duties referred to with respect to parking and selling of goods and operation of the ramp. There is no issue of the employee controlling the operation of the area of the piling where the accident happened.
>
> This appeal ensued.

On appeal, plaintiff renews his arguments made to the trial court. He contends his claim is about more than the City's failure to enforce its ordinance, urging it extends to the ramp attendant's failure to properly supervise a public recreational facility under N.J.S.A. 59:3-11. To establish liability based on negligent supervision, the claimant must establish his or her injury occurred at a public recreational facility, the entity or employee undertook to provide supervision [*6] of the facility and the entity or employee was negligent in providing supervision. *Fleuhr v. City of Cape May, 303 N.J. Super. 481, 697 A.2d 182 (App. Div. 1997), rev'd on other grounds, 159 N.J. 532, 732 A.2d 1035 (1999); Sharra, supra, 199 N.J. Super. at 539*.

Plaintiff contends there is "no dispute" the first prong was met even though the accident did not occur at the municipal ramp but, rather, in the waters off the City's coast. According to plaintiff, the gravamen of his claim is the second prong of the undertaking of supervision of "a public recreational facility," urging the ramp attendant was more than a mere "ticket taker." *See Morris v. City of Jersey City, 179 N.J. Super. 460, 464, 432 A.2d 553* (App. Div. 1981). Plaintiff contends this prong was clearly met by the employee's undertaking supervision of the municipal ramp in all facets of safety and launching of appropriate watercraft, including jet skis, responsibility for the maintenance and cleanliness of the ramp, and supervision of the patrons using the ramp, including their ability to safely operate a motorized watercraft. Plaintiff further argues he has raised a jury question as to the third prong, i.e., the employee's negligence in supervision, noting it was [*7] apparent to the ramp attendant from the outset that Lynch and her uncle were inexperienced in the operation of the jet ski.

When reviewing a grant of summary judgment, we employ the same standards used by the motion judge. *Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167, 704 A.2d 597 (App. Div.), certif. denied, 154 N.J. 608, 713 A.2d 499 (1998)*. Based on our review of the record, with all favorable inferences to plaintiff, and the applicable law, we find plaintiff's arguments to be unpersuasive and affirm substantially for the reasons articulated by Judge Todd.

Immunity is the dominant consideration of the Act. *Weiss v. N.J. Transit, 128 N.J. 376, 383, 608 A.2d 254 (1992)*.

"[W]hen one of the Act's provisions establishes liability, that liability is ordinarily negated if the public entity possesses a corresponding immunity." *Id. at 381* (citation omitted). Although plaintiff's claim is couched in terms of negligent supervision, he is basically asserting a failure of the City to enforce its municipal ordinance precluding use of the waterways by an unlicensed or untrained person such as Lynch. As plaintiff's expert opined, Lynch would not have been permitted to launch the jet ski from the ramp and the accident [*8] would not have occurred but for the ramp attendant's failure to inquire whether Lynch and her uncle had completed the boat safety course. Judge Todd correctly found the City to be expressly immune under *N.J.S.A. 59:2-4* for such inaction.

We are also satisfied that even assuming plaintiff met the first prong of the negligent supervision test under *N.J.S.A. 59:3-11*, plaintiff's arguments as to the second and third prongs fail as a matter of law based on the undisputed evidence as to the duties of the ramp attendants and the circumstances and location of Lynch's accident. Lynch was not injured by any object or condition related to the municipal ramp or in any proximity to the ramp. The ramp attendant's duties did not extend to supervising or patrolling the waterways.

Affirmed.

Exhibit 16

No *Shepard's* Signal™
As of: July 19, 2016 11:33 AM EDT

Lee v. State

Superior Court of New Jersey, Appellate Division

May 26, 2009, Submitted; June 23, 2009, Decided

DOCKET NO. A-1077-08T2

Reporter
2009 N.J. Super. Unpub. LEXIS 1661; 2009 WL 1749640

THERESA LEE AND THERESA LEE AS ADMINISTRATOR AD PROSEQUENDUM OF THE ESTATE OF BENJAMIN LEE, Plaintiffs-Appellants, v. STATE OF NEW JERSEY; DELAWARE AND RARITAN CANAL COMMISSION; DELAWARE AND RARITAN CANAL STATE PARK; and DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY, Defendants-Respondents, and SCUDDERS FALLS and EWING TOWNSHIP, Defendants.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-1692-07.

Core Terms

River, immunities, public entity, defendants', unimproved, summary judgment motion, notice, dangerous condition, trial date, days, arbitration, scheduled, drowning, public property, trial court, supervision, summary judgment, injuries, swim, warn

Counsel: Colby H. Grossman, attorney for appellants.

Anne Milgram, Attorney General, attorney for respondents (Melissa H. Raksa, Assistant Attorney General, of counsel; Kathleen M. Bartus, Deputy Attorney General, on the brief).

Judges: Before Judges Carchman and Sabatino.

Opinion

PER CURIAM

Plaintiff Theresa Lee, individually and on behalf of the estate of her deceased husband Benjamin Lee, appeals the Law Division's order granting summary judgment to defendants in this wrongful death litigation. The order dismissed plaintiff's complaint seeking to impose liability upon defendants, various public entities, in connection with the July 2005 drowning of plaintiff's husband in the Delaware River. As a matter of law, the trial court concluded that the public entities are immune from liability under the Tort Claims Act, *N.J.S.A. 59:1-1 to 59:12-3* (the "TCA"). We agree with the trial court's determination of statutory immunity, and affirm.

I.

This case arises out of tragic facts, which are substantially undisputed. We consider those facts, and all reasonable inferences from them, in a light most favorable to plaintiff as [*2] the responding party on defendants' summary judgment motion. *Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 535, 666 A.2d 146 (1995)*; *see also R. 4:46-2(c)*.

On July 22, 2005, plaintiff, along with her twenty-two-year-old husband Benjamin, and a friend, Roxanna Jones, visited the Delaware and Raritan Canal State Park (the "Park") located on the eastern bank of the Delaware River. The trio came to the Park that day to picnic, and to "wade and swim" in the river waters off of the shore. At approximately 4:30 p.m. Benjamin attempted to swim to an island located in the river near the Delaware Canal tow path. As he did so, Benjamin was pulled further into deeper water by the river's current. Benjamin failed to make it to the island and, despite plaintiff's efforts to save him, he ultimately drowned.

Various rescue units, including the Ewing Township Police Department, the Yardley-Makefield (Pennsylvania) Fire Department, and the New Jersey State Park Service, all attempted to find Benjamin, without success. Two days later, July 24, two kayakers found his body south of the Scudders Falls bridge that spans the Delaware River near Washington's Crossing.

The seventy-mile Park is owned and operated by [*3] the New Jersey Department of Environmental Protection (the

"DEP" [1]) and the Delaware and Raritan Canal Commission (the "Commission"), a sub-unit within the DEP. During its hours of operation the Park is regularly patrolled by one to four Park rangers. No lifeguards or other supervisors are stationed within the Park.

Following the death of her husband, and after timely serving the requisite notices under the TCA, *see* N.J.S.A. 59:8-8, plaintiff filed a complaint in the Law Division against the Park, the DEP, the Commission, the State of New Jersey, Scudders Falls, [2] and Ewing Township (collectively, "defendants"). [3] In her complaint, plaintiff alleged that defendants failed to take adequate measures to warn or safeguard Park visitors concerning the hazards of the Delaware River, thereby leading to Benjamin's drowning. Defendants, all of which are public entities covered by the TCA, denied liability. Their answers raised various immunities and alternative defenses under the statute.

Following discovery, defendants moved for summary judgment. In the motion papers, defendants relied on a certification from Ernest P. Hahn, Executive Director of the Commission. Hahn certified that the "Commission is a regulatory agency legally 'in the DEP,' but does not own any land." Defendants further relied upon the certification of Jeanne A. Mroczko, Acting Director of the State Park Service within the DEP. Mroczko certified that the State "did not own, control, or have jurisdiction over the Delaware River on July 22, 2005, or at any other time relevant to this matter." Defendants further relied on the deposition testimony of Stephen S. Garcia, a ranger employed by the State Park Service. Among other things, Garcia attested "that the State's jurisdiction ends at the [Delaware River's] waterline."

Apart from these proofs establishing the State defendants' lack of ownership and control of the river, defendants relied in their motion upon explicit immunities codified in the TCA, including N.J.S.A. 59:4-8 (regarding the condition of unimproved public property, including rivers), and N.J.S.A. 59:4-9 [*5] (regarding the condition of, among other things, the unimproved and unoccupied portions of the beds and navigable rivers owned by the State). Plaintiff argued that these immunity provisions in the TCA are inapplicable because of the alleged awareness of defendants and their employees of the severe dangers of the Delaware River. Plaintiff also emphasized defendants' alleged failure to provide warnings to, or supervision of, bathers in the river, including her husband. Plaintiff further contended that defendants' summary judgment motion was untimely under Rule 4:46-1 because it was not filed more than thirty days before the scheduled trial date.

After hearing oral argument, the motion judge determined that, as a matter of law under the TCA, defendants were shielded from liability for Benjamin's drowning. The judge applied pertinent case law, including Fleuhr v. City of Cape May, 159 N.J. 532, 732 A.2d 1035 (1999), recognizing that, as the motion judge paraphrased it, "once a bather enters a body of water, such as a river in this case, which is unimproved . . . there can be no liability [under the TCA] for injuries which occur solely due to the conditions encountered in the unimproved body." Additionally, [*6] the judge rejected plaintiff's procedural claim that defendants should be deprived of the benefit of the TCA immunities because their dispositive motion was made returnable less than thirty days before the trial date.

Plaintiff now appeals, solely as to the State defendants. [4] As a substantive matter, plaintiff maintains that no statutory immunities under the TCA apply here and, even if such immunities do pertain, defendants forfeited that protection by their failure to warn or protect Benjamin against the river's dangerous condition. Procedurally, plaintiff argues that the trial court should never have entertain the summary judgment motion due to the motion's proximity to the pending trial date.

II.

We begin with a brief discussion of the procedural issue. The pertinent chronology is as follows.

Following discovery, the Civil Case Manager's Office issued the parties a notice on August 15, 2008, scheduling a trial date for October 27, 2008. One week later, on August 22, 2008, the Case Manager's Office issued a second notice. That second notice scheduled an arbitration for October [*7] 16, 2008. It is not clear from the record why the arbitration notice was generated after, rather than before, the trial notice. Nor is it clear why the interval administratively provided between the arbitration date and the trial date was only eleven days, a period shorter than the thirty-day interval specified by Rule 4:21A-6(b)(1) to enable a litigant to demand a trial *de novo* following an arbitration.

Thereafter, on September 2, 2008, defendants filed their

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[1] The complaint erroneously identified the DEP by its former name, the Department of Environmental Protection and Energy.

[2] Scudders Falls is a location along the Delaware River rather than a legal entity.

[3] We shall [*4] refer to the defendants other than Ewing Township and Scudders Falls as "the State defendants."

[4] Plaintiff has not appealed the trial court's dismissal of co-defendants Ewing Township and Scudders Falls.

motion for summary judgment, marked returnable for the regular biweekly motion day of October 10, 2008. Plaintiff filed her opposition to that motion on October 1, 2008. The return date was not adjourned, and oral argument on the motion was conducted, as originally scheduled, on October 10, 2008. The trial court granted defendants' motion and issued a corresponding order that same day.

Plaintiff asserts that the trial court should not have entertained defendants' motion for summary judgment because the motion was returnable only seventeen days before the October 27 trial date, rather than the full thirty days prescribed by *Rule 4:46-1*. As amended in 2006, that *Rule* states, in relevant part, that a motion for summary judgment "shall [*8] be returnable not more than 30 days before the scheduled trial date, unless the court otherwise orders for good cause shown." *Ibid.* The purpose of the thirty-day interval is to accommodate the completion of the summary judgment motion process before the parties have to prepare for trial should the motion prove to be unsuccessful. *See also* Pressler, *Current N.J. Court Rules*, Comment *R. 4:46-1*, at p. 1633 (Gann 2009) (noting the obvious "desirability of pretrial disposition of dispositive motions").

The motion judge excused defendants for not filing their summary judgment motion with enough lead time to be disposed of within thirty days of the scheduled trial. We agree with the motion judge that there is ample "good cause" present here to justify the relaxation of the thirty-day interval. For one thing, because the trial notice issued from the Civil Division Office inexplicably preceded the arbitration notice, defendants were deprived of the customary predicate event of arbitration before a trial date was fixed. In addition, the October 27 trial date on the computer-generated notice apparently was not a feasible date, in light of the intervening arbitration and the motion judge's other [*9] trial commitments.

Moreover, because the thrust of defendants' summary judgment motion was based upon statutory immunities--legal protections that we agree control in this case--the motion judge recognized that "it doesn't make sense to ignore" those immunities in the pretrial phase. We agree with the motion judge that it would not have been sensible to require defendants, after the parties had gone through the expense and effort of preparing for trial, to delay their application for dispositive relief and preserve it in the form of a motion to dismiss on the first trial day.

Given the idiosyncratic scheduling of this case and the dispositive nature of defendants' statutory arguments, we concur with the motion judge that it was reasonable for the court to have considered the summary judgment motion on its merits on October 10, notwithstanding the normal thirty-day window called for under revised *Rule 4:46-1*. There was ample good cause to relax that requirement. *See also R. 1:1-2*. We therefore affirm the motion judge's procedural ruling.

III.

We now turn to the substance of defendants' motion. In doing so, we are mindful that our review on appeal of an order granting summary judgment is [*10] de novo, and that we must apply the same standards as the trial court under *Rule 4:46*. *See N.J. Div. of Taxation v. Selective Ins. Co., 399 N.J. Super. 315, 322, 944 A.2d 667 (App. Div. 2008)* (citing *Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167, 704 A.2d 597 (App. Div.), certif. denied, 154 N.J. 608, 713 A.2d 499 (1998)*).

Generally speaking, and subject to the TCA's specific immunity provisions, a public entity may be liable for injuries caused by a condition on its property if the plaintiff establishes:

> (1) that the property was in dangerous condition at the time of the injury;
>
> (2) that the injury was proximately caused by the dangerous condition;
>
> (3) that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred; and either
>
> (4) a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
>
> (5) a public entity had actual or constructive notice of the dangerous condition under *section 59:4-3* a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.
>
> [*See N.J.S.A. 59:4-2*; *see also Brown v. Brown, 86 N.J. 565, 575, 432 A.2d 493 (1981)*.]

A plaintiff must [*11] also demonstrate under *N.J.S.A. 59:4-2* that the public entity's conduct was "palpably unreasonable." *Ibid.; see also Muhammad v. N.J. Transit, 176 N.J. 185, 195, 821 A.2d 1148 (2003)*; *Kolitch v. Lindedahl, 100 N.J. 485, 493, 497 A.2d 183 (1985)*.

These liability-imposing principles are qualified in the TCA by specific immunities set forth, among other things, in *N.J.S.A. 59:4-8* and *N.J.S.A. 59:4-9*. Both of these immunities cover "unimproved" public property or waterways. Public property remains "unimproved" unless there has been

"substantial physical modification of the property from its natural state, and when the physical change creates hazards that did not previously exist and that require management by the public entity." *Troth v. State, 117 N.J. 258, 269-70, 566 A.2d 515 (1989)*. We agree with defendants that the Delaware River and the contiguous Park satisfy the definition of "unimproved" property.

More specifically, *N.J.S.A. 59:4-8* mandates that:

> Neither a public entity nor a public employee is liable for an injury caused by a condition of any *unimproved public property*, including but not limited to *any natural condition of any* lake, stream, bay, *river or beach*.
>
> [(Emphasis added).]

In like manner, *N.J.S.A. 59:4-9* provides a [*12] related immunity for injuries caused by the condition of unimproved portions of "submerged lands" and the "beds of navigable rivers":

> Neither a public entity nor a public employee is liable for any injury caused by a condition of the *unimproved and unoccupied portions of the* tidelands and *submerged lands, and the beds of navigable rivers*, streams, lakes, bays, estuaries, inlets and straits owned by the State.
>
> [(Emphasis added).]

As the motion judge aptly recognized, these statutory immunities clearly apply to the turbulent conditions of the Delaware River that allegedly caused Benjamin's drowning. As we have already noted, the river is "unimproved" property within the ambit of *N.J.S.A. 59:4-8*. Additionally, as defendants' supporting certifications establish without contradiction, the State of New Jersey and its governmental sub-units do not own or control the Delaware River itself beyond the waterline on the river bank. The immunity of *N.J.S.A. 59:4-8* is therefore clearly on point.

To the extent that Benjamin's drowning might have been produced, in part, by the condition of the river bed below the water itself, *N.J.S.A. 59:4-9* separately insulates defendants from liability for such a dangerous [*13] condition within "submerged lands." *N.J.S.A. 59:4-9* therefore provides an independent basis for immunity that is applicable here.

The motion judge found the Supreme Court's analysis of these TCA immunities in *Fleuhr, supra*, relevant to the present case, and so do we. In *Fleuhr*, a bodysurfer suffered a broken neck while swimming in the ocean off of the Jersey Shore. *159 N.J. at 534*. The plaintiff sued the City of Cape May under the TCA. He obtained an expert, who opined that, due to the presence of Hurricane Emily off of the Eastern Seaboard and the stronger waves that could be created by the storm, it was unreasonable for the City to not have a storm warning system in place. *Id. at 536*. The trial judge rejected the claim and granted summary judgment under *N.J.S.A. 59:4-8*. *Ibid.* Both this court and the Supreme Court affirmed that disposition.

The Supreme Court in *Fleuhr* emphasized the legislative commentary applicable to these particular statutory immunities involving natural and unimproved property. In that regard, the Legislature has declared that:

> [I]t is desirable to permit the members of the public to use public property in its natural condition and that the burdens and expenses of [*14] putting such property in a safe condition as well as the expense of defending claims for injuries would probably cause many public entities to close such areas to public use. In view of the limited funds available for the acquisition and improvement of property for recreational purposes, it is not unreasonable to expect persons who voluntarily use unimproved public property to assume the risk of injuries arising therefrom as part of the price to be paid for benefits received.
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> [*See id. at 540* (quoting Comment on *N.J.S.A. 59:4-9*).]

The legislative commentary also states:

> The exposure to hazard and risk involved is readily apparent when considering all the recreational and conservation uses made by the public generally of the [approximately 915,000] acreages, both land and water oriented. Thus, in *sections 59:4-8* and *59:4-9* a public entity is provided an absolute immunity irrespective of whether a particular condition is a dangerous one.
>
> [*Ibid.* (citing Comment on *N.J.S.A. 59:4-8* and *N.J.S.A. 59:4-9*).]

Plaintiff insists that these long-standing immunities should not apply here because defendants' actions and inactions were "palpably unreasonable." Among other things, plaintiff highlights the [*15] testimony of Garcia, the Park ranger, acknowledging that he would typically "find swimmers just about every day" in the river at certain times of the year. Plaintiff also points to statements in the record from Thomas C. Keck, a Regional Superintendent within the State Park Service, conceding that the upper portion of the Delaware River contains "swift currents" and that the location is a "very unsafe place to swim." These assertions are insufficient, however, to overcome the clear immunities mandated by the TCA. The hazards described by the witnesses are inherent in the Delaware River itself, an unimproved and natural

condition. [5]

Plaintiff cites to *Aversano v. Palisades Interstate Parkway Comm'n, 180 N.J. 329, 851 A.2d 633 (2004)*, for the proposition that TCA immunity may be abrogated where a public entity's [*16] liability can be asserted under a separate provision in the TCA. In *Aversano*, a young man was sunbathing at the Palisades Interstate Park when he fell backwards off a three-hundred-foot cliff. *Id. at 330*. Emergency personnel assumed that the man could not have survived the fall. *Ibid.* Rather than beginning a "rescue" operation, they instituted a "recovery" operation. *Ibid.* However, when the emergency crew finally reached the young man, three hours after his fall, he still had a pulse and was moaning. *Ibid.* He died two hours later. *Id. at 331*.

The trial court concluded in *Aversano* that the defendants involved in the emergency operation were immune from liability under *N.J.S.A. 59:4-8*. We reversed, holding that the unimproved-property immunity of *N.J.S.A. 59:4-8* did not eliminate the defendants' exposure to liability for the reduction in the young man's "chances of survival that might have been caused by defendants' alleged negligence in undertaking a proper rescue." *Ibid.* The Supreme Court adopted our reasoning and affirmed. *Ibid.*

Aversano is clearly distinguishable from the present case. In that case, it was the failure of emergency personnel to properly respond to the decedent's fall, [*17] not the condition of the property, that supported plaintiff's theory of liability.

Plaintiff faults defendants for not stationing lifeguards or other supervisory personnel at the Park who hypothetically might have been able to intercede and rescue her husband from the river current. However, *N.J.S.A. 59:2-7* plainly states that:

> A public entity is not liable for the failure to provide supervision of public recreational facilities; provided, however, that nothing in this section exonerates a public entity for failure to protect against a dangerous condition as provided in Chapter 4 [of *Title* 59].

Moreover, a companion provision, *N.J.S.A. 59:3-11*, immunizes public employees from liability for "failure to provide supervision of public recreational facilities," unless such supervision is affirmatively provided in a negligent manner. *Ibid.*

This is not a situation in which supervision of bathers in the river was supplied by defendants but negligently implemented. It is undisputed that no supervision whatsoever was provided. Indeed, the record contains a photograph of a sign posted on a gate entering the Park advising the public that swimming in the Delaware River was prohibited. Sadly, for reasons [*18] that may never be known, the decedent did not either perceive or heed those warnings.

For these many reasons, the defendants are immunized from liability in this case. We recognize that the outcome is a harsh one for decedent's family. Even so, it is not our function to second-guess the clear policy choices made by the Legislature within the terms of the TCA. *See Posey v. Bordentown Sewerage Auth., 171 N.J. 172, 181-83, 793 A.2d 607 (2002)* (noting that under the TCA, "immunity is the rule and liability is the exception").

Affirmed.

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[5] Plaintiff's reliance upon an unpublished river drowning case litigated in New York, *Cohen v. New York, 5 Misc. 3d 1144[A], 841 N.Y.S.2d 819, 2007 NY Slip Op 51135[U] [N.Y. Ct. Cl. 2007]*, in which summary judgment was denied to the public entity defendants, is unavailing. The unpublished decision is not precedential and did not, of course, involve the sovereign immunities legislatively established in New Jersey in the TCA. *See R. 1:36-3*.

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