

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**DELITA SHERMANE BURRIS, AS
ADMINISTRATRIX AD PROSEQUENDUM
OF THE ESTATE OF MICHAEL ANTHONY
BURRIS, AND ON HER OWN BEHALF**

AND

**DELITA SHERMANE BURRIS, GUARDIAN
OF MAI'LYIA BURRIS, A MINOR**

AND

**DELITA SHERMANE BURRIS, GUARDIAN
OF MIHANNA BURRIS, A MINOR**

406 E. Broad St., Apt. B
Millville, NJ 08332

Plaintiffs

Civil Action No.

v.

JURY TRIAL DEMANDED

**MILLVILLE POLICE DEPARTMENT
DEPARTMENT OF PUBLIC SAFETY,
CITY OF MILLVILLE**

12 South High Street
Millville, New Jersey 08332

AND

CITY OF MILLVILLE

12 South High Street
Millville, New Jersey 08332

AND

**JOHN BUTSCHIKY, INDIVIDUALLY AND
IN HIS OFFICIAL CAPACITY AS A
MILLVILLE POLICE OFFICER**

12 South High Street
Millville, New Jersey 08332

AND

**ROSS HOFFMAN, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY AS A
MILLVILLE POLICE OFFICER**

12 South High Street
Millville, New Jersey 08332

AND

**EDWIN ANSARA, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY AS A
MILLVILLE POLICE OFFICER**

12 South High Street
Millville, New Jersey 08332

AND

**WILLIAM STADNICK III, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS A
MILLVILLE POLICE OFFICER**

12 South High Street
Millville, New Jersey 08332

AND

**JULIO PUMAREJO, INDIVIDUALLY AND
IN HIS OFFICIAL CAPACITY AS A
MILLVILLE POLICE OFFICER**

12 South High Street
Millville, New Jersey 08332

AND

UNDERWOOD MEMORIAL HOSPITAL

509 North Broad Street
Woodbury, New Jersey 08096

AND

**UNDERWOOD-MEMORIAL HOSPITAL
MOBILE INTENSIVE CARE UNIT**

3004 S Main Road
Vineland, NJ 08360

AND

**TROY PAYEUR, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY AS AN
UNDERWOOD-MEMORIAL HOSPITAL
RESPONDER**

16 Pleasant Drive
Bridgeton, NJ 08302

AND

**ROBERT SMITH, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY AS AN
UNDERWOOD-MEMORIAL HOSPITAL
RESPONDER**

135 Hogbin Road
Millville, NJ 08332

AND

**MILLVILLE RESCUE SQUAD, INC., d/b/a
and/or MILLVILLE RESCUE SQUAD**

600 Cedar Street
Millville, New Jersey 08332

AND

**CHARLES BENNETT, JR, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS A
MILLVILLE RESCUE SQUAD
RESPONDER**

115 Smith Road
Millville, New Jersey 08332

AND

**KAREN MORENO, INDIVIDUALLY AND
IN HER OFFICIAL CAPACITY AS A
MILLVILLE RESCUE SQUAD
RESPONDER**

804 East Broad Street
Millville, New Jersey 08332

AND

**ERIC STORMES, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY AS A
MILLVILLE RESCUE SQUAD
RESPONDER**

502 Ireland Avenue
Millville, New Jersey 08332

AND

**SHERIE COOMBS, INDIVIDUALLY AND
IN HER OFFICIAL CAPACITY AS AN
MILLVILLE RESCUE SQUAD OBSERVER**

48 Ramah Road
Bridgeton, NJ 08302

AND

DHS SYSTEMS, LLC

33 Kings Highway
Orangeburg, New York 10962

AND

DHS SYSTEMS, CORP.

33 Kings Highway
Orangeburg, New York 10962

AND

DHS TECHNOLOGIES, LLC

c/o CT Corporation Systems
111 Eighth Avenue
New York, New York 10011

AND

DHS INTERNATIONAL, LLC

33 Kings Highway
Orangeburg, New York 10962

AND

**REEVES EMERGENCY MANAGEMENT
SYSTEMS, LLC**

4510A Metropolitan Court
Frederick, Maryland 21704

AND

REEVES MANUFACTURING, INC.

4510A Metropolitan Court
Frederick, Maryland 21704

AND

ABC CORPORATIONS 1-10

(names being fictitious and unknown)

Defendants

CIVIL ACTION COMPLAINT

1. This Court has jurisdiction over Plaintiffs' claims pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1331, as these claims arise under the Constitution and the Laws of the United States.

2. Venue is proper under 28 U.S.C. §1391(b) because the causes of action upon which the Complaint is based arose in Cumberland County, New Jersey which is in the District of New Jersey.

3. Counsel for Plaintiffs hereby certifies that the damages recoverable in this civil action exceed the sum of \$150,000, exclusive of interest and costs.

4. Plaintiff Delita Shermane Burris, as Administratrix Ad Prosequendum of the Estate of Michael Anthony Burris, and on her own Behalf, was the wife of Mr. Burris, and is an adult individual and citizen of New Jersey, residing at the above captioned address.

5. Plaintiff Delita Shermane Burris, Guardian of Mai'lyia Burris, a Minor, and Mihanna Burris, a Minor, is the Mother of Mai'lyia and Mihanna, who were daughters of Mr. Burris and who at all relevant times lived with Mrs. Burris and Mr. Burris before his death at the above captioned address.

6. This action is commenced within two (2) years of Michael Anthony Burris' major, catastrophic injury of July 31, 2010, that resulted in his death on the same day.

7. Defendant, Millville Police Department, Department of Public Safety, City of Millville ("Millville Police Department"), is a public entity organized and existing under the laws of New Jersey with Administrative Offices at 12 South High Street, Millville, New Jersey 08332.

8. Defendant The City of Millville ("Millville"), is a municipality organized under the laws of New Jersey with Administrative Offices located at 12 South High Street, Millville, New Jersey 08332.

9. John Butschky is sued in his official capacity, and individually, and at all relevant times was a law enforcement officer with the Millville Police Department, with Administrative Offices at 12 South High Street, Millville, New Jersey 08332.

10. Ross Hoffman is sued in his official capacity, and individually, and at all relevant times was a law enforcement officer with the Millville Police Department, with Administrative Offices at 12 South High Street, Millville, New Jersey 08332.

11. Edwin Ansara is sued in his official capacity, and individually, and at all relevant times was a law enforcement officer with the Millville Police Department, with Administrative Offices at 12 South High Street, Millville, New Jersey 08332.

12. William Stadnick III is sued in his official capacity, and individually, and at all relevant times was a law enforcement officer with the Millville Police Department, with Administrative Offices at 12 South High Street, Millville, New Jersey 08332.

13. Julio Pumarejo is sued in his official capacity, and individually, and at all relevant times was a law enforcement officer with the Millville Police Department, with Administrative Offices at 12 South High Street, Millville, New Jersey 08332.

14. Defendant, Underwood-Memorial Hospital, is a non-profit entity organized and existing under the laws of New Jersey with its headquarters or public address at 509 North Broad Street, Woodbury New Jersey 08096.

15. Defendant, Underwood-Memorial Hospital Mobile Intensive Care Unit, is a non-profit entity organized and existing under the laws of New Jersey with its headquarters or public address at 3004 S Main Rd, Vineland, NJ 08360.

16. Defendants Underwood-Memorial Hospital and Underwood-Memorial Hospital Mobile Intensive Care Unit are hereafter collectively referred to as "Underwood."

17. Troy Paycur is sued in his official capacity, and individually, and at all relevant times was a Responder with Underwood, with its headquarters or public address at 509 North Broad Street, Woodbury New Jersey 08096.

18. Robert Smith is sued in his official capacity, and individually, and at all relevant times was a Responder with Underwood, with its headquarters or public address at 509 North Broad Street, Woodbury New Jersey 08096.

19. Defendant, Millville Rescue Squad, Inc, d/b/a and/or Millville Rescue Squad ("Millville Rescue"), is a non-profit entity organized and existing under the laws of New Jersey with its headquarters or public address at 600 Cedar Street, Millville New Jersey 08332.

20. Charles Bennett, Jr. is sued in his official capacity, and individually, and at all relevant times was a Responder with Millville Rescue, with its headquarters or public address at 600 Cedar Street, Millville New Jersey 08332.

21. Karen Moreno is sued in her official capacity, and individually, and at all relevant times was a Responder with Underwood-Memorial Hospital, with its headquarters or public address at 600 Cedar Street, Millville New Jersey 08332.

22. Eric Stormes is sued in his official capacity, and individually, and at all relevant times was a Responder with Underwood-Memorial Hospital, with its headquarters or public address at 600 Cedar Street, Millville New Jersey 08332.

23. Sherrie Coombs is sued in her official capacity, and individually, and at all relevant times was an observer with the Millville Rescue Squad, with its headquarters or public address at 600 Cedar Street, Millville New Jersey 08332.

24. Defendant, DHS Systems, LLC, is a corporation organized and existing under the laws of New York with its headquarters or principal place of business at 33 Kings Highway, Orangeburg, New York 10962.

25. Defendant, DIIS Systems, Corp., is a corporation organized and existing under the laws of New York with its headquarters or principal place of business at 33 Kings Highway, Orangeburg, New York 10962.

26. Defendant, DHS Technologies, LLC, c/o CT Corporations Systems, is a corporation organized and existing under the laws of Delaware with its headquarters or principal place of business at 111 Eighth Avenue, New York, New York 10011.

27. Defendant, DHS International, LLC, is a corporation organized and existing under the laws of New York with its headquarters or principal place of business at 33 Kings Highway, Orangeburg, New York 10962.

28. The entities described in Paragraphs 10-13 are hereinafter collectively referred to as "DIIS."

29. Defendant, Reeves Emergency Management Systems, LLC, and/or Reeves Manufacturing, Inc. ("Reeves"), are corporations organized and existing under the laws of Delaware with headquarters or principal places of business at 4510A Metropolitan Court, Frederick, Maryland 21704.

30. Defendants, ABC Corporations 1-5 fictitious name for manufacturer and/or distributor of Reeves Stretcher, are fictitious corporations and are the manufacturer and/or distributor of the Reeves Stretcher used to transport Decedent Michael Burris prior to his death.

31. Defendants, ABC Corporations 6-10 fictitious name for entities employing and/or providing training services to first responders, are fictitious names and are the entities that employed and/or trained the police, emergency medical technicians, paramedics, and other

emergency service personnel who responded to 406 E. Broad Street, Apt. B, Millville, New Jersey 08332 on July 31, 2010, prior to Decedent Michael Burris' death.

32. At all times relevant and material hereto, Defendants have carried out, and continue to carry out, substantial, continuous and systematic business activities in New Jersey and have purposely established significant contacts within New Jersey.

33. The injuries and damages alleged in this lawsuit arise out of, and are related to, Defendants' contacts and activities in New Jersey.

34. At all relevant times, Defendants were acting by and through their employees, servants, agents, workmen, and staff, all of whom were acting within the course and scope of their employment, for and on behalf of the Defendants.

35. At all relevant times, all or some of the above named Defendants have or have had successor corporation liability as to the liabilities of one or more of the other above named Defendants.

36. An initial Notice of Tort Claim was properly served and received on the required Defendants.

37. More than six months have elapsed since the service of plaintiff's Notice of Claim and the claim remains unsatisfied.

38. On or about July 31, 2010, Decedent, Michael Burris, was at his 406 E. Broad Street, Apt. B, Millville, New Jersey 08332, with his aforementioned family, as well as his friend Jarmar Parker, and Mr. Parker's minor daughter.

39. At that time and place, on the outside deck of his home, Mr. Burris unexpectedly fell to the ground and began to convulse.

40. At that time, 911 was called.

41. Members of Millville Rescue, including but not limited to Emergency Medical Technicians Eric Stormes and Karen Moreno, and observer Sherrie D. Coombs, were the first responders to arrive at the residence.

42. Members of Underwood, including but not limited to Paramedics Troy Payeur and Robert Smith, arrived at the residence after the Millville Rescue EMTs.

43. Members of the Millville Police Department, working for Millville, including but not limited to Sergeant Ross Hoffman, Patrolman John Butschky, Patrolman Edwin Ansara, Patrolman William Stadnick, and Patrolman Julio Pumarejo, arrived at the residence after Millville Rescue and Underwood responders.

44. Captain Charles Bennett, Jr. of Millville Rescue also responded to the residence after members of Millville Police, Millville Rescue and Underwood responders.

45. Four police cars responded to the Burris residence on July 31, 2010, prior to Mr. Burris' placement in an ambulance.

46. Some or all of the officers and responders listed above were physically larger than Decedent.

47. While some or all of the responders were present at the Burris residence, Mr. Burris was conscious and refused medical attention.

48. Some or all of the responders were aware that Mr. Burris refused medical attention.

49. While within the Burris residence, Paramedic Troy Payuer forced the Decedent onto his stomach on his couch and kneeled on his back to restrain him.

50. In an attempt to restrain Decedent while he was seated on the deck of his residence, Patrolman Pumarejo grabbed Decedent's right hand and arm, and turned Decedent onto his back.

51. Despite refusing medical attention, Mr. Burris was handcuffed, arms behind back, with two handcuffs, by some or all of the aforementioned responders.

52. Despite refusing medical attention, Mr. Burris' legs were shackled, by some or all of the aforementioned responders.

53. Patrolman Pumarejo handcuffed Decedent.

54. Patrolmen Butschky and Stadnick, and Sergeant Hoffman assisted in shackling Decedent's legs.

55. Despite refusing medical attention, Mr. Burris was placed on a Reeves stretcher, in the prone, or face down, position, and restrained with straps, while handcuffed and shackled.

56. Upon information and belief, the Reeves stretcher came from the Millville Rescue's vehicle.

57. Upon information and belief, four medical and police personnel transported Decedent down a set of stairs, while Decedent was constrained by handcuffs and shackles, in the prone position, and strapped into the Reeves Stretcher.

58. Prior to placing Decedent in an ambulance, Sergeant Hoffman advised police and medical personnel to be aware of the risk of positional asphyxia.

59. Responders kneeled on or otherwise physically restrained Decedent, while he was also handcuffed, shackled, constrained by the Reeves stretcher, and in the prone position.

60. Transportation and restraint of an individual in the prone position is a violation of numerous New Jersey protocols.

61. *N.J.A.C. 8:40-4.10(c)* states the following:

Physical behavioral restraints shall not be of a type, or utilized in a manner, that causes undue physical discomfort, harm or pain to a patient. Hard restraints, such as handcuffs, are specifically prohibited unless the law enforcement officer who applied the hard restraints or handcuffs personally accompanies the patient. A patient placed in any type of restraint shall be closely monitored to ensure that his or her airway is not compromised in any way. In no circumstance shall a patient be placed prone (that is, face-down) on a stretcher while in restraints.

62. In 1996, a training memorandum was issued by Millville Police regarding the dangers of positional asphyxia.

63. One or more of the four Millville Police officers who responded to the scene of the incident were graduates of the Cape May County Police Academy, one of twenty-seven regional training sites for the Federal Law Enforcement Training Center of the U.S. Department of Homeland Security, which qualifies candidates for certification from the New Jersey Police Training Commission.

64. The Police Training Commission Lesson Plan mentions Positional Asphyxia in functional area 9, section 9.5.10, where it instructs officers that subjects should be transported in the upright position, to avoid positional asphyxia.

65. Placing Mr. Burris in the prone, or face down, position, violated the requirements of *N.J.A.C. 8:40-4.10(c)*.

66. No member of Millville Rescue checked Decedent's ability to breathe while on the second floor.

67. No member of Millville Rescue checked Decedent's ability to breathe while Decedent was transported down the stairs.

68. No member of Underwood checked Decedent's ability to breathe while on the second floor.

69. No member of Underwood checked Decedent's ability to breathe while Decedent was transported down the stairs.

70. No member of Millville Police Department or Millville checked Decedent's ability to breathe while on the second floor.

71. No member of Millville Police Department or Millville checked Decedent's ability to breathe while Decedent was transported down the stairs.

72. While restrained on the Reeves Stretcher, Mr. Burris reported to the personnel present that he could not breathe.

73. One or more of the responders replied to Decedent that if he could talk, he could breathe.

74. Mr. Burris died on July 31, 2010 from the inability to breathe, and from positional asphyxiation.

75. As a direct and proximate result of the actions taken in bad faith, the willful and/or wanton misconduct, the palpably unreasonable conduct, the intentional misconduct, and/or the negligent, grossly negligent, reckless, and other liability producing conduct of Defendants, and/or due to their wanton and willful disregard for the safety of Michael Burris, decedent Mr. Burris suffered severe and permanent injuries, endured great pain and suffering, and eventually died from injuries and positional asphyxiation on July 31, 2010. Mr. Burris was forced to sustain grievous and painful injuries including, but not limited, to: asphyxiation, loss of blood, traumatic shock, and severe emotional distress.

76. All the paramedics and emergency medical technicians who responded to the scene on July 31, 2010 had their licenses suspended as a result of their actions in treating Michael Burris.

77. The Medical Examiner's final autopsy report of October 27, 2010 listed Michael Burris' Final Cause of Death as Positional Asphyxia.

78. The Medical Examiner's final autopsy report of October 27, 2010 listed Michael Burris' Final Manner of Death as Homicide.

79. The Medical Examiner's final autopsy report of October 27, 2010 listed Michael Burris' Circumstances of Death as "Deceased was secured in a prone position."

80. The toxicology report confirmed that Decedent Michael Burris had no alcohol or illegal drugs or substances in his system at the time of his death.

81. As of March 9, 2012, a criminal investigation was pending against all or some of the Defendants and/or their agents, employees, and/or servants.

82. Defendants acted with willful and/or wanton disregard for the safety of Plaintiffs and Plaintiffs' Decedent, throughout their activities at and around the Burris residence on July 31, 2010.

83. Defendants understood that their actions posed dangerous risks.

84. At all relevant times, Defendants did not act reasonably.

85. At all relevant times, Defendants did not act in good faith.

86. At all relevant times, Defendants failed to act to the level of standard of care required of each and all of them.

87. Defendants acted without regard for the dangerous risks and serious consequences of their actions.

88. Defendants deviated from standard operating protocols and procedures, including techniques and procedures authorized by the New Jersey Commissioner of Health, which led to harmful results.

89. Defendants have systematically failed to conform to standards and procedures for safe and proper transport of individuals and/or patients.

COUNT I - WRONGFUL DEATH
PLAINTIFFS V. ALL DEFENDANTS

90. All preceding paragraphs are incorporated here by reference.

91. Plaintiffs, on behalf of the Estate of Michael Anthony Burris and on their own behalf, bring this action on behalf of the Decedent's next of kin/statutory beneficiaries against Defendants for wrongful death.

92. Decedent, Michael Anthony Burris, is survived by his wife, Delita Shermane Burris, and minor daughters, Mai'lyia Burris (D/O/B 9/21/2008) and Mihanna Burris (D/O/B 5/22/2010).

93. No action for damages was brought by or on behalf of Michael Anthony Burris during his lifetime as a result of the incident at issue in this case.

94. Plaintiffs, on behalf all persons entitled to recover under law, claim all medical, funeral, burial, and estate administration expenses, the loss of services, society, comfort, guidance and tutelage due to the death of Michael Anthony Burris, all pecuniary loss suffered by Decedent's next of kin/statutory beneficiaries by reason of the death of Michael Anthony Burris and all other damages recoverable under applicable law.

WHEREFORE, Plaintiffs demand judgment against the Defendants for such damages as may be permitted pursuant to applicable law, together with interest, costs and attorney's fees.

COUNT II - SURVIVAL
PLAINTIFFS V. ALL DEFENDANTS

95. All preceding paragraphs are incorporated here by reference.

96. Plaintiffs, on behalf of the Estate of Michael Anthony Burris, bring this action under the New Jersey Survival Act and claim all benefits of the Survival Act or law governing the survival of actions.

97. Plaintiffs, on behalf of the Estate of Michael Anthony Burris, claim all damages suffered by the Estate by reason of the death of Michael Anthony Burris, including without limiting the generality of the foregoing: damages for the anxiety, fear, serious injuries, the great and unspeakable conscious pain and suffering, both physical and emotional, and other intangible losses which Michael Anthony Burris underwent prior to his death; the loss of life and of life's pleasures, the loss of future earning capacity suffered by Michael Anthony Burris from the date of his death until the time in the future that he would have lived had he not died as a result of the injuries he sustained; and the total limitation and deprivation of Michael Anthony Burris' normal activities, pursuits, and pleasures from the date of his death until such time in the future as he would have lived had he not died as a result of the injuries sustained by reason of the negligence and other liability-producing conduct of the Defendants.

WHEREFORE, Plaintiffs demand judgment against the Defendants for such damages as may be permitted pursuant to applicable law, together with interest, costs and attorney's fees.

COUNT III - NEGLIGENCE

**PLAINTIFFS V. MILLVILLE POLICE DEPARTMENT,
DEPARTMENT OF PUBLIC SAFETY, CITY OF MILLVILLE, THE CITY OF
MILLVILLE, JOHN BUTSCHKY, ROSS HOFFMAN, EDWIN ANSARA, WILLIAM
STADNICK III, JULIO PUMAREJO & ABC CORPORATIONS 6-10**

98. All preceding paragraphs are incorporated here by reference.

99. On July 31, 2010, Defendants undertook response services at the late Mr. Burris' residence.

100. Defendants had a duty to act reasonably in the response services and evaluation of Decedent.

101. At the time and place aforesaid, the Defendants had knowledge that the Decedent had refused medical attention.

102. Despite this knowledge, the responders on site proceeded to physically restrain Mr. Burris, handcuff Mr. Burris, shackle his legs, and place him face down in the prone position on a Reeves Stretcher.

103. Defendants breached their duties, by and through their agents, servants, workers and/or employees and were jointly and severally careless, negligent, grossly negligent and/or reckless as follows:

- a. failure to provide and afford careful care and response services to Decedent, as evidenced by the clear failure to abide by New Jersey Code requirements that prohibit placing an individual face down, in the prone position, on a stretcher;
- b. failure to provide and afford careful care and response services to Decedent, as evidenced by the failure to recognize the potential harm

- and safety concerns related to the potential asphyxiation when an individual is placed in the prone position on a stretcher;
- c. failure to conform with accepted standards of care for the transport of an individual, as evidenced by the inappropriate use of the stretcher in lieu of an acceptable and safe transfer device;
 - d. allowing Decedent to asphyxiate after notice that the Decedent was having trouble breathing while in the prone position; and
 - e. providing care and response services to Decedent which were below the standard of care in the community, as aforementioned above, increasing the risk of harm to Decedent's well-being.
 - f. failing to identify unreasonable hazards and unseen dangerous conditions;
 - g. failing to employ and select only qualified and competent individuals to offer care and response services;
 - h. failing to provide proper training to its employees regarding proper transportation techniques;
 - i. failing to uncover dangerous conditions of the stretcher during routine inspections of the same;
 - j. failing to notice that the subject stretcher lacked required and necessary warnings and safeguards for safe and proper use;
 - k. using deadly force;
 - l. using excessive force and/or physical brutality;
 - m. failing to properly notice or observe unsafe practices with respect to the use of the stretcher;
 - n. failing to identify and correct unsafe practices with respect to the use of the stretcher, acting against Decedent's consent;
 - o. acting against Decedent's life and liberty interests
 - p. violating Decedent's Constitutional Rights
 - q. violating Decedent's Federal Rights
 - r. choosing not to turn Decedent face up, or out of the prone position
 - s. choosing not to direct personnel to remove Decedent from the prone position;

- t. failing to properly train and supervise its employees;
- u. choosing not to radio or instruct another officer or unit for assistance in moving Decedent;
- v. willfully ignoring impending harm to the Decedent when Decedent cried and screamed for help;
- w. failing to properly recognize a medical emergency;
- x. failing to provide Decedent with medical assistance;
- y. failing to properly involve medical emergency services;
- z. refusing to discontinue bringing Decedent down the stairs on the stretcher, face down in the prone position despite Decedent's dire medical condition;
- aa. failing to have appropriate policies and measures in place for recognizing medical emergencies;
- bb. failing to have appropriate policies and measures in place for responding to medical emergencies; and
- cc. failing to have appropriate policies and measures in place for contacting appropriate medical emergency services.

104. By reason of the negligent, grossly negligent, reckless, and other liability producing conduct of Defendants and their wanton and willful disregard for the safety of Michael Burris, as aforesaid, Decedent was caused to sustain the serious and permanent personal injury and death, as set forth above.

105. By conducting themselves as set forth above, Defendants' acts and/or omissions were substantial factors in, a factual cause of, and/or increased the risk of Decedent's injuries and death.

WHEREFORE, Plaintiffs demand judgment against the Defendants for such damages as may be permitted pursuant to applicable law, together with interest, costs and attorney's fees.

COUNT IV - 42 U.S.C. § 1983

**PLAINTIFFS V. MILLVILLE POLICE DEPARTMENT,
DEPARTMENT OF PUBLIC SAFETY, CITY OF MILLVILLE, THE CITY OF
MILLVILLE, JOHN BUTSCHKY, ROSS HOFFMAN, EDWIN ANSARA, WILLIAM
STADNICK III, JULIO PUMAREJO & ABC CORPORATIONS 6-10**

106. All preceding paragraphs are incorporated here by reference.

107. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 that challenges the constitutionality of the actions of the Millville Police Department, Department of Public Safety, City of Millville and The City of Millville and other officials that resulted in the injuries suffered by Plaintiffs and Plaintiffs' Decedent.

108. Defendants Millville Police Department, Department of Public Safety, City of Millville & City of Millville are state actors as defined in 42 U.S.C. § 1983.

109. All acts taken by Defendants Millville Police Department, Department of Public Safety, City of Millville and The City of Millville were taken under color of law as defined by 42 U.S.C. § 1983, were under the pretense and color of law in their official capacity, and under the pretense of the statutes, ordinances, policies, practices, customs, regulations and/or usages of the Millville Police Department, Department of Public Safety, City of Millville and The City of Millville and/or the State of New Jersey.

110. At all times mentioned herein and material hereto, the Decedent possessed a liberty interest in the freedom from unwanted invasion of his bodily integrity, which right is secured under the 4th and 14th Amendments to the Constitution of the United States, and by Title 42, United States Code, §1983.