

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JEANNE PHILLIPS, Administrator
of the Estate of Mark Phillips,
deceased,

CIVIL ACTION

No.

Plaintiff,

v.

COUNTY OF ALLEGHENY,
NORTHWEST REGIONAL
COMMUNICATIONS, ALLEGHENY
COUNTY 9-1-1 f/k/a NORTHWEST
REGIONAL COMMUNICATIONS,
DANIEL NUSSBAUM, DANIELLE
TUSH, BRIAN CRAIG, LEONARD
DEUTSCH, RYAN GING, SUSAN
ZURCHER, and PHILLIP CESTRA,

Defendants.

obtained and prepared by:

www.911Dispatch.com

JURY TRIAL DEMANDED

CIVIL COMPLAINT

Plaintiff, Jeanne Phillips, Administratrix of the Estate Mark Phillips, deceased, by and through her attorneys, Ogg, Cordes, Murphy & Ignelzi, LLP, files this civil complaints seeking relief for the death of Mark Phillips. In support thereof, Plaintiff alleges the following:

A. The Parties

1. The Plaintiff's decedent is Mark Phillips ("Phillips"), who, at the time of his death, resided at 633 Edwards Drive, Carnegie, Pennsylvania, within the Western District of Pennsylvania.
2. Plaintiff, Jeanne Phillips, is the biological mother, and a surviving parent of Phillips, who, at the time his death, and presently, resides at 633 Edwards Drive, Carnegie, Pennsylvania, within the Western District of Pennsylvania.
3. On February 22, 2005, Jeanne Phillips was appointed Administratrix of the Estate

of Mark Phillips, deceased, by the Register of Wills of Allegheny County, Pennsylvania, at No. 020402495 of 2004.

4. Defendant, County of Allegheny (“Allegheny County”), is a political subdivision of the Commonwealth of Pennsylvania. Its principal place of business is 436 Grant Street, Pittsburgh, Pennsylvania, within the Western District of Pennsylvania.

5. Defendant, Northwest Regional Communications (“Northwest”), is a corporation established and operated as an emergency/911 call and dispatch center for the benefit of residents of the County of Allegheny. Northwest had a place of business at 9955 Grubbs Road, Wexford, Pennsylvania, within the Western District of Pennsylvania and now is located at 400 North Lexington Street, Pittsburgh, Pennsylvania.

6. Defendant, Allegheny County 9-1-1 f/k/a Northwest Regional Communications (“Allegheny 911”), is a political subdivision of the Commonwealth of Pennsylvania. Allegheny County 911 has a place of business at 400 North Lexington Street, Pittsburgh, Pennsylvania, within the Western District of Pennsylvania.

7. At all relevant times, Defendants, Allegheny County, Northwest and Allegheny 911, acted through its agents and employees.

8. Defendant, Daniel Nussbaum (“Nussbaum”), at all relevant times, was the Communications Director for and employed by Allegheny County, Northwest and/or Allegheny 911 (hereinafter collectively referred to as the “911 Call Center”) and therefore is a state actor. He is sued in his individual capacity.

9. Defendant, Danielle Tush (“Tush”), at all relevant times, was a dispatcher employed by the 911 Call Center, and therefore is a state actor. She is sued in her individual capacity.

10. Defendant, Brian Craig (“Craig”), at all relevant times, was a dispatcher employed

by 911 Call Center, and therefore is a state actor. He is sued in his individual capacity.

11. Defendant, Leonard Deutsch (“Deutsch”), at all relevant times, was a dispatcher employed by 911 Call Center, and therefore is a state actor. He is sued in his individual capacity.

12. Defendant, Ryan Ging (“Ging”), at all relevant times, was a dispatcher employed by the 911 Call Center, and therefore is a state actor. He is sued in his individual capacity.

13. Defendant, Susan Zurcher (“Zurcher”), at all relevant times, was a dispatcher employed by the 911 Call Center, and therefore is a state actor. She is sued in her individual capacity.

14. Defendant, Phillip Cestra (“Cestra”), at all relevant times, was a dispatcher employed by the 911 Call Center, and therefore is a state actor. He is sued in his individual capacity.

15. At all relevant times, Defendants Allegheny County, Northwest, Allegheny 911, Nussbaum, Tush, Craig, Deutsch, Ging, Zurcher and Cestra were state actors and acting under the color of law.

B. Jurisdiction

16. This action arises under 42 U.S.C. §1983, and this Court has jurisdiction pursuant to 28 U.S.C. §1331 and §1343 and supplemental jurisdiction over related state law claims pursuant to 28 U.S.C. §1367.

C. Facts

17. On October 12, 2003, Michael Michalski (“Michalski”), a dispatcher and employee of the 911 Call Center, used his position to surreptitiously gain access to and obtain unauthorized information.

18. Specifically, Michalski ran multiple searches of computer networks and databases available to him in an attempt to locate the whereabouts of his former girlfriend, Gretchen Federbar

(“Ferderbar”) and her current boyfriend, Phillips.

19. By October 19, 2003, Nussbaum, Michalski’s supervisor, was aware of Michalski’s actions. As a result of Michalski’s improper and unauthorized accessing of personal information, Michalski was given a deferred, one-week suspension, to take effect on October 27, 2003.

20. At the time Nussbaum suspended Michalski, Michalski informed Nussbaum that other dispatchers were also engaging in the widespread practice of the unauthorized access of people’s personal information using the 911 Call Center’s computer networks and databases.

21. On October 26, 2003, and the day before his suspension was to take effect, Michalski, unmonitored, and again, through unauthorized means, conducted searches of the 911 Call Center’s computer networks and databases available to him to gain access to personal information regarding Phillips.

22. Specifically, Michalski ran information regarding Phillips’ motor vehicle and license plates registration in an effort to track and locate Phillips whereabouts.

23. In the late evening of October 28, 2003 and the early morning of October 29, 2003, while on suspension, Michalski made their numerous telephone calls to the 911 Call Center, speaking with co-workers and fellow dispatchers, Tush and Craig.

24. During those occasions, Michalski requested information that would assist him in locating Phillips.

25. Specifically, Michalski asked for assistance in locating Phillips’ residence and the telephone number for his address.

26. Defendants Tush and Craig, assisted Michalski knowing that they were accessing unauthorized personal information that had absolutely no relationship to their function as dispatchers and a 9-1-1 emergency call center.

27. At all relevant times, Defendants were aware that the relationship between Federbar and Michalski had recently ended and that Michalski was distraught over this.

28. At all relevant times, Defendants were not only aware of Michalski's distress, but that his distress was the impetus and cause of him accessing unauthorized information that resulted in his suspension.

29. Knowing the above, Defendants also knew or should have know that the target of Michalski's inquiry was Phillips, Federbar's present boyfriend.

30. Further, the only, reasonable, foreseeable consequence of Michalski wanting to track down and locate Phillips was to subject him to harm.

31. The next morning, October 29, 2003, Federbar contacted Defendant Nussbaum informing him that Michalski, using his position as a dispatcher, had accessed the 911 Call Center's computer system for information enabling him to track and locate her and Phillips at Phillips' residence.

32. Defendant Nussbaum confirmed that Michalski improperly accessed information regarding Mark Phillips.

33. That same morning, Michalski appeared at the 911 Call Center's facility and met with Nussbaum.

34. At that time, Nussbaum confronted Michalski regarding his repeated, unauthorized use of the 911 Call Center's computer systems. Michalski admitted to Nussbaum his use of the 911 Call Center's computer systems to gain access to unauthorized information regarding Mark Phillips.

35. At this meeting, Nussbaum terminated Michalski's employment.

36. Recognizing Michalski's volatile appearance and concerned Michalski may commit a violent act, Nussbaum placed two telephone calls. He either left a voicemail message on

Federbar's cell phone warning her to be careful and watch out for Michalski or warned her directly. Nussbaum made a similar telephone call to the McCandless Township Police Department notifying them of Michalski's propensity.

37. Despite recognizing that Michalski was likely to engage in violence and knowing that Michalski's had used the 911 Call Center's computer system and databases to track a particular individual, Phillips, who was the boyfriend of Michalski's former girlfriend, Nussbaum made no effort to attempt to detain, or deter Michalski from reaching Phillips.

38. Similarly, despite the clear foreseeability that Michalski was going to attempt to find and harm Phillips, Nussbaum made no effort to warn Phillips.

39. Similarly, despite the clear foreseeability that Michalski was going to attempt to find and harm Federbar and that Phillips may be with Federbar, Nussbaum, the Communications Director of an emergency 9-1-1 center, made no effort to contact the police departments of the Township of Shaler or the Borough of Carnegie, the locales of the residences of Federbar and Phillips, respectively.

40. That same afternoon, Michalski again contacted many of the 911 Call Center's dispatchers, including Defendants Tush, Craig, Deutsch, Ging, Zurcher and Cestra explaining the circumstances of his termination, that he had nothing left to live for and that Federbar and Phillips were going to pay for putting him in his present situation.

41. Like Nussbaum, and armed with the information that Michalski was likely to search for, locate and harm Federbar and Phillips, each of the aforementioned Defendants made no effort to contact either Federbar, Phillips or the police departments of the Township of Shaler or the Borough of Carnegie, the locales of the residences of Federbar and Phillips, respectively.

42. Later that afternoon of October 29, 2003, Michalski shot and killed Phillips with a

handgun.

COUNT ONE
Plaintiff v. Allegheny County, Northwest and Allegheny 911
42 U.S.C §1983

43. Plaintiff incorporates by reference the allegations of paragraphs 1 through 42 as if fully restated.

44. As previously set forth, Defendants actions, individually and/or jointly, created a situation, a state-created danger, where it was foreseeable that Phillips would suffer injury and harm.

45. The actions of Defendants were intentional and/or constituted willful disregard, gross recklessness and deliberate indifference for Phillips' personal safety, well-being and right to life in derogation of the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution.

46. Further, Defendants' actions resulted in the seizure of Phillips' person and life in derogation of the Fourth Amendment of the United States Constitution.

47. The relationship between Defendants and Phillips was such that Defendants had direct knowledge of the likelihood that Phillips would suffer the harm he did.

48. Defendants conduct, their position and authority as state actors facilitated, enabled and created a dangerous situation and made Phillips particularly vulnerable to harm.

49. Defendants further, through their deliberate and conscious indifference and utter disregard in the training and monitoring of their agents and employees, fostered and created the atmosphere, custom and practice whereby an individual, namely Phillips' personal, private information, was not protected.

50. As a direct and proximate result of willful disregard, intentional, grossly reckless and deliberately indifferent actions and/or failure to act of the Defendants, Phillips was deprived of his

right to life and liberty without Due Process and in violation of his Equal Protection rights as guaranteed by the Fourteenth Amendment of the United States Constitution.

51. As a direct and proximate result of willful disregard, intentional, grossly reckless and deliberately indifferent actions and/or failure to act of the Defendants, Phillips was unreasonably seized in violation of Phillips' rights under the Fourth Amendment of the United States Constitution.

WHEREFORE, Plaintiff demands judgment against Defendants for all available damages, including punitive damages, in addition to attorney fees and costs pursuant to 42 U.S.C. §1988.

COUNT TWO
Plaintiff v. Nussbaum, Tush, Craig, Deustch, Ging, Zurcher and Cestra in their individual capacity
42 U.S.C §1983

52. Plaintiff incorporates by reference the allegations of paragraphs 1 through 51 as if fully restated.

53. As previously set forth, Defendants actions, individually and/or jointly, created a situation, a state-created danger, where it was foreseeable that Phillips would suffer injury and harm.

54. The actions of Defendants were intentional and/or constituted willful disregard, gross recklessness and deliberate indifference for Phillips' personal safety, well-being and right to life in derogation of the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution.

55. Further, Defendants' actions resulted in the seizure of Phillips' person and life in derogation of the Fourth Amendment of the United States Constitution.

56. The relationship between Defendants and Phillips was such that Defendants had direct knowledge of the likelihood that Phillips would suffer the harm he did.

57. Defendants conduct, their position and authority as state actors facilitated, enabled

and created the a dangerous situation and made Phillips particularly vulnerable to harm.

58. As a direct and proximate result of willful disregard, intentional, grossly reckless and deliberately indifferent actions or failure to act of the Defendants, Phillips was deprived of his right to life without Due Process and in violation of his Equal Protection rights as guaranteed by the Fourteenth Amendment of the United States Constitution.

59. As a direct and proximate result of willful disregard, intentional, grossly reckless and deliberately indifferent actions and/or failure to act of the Defendants, Phillips was unreasonably seized in violation of his rights under the Fourth Amendment of the United States Constitution.

WHEREFORE, Plaintiff demands judgment against Defendants for all available damages, including punitive damages, in addition to attorney fees and costs pursuant to 42 U.S.C. §1988.

COUNT THREE
Plaintiff v. Northwest, Nussbaum, Tush, Craig, Deustch, Ging, Zurcher and Cestra
Wrongful Death Action

60. Plaintiff incorporates by reference the allegations of paragraphs 1 through 59 as if fully restated.

61. Defendants by virtue of their position, authority and knowledge had a duty to protect the decedent from harm.

62. Defendants actions and/or failures to act constituted negligence and/or willful misconduct resulting in a breach in their duty of care towards the decedent.

63. The decedent, Mark Phillips', death was a direct and proximate result of the Defendants' negligence and/or willful misconduct.

64. As a result of Phillips' death, his next of kin has or have sustained pecuniary losses, including but not limited to loss of decedent's income, maintenance, guidance, companionship, support, love and society along with any other damages recoverable pursuant to

Pennsylvania's Wrongful Death Act.

WHEREFORE, Plaintiff demands judgment against Defendants for all available damages, including but not limited to fees and costs, and any other such relief this Court deems just and proper.

COUNT FOUR
Plaintiff v. Northwest, Nussbaum, Tush, Craig, Deustch, Ging, Zurcher and Cestra
Survival Action

65. Plaintiff incorporates by reference the allegations of paragraphs 1 through 64 as if fully restated.

66. Plaintiff brings this action for the damages on behalf of the Estate of Mark Phillips for any all damages suffered by the Estate recoverable under Pennsylvania's Survival Statute at 42 Pa. C.S.A. §8302.

67. Plaintiff claims as damages include but not limited to past and future loss of income and earning capacity, as well as pain and suffering, physical injury, disfigurement and loss of life suffered by the decedent, Mark Phillips.

WHEREFORE, Plaintiff demands judgment against Defendants for all available damages, including but not limited to fees and costs, and any other such relief this Court deems just and proper.

Respectfully submitted,

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