

TAYLOR & GOMEZ LLP
2600 North 44th Street, Suite B-101
Phoenix, Arizona 85008
Tel: (602) 403-0212, Benjamin Taylor, Esq.
(602) 394-8930, Dominic Gomez, Esq.
Fax: (602) 957-3257

NOVEMBER 15, 2022

Tempe City Clerk
City Clerk's Office
On Behalf of the City of Tempe, Tempe Police Department, Tempe Fire Medical Rescue
Department, Tempe Town Lake, and Their Employees and Agents
31 East Fifth St., 2nd Floor
Tempe, Arizona 85281

PROCESS SERVER

ID#: MC-9021

Gregory S. Hardy

RE: Turee Toro (Mother); Sean Bickings (Decedent); Date of Loss/Death: May 28, 2022;
Notice of Claim

Dear City of Tempe and Tempe City Clerk and City Clerk's Office,

This confirms that this law firm represents Turee Toro ("Ms. Toro"), the Biological Mother of Decedent, Sean Bickings ("Mr. Bickings"). Ms. Toro has standing to bring this wrongful death claim pursuant to Arizona Revised Statutes Section 12-612(A), (B) ("A. An action for wrongful death shall be brought by and in the name of the surviving...parent....B. Either parent may maintain the action for the death of a child...."). **Please accept this as Ms. Toro's Notice of Claim pursuant to Arizona Revised Statutes § 12-821.01.**

This Notice of Claim is asserted against the City of Tempe, the Tempe Police Department, Tempe Fire Medical Rescue Department, Tempe Town Lake, the Tempe Police Department Officers involved in this incident, Tempe Police Department Chief Jeffrey Glover, and any and all other potentially responsible or liable employees or agents of the City of Tempe, Tempe Police Department, Tempe Fire Department, and Tempe Town Lake. The City of Tempe is vicariously liable under the theories of *respondeat superior*, nondelegable duties, agency, and any other applicable legal theories for the actions, inactions, torts, negligence, gross negligence, recklessness, constitutional/legal violations, etc. of any applicable City of Tempe, Tempe Police

Department, Tempe Fire Medical Rescue Department, and Tempe Town Lake employees and agents. *Kopp v. Physician Group of Arizona of Ariz., Inc.*, 244 Ariz. 439 (2018). It is alleged that the City of Tempe, Tempe Police Department, Tempe Fire Medical Rescue Department, and Tempe Town Lake could also be found to be independently negligent/liable here under such theories as negligent hiring, negligent training, negligent supervision, etc. *Id.* Moreover, it is alleged that there are procedures and policies and/or lack thereof of the City of Tempe, Tempe Police Department, Tempe Fire Medical Rescue Department, Tempe Town Lake, and/or Police Chief Jeffrey Glover, which could subject the City of Tempe, Tempe Police Department, Tempe Fire Medical Rescue Department, Tempe Town Lake, and/or Police Chief Jeffrey Glover to liability. This includes but is not limited to the City of Tempe and its Agencies/Departments/Enterprises' Hiring Policies and Procedures; Training Policies and Procedures; Policies and Procedures Regarding Tempe Town Lake, if any; Policies and Procedures Regarding Drowning Incidents/Victims, if any; Policies and Procedures Regarding Water/Bodies of Water, if any; Policies and Procedures Regarding Emergency Medical Treatment and Rescue, if any; Policies and Procedures Regarding Provision of Medical Care and Attention to Alleged Suspects, if any, etc., or lack thereof.

At the time of the submission of this Notice of Claim, Ms. Toro, this law firm, and/or their agents have received some, but not all information and documentation from the City of Tempe, regarding this incident and the investigation of this incident. Accordingly, this matter is still in the early stages and is meant to put you on notice of the claim and to provide you with a reasonable opportunity to investigate and resolve this claim. This Notice of Claim is not meant to include each and every possible fact, argument, theory of liability, citation to case law and statutes, etc. We

reserve the right to include and assert additional facts, arguments, theories of liability, citations, etc., as this matter proceeds. We reserve the right to amend, supplement, correct, clarify, etc. this Notice of Claim, as necessary and as justice requires.

As an initial matter, enclosed please find a color photograph of Mr. Bickings prior to his drowning and death at Tempe Town Lake. As can be seen by the color photograph of him, Mr. Bickings was a joyful young man who had lots of life left to live. At the time of this incident and his death, Mr. Bickings was only 34-years-old. Mr. Bickings, known by his many friends as “Madrocks/Madrox”, was an endearing member of Tempe’s unsheltered community. Friends described Mr. Bickings as a “big teddy bear,” who was loved by many in his community.¹ In a Facebook post dated June 5, 2022, the City of Tempe Mayor Corey Woods wrote that he had met Mr. Bickings two days before his drowning.² Mayor Woods commended Mr. Bickings for having “graciously volunteered to assist the City of Tempe” and “nonprofit human services partners” in improving the lives of fellow members of Tempe’s unsheltered community.

Moreover, as an initial matter, it must be noted that Tempe Town Lake is within the City of Tempe’s jurisdiction,³ and the City of Tempe maintains control and responsibility for Tempe Town Lake and the several parks and facilities along Tempe Town Lake’s shores.⁴ The City of Tempe expends significant funds each year in maintaining the Tempe Town Lake and surrounding facilities.⁵ Additionally, Tempe Town Lake is big business for the City of Tempe. According to

¹ <https://thegrio.com/2022/06/12/sean-bickings-remembered-by-friends/>.

² <https://www.facebook.com/mayorcoreywoods/posts/pfbid02usJREDEu3GSSA7zWYrtIU7YavaJu1nw6mlpjxx7TaZWdfBknChMxLbUyR3kQcwG1l>. and <https://www.independent.co.uk/news/world/americas/sean-bickings-tempe-arizona-drowning-police-b2096030.html?amp>

³ <https://data.tempe.gov/datasets/city-of-tempe-boundary/explore?location=33.430467%2C-111.934315%2C15.00>

⁴ <https://www.tempe.gov/government/community-services/tempe-town-lake>

⁵ <https://www.tempe.gov/government/community-services/tempe-town-lake/town-lake-financial-and-regulatory-information/town-lake-checkbook>

the City of Tempe's Business and Development webpage, "[m]ore than 40,000 people work within a mile of Tempe Town Lake, and that number is growing."⁶ "No other waterfront offers boating, dozens of special events, miles of bike and running paths and both business and residential opportunities." The City of Tempe specifically encourages companies to "[j]oin the many businesses, such as State Farm, Silicon Valley Bank, KPMG and Fidelity National Title with a Tempe Town Lake address." Furthermore, according to the City of Tempe's Tempe Town Lake webpage, "[m]ore than 2.4 million people spend time at Tempe Town Lake each year. The economic impact of Tempe Town Lake since its creation is more than \$2 billion."⁷ More than 40 special events happen at Town Lake annually, including Ironman Arizona and the Fantasy of Lights Boat Parade."⁸

On May 28, 2022, in the morning, City of Tempe Police Officers stood and watched on as Mr. Bickings drowned in Tempe Town Lake, despite the significant danger Mr. Bickings was in and his desperate pleas for help.

As you know, the incident was captured by City of Tempe Police Officers' body-worn cameras and there are witnesses who observed this incident. The City of Tempe/Tempe Police Department has released at least three videos of hours of body-worn camera footage to the public but has redacted the eight-minute portion that contains Mr. Bickings' tragic drowning and the City of Tempe Police Officers' callous indifference.⁹

⁶ <https://www.tempe.gov/government/community-services/tempe-town-lake/business-and-development>

⁷ See also <https://yourvalley.net/stories/tempe-town-lake-development-moves-forward-despite-concerns,287351>

⁸ <https://www.tempe.gov/government/community-services/tempe-town-lake>

⁹ <https://www.azfamily.com/2022/06/15/tempe-releases-3-lengthy-body-cam-videos-police-responding-man-drowning-lake/>

The initial portions of the body-worn camera footage show the City of Tempe Police Officers responding to a call from Michael Chavez, a Downtown Tempe Authority ambassador, concerning Mr. Bickings and his partner. Mr. Chavez aired the call over police radio at 4:57 a.m.

City of Tempe Police Officers' Bryan Berman and Kelly Bennett were initially dispatched to respond to Mr. Chavez's call. The body-worn camera footage shows Officer Berman arrive at the scene and make contact Mr. Bickings near the Elmore Pedestrian Bridge of the Tempe Town Lake at approximately 5:00 a.m. At 5:02 a.m., Officers Gebbie and Bennett arrive on the scene, and Officer Bennett directs the two officers to speak to Mr. Bickings' partner.

Officer Berman's body-worn camera footage shows his initial interaction with Mr. Bickings. Mr. Bickings read to Officer Berman a statement concerning his constitutional rights and, after Officer Berman explained that Mr. Bickings was required by law to identify himself, provided Officer Berman his name, date of birth, and the last four digits of his Social Security number.

At approximately 5:07 a.m., Officers Gebbie and Bennett joined Officer Berman and informed Officer Berman that Mr. Bickings' partner denied that any physical argument had taken place between her and Mr. Bickings. Officer Berman then conducted a warrant search on Mr. Bickings, while Mr. Bickings stood up and began leaning over the railing between the walkway and the Lake. Mr. Bickings then climbed over the railing. No City of Tempe Police Officers made any attempt to prevent Mr. Bickings from climbing over the railing. Instead, Officers Berman¹⁰ and Gebbie told Mr. Bickings that he was not allowed to swim in the Lake.

¹⁰ The Police Report at issue here notates that Officer Berman was certified to use the Tempe Police Boat. *See* enclosed.

Mr. Bickings entered the Tempe Town Lake at approximately 5:12 a.m., and began swimming north. Officers Bennett and Gebbie moved over to the Elmore Pedestrian Bridge and watched as Mr. Bickings increasingly struggled to stay afloat.

The body-worn camera footage released by Tempe Police Department is redacted between 5:14 a.m. and 5:22 a.m. In the transcripts and captured on the unreleased footage, Officer Bennett stood on as Mr. Bickings gasped out that: "I'm gonna drown." In response to Mr. Bickings, Officer Bennett stated, "No you're not." Mr. Bickings replied, "yes I am."

Officer Gebbie, with no apparent urgency, told Mr. Bickings to swim to a pylon. When Mr. Bickings gasped out that he could not do that, Officer Gebbie responded "Okay. I'm not jumping in after you."

The transcripts and unreleased footage also capture the City of Tempe Police Officers detaining Mr. Bickings' partner, the only person on the scene displaying remotely any concern for Mr. Bickings' life. At approximately 5:15 a.m., Mr. Bickings' partner ran onto the pedestrian bridge. The transcripts show that Mr. Bickings cried out, "Baby, help me. Help me." When Mr. Bickings' partner attempted to rescue him, she was physically restrained by Officer Bennett and handcuffed by Officer Gebbie. She begged the City of Tempe Police Officers to help Mr. Bickings as she sat there helplessly handcuffed. Officers Bennett and Gebbie never attempted to rescue Mr. Bickings in any form.

At approximately 5:16 a.m., Mr. Bickings went under the water and did not re-emerge.

According to the Police Report at issue, the Tempe Police Boat "required two people per policy to operate." Accordingly, pursuant to this policy, Officer Berman did not operate the Police

Boat right away and had to wait until Sergeant Neff arrived to Tempe Town Lake to prepare and deploy the Tempe Police Boat. *See enclosed.*

At approximately 5:26 a.m., the Tempe Police Boat arrived at the buoy line east of the bridge. According to the Police Report at issue, "This buoy line is locked at each shore of the lake. The padlock had been changed and police had not been provided a working key, so they were unable to get past the buoy line." *See enclosed.*

According to the Police Report at issue, at approximately 5:28 a.m., there was a call from Tempe Fire Medical Rescue Department, stating: "STAND DOWN -NOT SENDING ANYONE IN THE WATER". *See enclosed.*

According to the Police Report at issue, at approximately 5:38 a.m., the Tempe Police Boat reached "the east side of the bridge, but unable to fit under to get to the west side of the pedestrian bridge. Tempe Fire Department boat would not fit under bridge either." *See enclosed.*

According to the Police Report, almost six (6) hours after Mr. Bickings initially went into Tempe Town Lake, at 11:02 a.m., Tempe Fire Medical Rescue Department finally deployed its Dive Team into Tempe Town Lake. *See enclosed.* In fact, according to the Timeline in the Police Report at issue, there is a gap with no entries between 6:42 a.m. and 11:02 a.m.¹¹ *See enclosed.*

At approximately 11:22 a.m., the Tempe Fire Medical Rescue Department recovered Mr. Bickings' body from below the surface of Tempe Town Lake. Accordingly, it only took them twenty (20) minutes to locate/recover Mr. Bickings' body once they actually went into the water.

Since the incident, public attention has focused on the callous inaction of the City of Tempe Police Officers, as evinced by the following headlines:

¹¹ A gap of 4 hours and 20 minutes between entries and activities shows clear indifference to Mr. Bickings' life.

- Arizona man who begged officers for help before drowning was told ‘I’m not jumping in.’¹²
- Man who drowned while Arizona police ignored his pleas for help met with mayor two days before his death.¹³
- ‘He was truly, truly loved’: Community, friends mourn man who drowned in Tempe as police watched.¹⁴

As discussed next, the City of Tempe, Tempe Police Department, Tempe Fire Medical Rescue Department, and Tempe Town Lake had prior notice and knowledge of numerous other drownings in Tempe Town Lake and other public bodies of water in the City of Tempe. Despite this notice and knowledge, City of Tempe, Tempe Police Department, Tempe Fire Medical Rescue Department, and Tempe Town Lake negligently failed to train and equip its Officers, employees, and agents for water-based emergencies, and negligently failed to provide any publicly accessible rescue devices. Moreover, the dangerousness of the Tempe Town Lake is further confirmed in the Police Report in this matter: “Tempe Town Lake is a man-made waterway which spans over 2 miles north of Rio Salado Pkwy” and “[t]he depth of the lake is approximately 13 feet deep with sloped edges.”

The City of Tempe and its Agencies/Departments/Enterprises had extensive prior notice and knowledge of the dangerousness of and risk of drowning in the Tempe Town Lake because there were numerous other prior drownings in Tempe Town Lake in the years leading up to Mr. Bickings’ avoidable death.

¹² <https://www.nbcnews.com/news/us-news/arizona-man-begged-officers-help-drowning-told-not-jumping-rcna32164>.

¹³ <https://news.yahoo.com/man-drowned-while-arizona-police-202959693.html>.

¹⁴ <https://www.azcentral.com/story/news/local/arizona/2022/06/11/tempe-community-mourns-man-who-drowned-police-watched/7560700001/>.

In April 2013, 56-year-old Joseph O'Conner, a City of Tempe employee, drowned in Tempe Town Lake after falling out of his kayak. The Tempe Police Department was the agency that notified the Tempe Fire Department of Mr. O'Conner's drowning.¹⁵

In May 2013, 21-year-old Gerrick Begay, a former Arizona State University (ASU) student and Tempe resident, was found floating in the Tempe Town Lake around 5:30 a.m.¹⁶ Prior to Mr. Begay's death in Tempe Town Lake, two other current or former ASU students were found dead in or near Tempe Town Lake in early 2011 and November 2012. Those three deaths were in addition to another drowning of a swimmer in Tempe Town Lake in October 2012.

On the evening of June 6, 2018, the Tempe Police Department responded to a call about a man who had jumped into Tempe Town Lake from the Mill Street Bridge.¹⁷ Witnesses stated that the man had been talking about jumping into the lake. After doing so, the man reportedly resurfaced and yelled for help, but drowned in Tempe Town Lake shortly thereafter. The man's body was recovered from Tempe Town Lake the next morning.

In July 2019, City of Tempe police officers responded to a call concerning a possible drowning in Tempe Town Lake.¹⁸ The body of the drowned victim was found near a pedestrian foot bridge over Tempe Town Lake.

¹⁵ <https://ktar.com/story/72011/divers-recover-drowning-victim-in-tempe-town-lake/>.

¹⁶ <https://www.phoenixnewtimes.com/news/ex-asu-student-found-dead-in-tempe-town-lake-6655159>.

¹⁷ <https://www.azcentral.com/story/news/local/tempe/2018/06/07/man-jumped-off-mill-avenue-bridge-into-tempe-town-lake-body-recovered/682087002/>.

¹⁸ <https://ktar.com/story/2649640/police-recover-body-in-tempe-town-lake-in-possible-drowning/>.

On July 9, 2022, the Tempe Police Department was called to the Kiwanis Park in Tempe after a 2-year-old boy fell into the lake there.¹⁹ A group of bystanders had already rescued the drowning boy and had started CPR when City of Tempe police officers arrived. Thankfully, the young boy survived that incident.

Despite the numerous drownings that have occurred in Tempe Town Lake and the City of Tempe's public bodies of water, the City of Tempe, Tempe Police Department, Tempe Fire Medical Rescue Department, and Tempe Town Lake negligently failed to provide to its Officers, employees, agents, etc. with the necessary training and equipment to respond to water-related emergencies, and negligently failed to provide any form of publicly accessible, life-saving equipment near Tempe Town Lake. In fact, as noted above and as confirmed in the Police Report at issue, *see* enclosed, the Tempe Police Department did not even have a working key to the padlock of the buoy line, causing them to be unable to use the Tempe Police Boat to get past the buoy line. Moreover, neither Tempe Police Department nor Tempe Fire Medical Rescue Department had a boat that could actually fit and get under the pedestrian bridge at Tempe Town Lake.

Other Cities and Police Departments that are near bodies of water have implemented procedures and training concerning water-related emergencies, but the City of Tempe and its Agencies/Departments/Enterprises made insufficient attempts, if any, prior to Mr. Bickings' drowning to implement such life-saving procedures and training.

¹⁹ <https://www.abc15.com/news/region-southeast-valley/tempe/2-year-old-boy-in-stable-condition-after-near-drowning-at-kiwanis-lake-in-tempe>

In 1992, an article in *Law Enforcement Technology* recognized the training program used by the Police Department of Palm Beach, FL, for demonstrating an effective way to train “police officers in water safety so that they can respond effectively to drowning[s].”²⁰ Palm Beach Police Department requires all police officers to pass a swimming proficiency test, and each police officer receives eight hours of water rescue training. Police officers are trained on different types of rescues, such as those accomplished with rescue devices and those in which an officer enters the water to effect a rescue. Additionally, the Palm Beach Police Department includes basic rescue equipment, including a throw bag attached to a line, in each patrol vehicle.

In 2006, the United States Department of Justice republished an article that advocated for teaching all police officers “basic techniques for performing various on-duty actions in water... since water is a potential environment for police actions in all jurisdictions.”²¹ The article offers suggestions for how to train officers in water-related rescues.

The City of Pittsburgh, PA, formed the River Rescue Unit in 1986 “to respond to waterborne emergencies in the waterways in and around the City of Pittsburgh.”²² In recognition of the importance of police officers in water-related emergencies, the City of Pittsburgh has since ensured that it has available first responders who “are responsible for surface and subsurface water rescue, and for administering ALS emergency medical care to victims....”

University Police Departments, like the University of Wisconsin, Madison Police Department, have instituted programs designed to protect users of the lake bordering the

²⁰ <https://www.ojp.gov/ncjrs/virtual-library/abstracts/water-safety-training>

²¹ <https://www.ojp.gov/ncjrs/virtual-library/abstracts/taking-plunge-officers-who-work-around-water-need-know-more-just>

²² <https://pittsburghpa.gov/cms/cms-river-rescue>

university's campus.²³ The UW – Madison Police Department's program emphasizes the need for trained personnel who are able to respond effectively to water-based emergencies, and demonstrates the feasibility of scaling department resources to reasonably address the danger posed by the lake.²⁴

In its own water-safety publication, the American Red Cross expressly instructs people to call 9-1-1 or the local emergency number in the event of a water-related emergency.²⁵ Regrettably, the City of Tempe and Tempe Police Department rendered that instruction futile by failing to prepare its Police Officers to adequately respond to water-related emergencies. The City of Tempe, Tempe Police Department, and Tempe Fire Medical Rescue Department were negligent in failing to train and equip its Police Officers and its employees and agents for water-based emergencies and negligent for not providing public rescue devices near Tempe Town Lake.

In response to Mr. Bickings' drowning and death, the City of Tempe has recently implemented water-safety measures.²⁶ On August 19, 2022, the City of Tempe announced new measures to protect people around the city's bodies of water, like installing water rescue devices around Tempe Town Lake and Kiwanis Lake, as well as issued water rescue "throw bags" for every Tempe Police Officer. In addition to these measures, the City of Tempe will train its officers

²³ <https://uwpd.wisc.edu/content/uploads/2020/11/48.1-Lake-Rescue-and-Safety.pdf>

²⁴ Tempe Town Lake is nearby the ASU Tempe Campus and multiple ASU students have drowned in Tempe Town Lake as noted and detailed above; nevertheless, the City of Tempe, as of May 28, 2022, had failed to protect City of Tempe residents/ASU students from the dangers of Tempe Town Lake. Overall ASU enrollment for undergraduate and graduate students in Fall 2021 was 134,500 total students. <https://news.asu.edu/20210817-sun-devil-life-record-number-students-ready-launch-fall-2021>

²⁵ https://streamlinhealth.com/wp-content/uploads/2017/10/Basic_Water_Rescue_Guide_2017.pdf, at Pg. 6.

²⁶ <https://www.tempe.gov/Home/Components/News/News/16801/1483>

on how to use water rescue devices and is developing a new rescue policy modeled after those of other cities near bodies of water.

Since these measures have been adopted, Tempe Police has already had the opportunity to deploy them, and a human life has already been saved.²⁷ On August 27, 2022, Tempe Police responded to a call and found a man in Tempe Town Lake. Video of the Police Officers' response shows the successful deployment of a throw bag. The video shows the man struggling in the water, the Police deploy a throw bag, the man grabs ahold of the bag, and is pulled into a shallow area of the Tempe Town Lake where the man was able to stand up. Tempe Police's use of the throw bag gave them valuable time to summon the Tempe Police boat to pull the man out of the water and to safety. It should not have taken Mr. Bickings' death for the City of Tempe to provide simple and necessary life-saving equipment and training to its Officers, employees, and agents.

The City of Tempe may attempt to argue that the involved Tempe Police Officers were not required to attempt to save Mr. Bickings as he drowned in front of them. Mr. David Liebowitz, a "public relations consultant" for the Tempe Officers Association, recently proffered a similar version of that argument.²⁸ However, that argument is completely undermined by the actions of Tempe Police Officers themselves.²⁹ A mere eleven days before Mr. Bickings drowned to death, two Tempe Police Officers assisted the rescue of a dog from the Tempe Canal.³⁰ Body camera footage shows the two Officers holding onto a good Samaritan on the banks of the canal,

²⁷ <https://www.azcentral.com/story/news/local/tempe-breaking/2022/09/20/police-officers-pull-man-safely-out-tempe-town-lake/8064980001/>

²⁸ https://www.westvalleyview.com/opinion/opinion-2-tempe-incidents-illustrate-anti-cop-bias/article_53002958-3ead-11ed-8a1b-136148f822ab.html

²⁹ <https://twitter.com/tempepolice/status/1526667771508977665?lang=en>

³⁰ <https://www.abc15.com/news/region-southeast-valley/tempe/dog-rescued-by-good-samaritan-police-from-tempe-canal>

unconcerned with their proximity to the body of water. The officers were also unconcerned with the swimming ability of the good Samaritan who admitted after the fact that he is “not a very good swimmer.” The Tempe Police Officers helped to rescue a dog despite the risk of being pulled into the canal themselves. Those Officers were willing to confront that risk for a dog on May 17, 2022; but, on May 28, 2022, the involved Tempe Police Officers did not even walk to the bank of the Tempe Town Lake while a human being drowned to death in front of them.

In another example, three Tempe Police Officers “immediately jumped into the dark water [of Tempe Town Lake] in an attempt to save the passengers” of a vehicle that crashed into Tempe Town Lake in 2015.³¹ Tempe Police Officers “were able to find and pull out two toddlers, the adult male driver, and the adult female passenger” during the rescue that was initiated in the middle of the night.

However, during the early morning of May 28, 2022, the involved Tempe Police Officers stood by as Mr. Bickings drowned to death in front of them; their actions and inactions were negligent, grossly negligent, reckless, and/or deliberately indifferent. Similarly, Tempe Fire Medical Rescue Department also was indifferent and failed to timely render aid to Mr. Bickings. At approximately 5:28 a.m., there was a call from Tempe Fire Medical Rescue Department, stating: “STAND DOWN -NOT SENDING ANYONE IN THE WATER”. *See* enclosed. According to the Police Report at issue, at approximately 5:38 a.m., the “Tempe Fire Department boat would not fit under the [pedestrian] bridge either.” *See* enclosed. According to the Police Report, almost six (6) hours after Mr. Bickings initially went into Tempe Town Lake, at 11:02 a.m., Tempe Fire Medical Rescue Department finally deployed its Dive Team into the water of

³¹ phoenixnewtimes.com/news/family-of-five-drowns-after-vehicle-crashes-into-tempe-town-lake-7755980

Tempe Town Lake. *See* enclosed. Once they actually went in to Tempe Town Lake, Mr. Bickings' body was recovered within twenty (20) minutes

The following Cases amply support and establish liability here:

In *Ross v. United States*, 910 F.2d 1422 (7th Cir. 1990), the Seventh Circuit Court of Appeals affirmed the potential liability of a county, sheriff, and deputy sheriff for their roles and policies in the young boy's drowning in Lake Michigan. In *Ross*, a twelve-year old boy went for a stroll with a friend on a breakwater that extended out into the lake. *Id.* at 1424. The young boy fell into the water and sank; his friend immediately ran for help. *Id.* Within ten minutes after the boy had fallen into the water, two lifeguards, two firefighters, and one police officer were on the scene with equipment to effect a rescue. *Id.* Additionally, two scuba-diving civilians were there and ready to assist in the rescue. *Id.* However, instead of initiating a rescue, a deputy sheriff ordered everyone on the scene to cease their rescue efforts because "the county and its sheriff had promulgated a policy that directed all members of the sheriff's department to prevent any civilian from attempting to rescue a person in danger of drowning in the lake." *Id.* at 1425. The boy's body wasn't pulled out of the water until twenty minutes after he had fallen in, and he was declared dead the next morning. *Id.*

The court held the plaintiffs sufficiently alleged a cause of action against the county that controlled the lake because the county's policy "prevented rescue" of persons who were drowning. *Id.* at 1431. Furthermore, plaintiffs sufficiently alleged a cause of action against the deputy sheriff because he "knew that the boy had already been under the water for at least a few minutes... could have readily ascertained that the alternative on-site rescue personnel were qualified to save the drowning boy... [and] [n]evertheless waited until twenty minutes later for the 'authorized' rescue

squad to arrive.” *Id.* at 1433. The deputy sheriff “knew there was a substantial risk of death yet consciously chose a course of action that ignored the risk. Such conduct is reckless.” *Id.*

Moreover, in *Poindexter v. United States*, 244 F. App'x 561, 563 (5th Cir. 2007), the decedent drowned in an area of Big Creek. The decedent’s surviving sons and spouse brought a wrongful death action against the United States Army Corps of Engineers and the Tensas Basin Levee District. *Id.* The plaintiffs alleged “that the defendants were negligent in their ownership and maintenance of the weir³² and that such negligence caused Poindexter’s death by drowning. Plaintiffs also asserted that the defendants knew of the foreseeable hazards presented by the weirs in Big Creek, specifically with respect to the high current and turbulence of the water at and near the water structure.” *Id.* The district court dismissed the plaintiffs’ case on summary judgment and the Fifth Circuit Court of Appeal reversed, concluding the “district court’s view of the scope of the defendants’ duty associated with the known risks of the weir was too narrow....” *Id.*

“The United States Army Corps of Engineers had previously placed and maintained signs on cables across the creek, warning boaters and other users of these dangers. The signs were abandoned by the government several years before the accident, as the Corps claimed that the Levee District should assume responsibility for the signs. No signs were in place on the date of the accident.” *Id.*

The Fifth Circuit Court of Appeals stated: “These cases are in accord with the negligence law of most states – that it is not necessary that a custodian might or should have foreseen the likelihood of the particular injury or harm, the extent of the harm, or the manner in which it

³² After Poindexter [decedent] went over the weir, he became entangled in a corrugated opening of the weir, broke his leg and was trapped under the water, causing his death by drowning.” *Id.*

occurred; instead, it is only necessary that the custodian should have anticipated that some injury or harm might result from the identified risk.” *Id.* at 565 (citations omitted).

Accordingly, the Fifth Circuit Court of Appeals held: “As applied to this case, the unknown risk of becoming trapped in the weir after encountering the known risk of being swept over the weir by turbulent water is within the scop of the defendants’ duty. Mr. Poindexter’s injury and drowning is easily associated with the foreseeable risk.”

Additionally, in *Fisherman's Pier, Pers. Representative of Estate of Starling v. Fisherman's Pier*, 401 So. 2d 1136, 1136 (Fla. Dist. Ct. App. 1981), the appellate court reversed the dismissal of a lawsuit brought against the operator of a commercial fishing pier for negligently failing "to safeguard a passed-out drunk customer who was left lying near the ocean on the pier, by himself, in the early hours of the morning and rolled over into the water and drowned." The alcohol the customer had brought with him to the pier was in violation of a municipal ordinance. *Id.* But, the Pier's employee had "full knowledge... [that] the railing [on the pier] was inadequate to restrain horizontal bodies [from falling into the water]." *Id.* at 1138. The court held that the Pier had a duty to take reasonable minimal steps in order to safeguard the deceased from the extreme danger of drowning even though the customer had allowed himself to be exposed to that danger in the first place. *Id.* at 1136-37.

Lastly, in *Ind. Limestone Co. v. Staggs*, 672 N.E.2d 1377, 1379 (Ind. Ct. App. 1996), the decedent drowned in defendant’s water-filled limestone quarry when she lost control of her car on an icy road, and as she left the road she entered the quarry which was located about 24 feet from a sharp curve on the road. The appellate court affirmed the trial court's decision to deny the defendant's motion for summary judgment with regard to the negligence action. *Id.* at 1384. No

previous similar accident had occurred at this University Quarry. *Id.* at 1379. Despite the lack of previous incidents, the court held that genuine issues of material fact existed as to whether the decedent's accident was reasonably foreseeable as a matter of law. *Id.* at 1384. The court also found that public policy weighed in favor of imposing a duty on the owner of property, "containing hazards similar to the University Quarry when such hazards are located near places on public ways where users of the road might foreseeably deviate from it." *Id.*

Accordingly, now that liability has been firmly established and based on the clear torts, actions, inactions, negligence, gross negligence, recklessness, indifference, constitutional/legal violations, etc. committed by the City of Tempe, Tempe Police Department, Tempe Fire Medical Rescue Department, and Tempe Town Lake and its involved Police Officers, employees, and agents, Ms. Toro makes a sum certain settlement Demand in the total amount of \$3,000,000.00.

Ms. Toro is bringing this claim pursuant to her right under A.R.S. § 12-612(A) and (B). She is entitled to fair compensation for the loss of her Son's love and affection, the pain, grief, sorrow, stress, shock, and mental suffering she has and will continue to experience because of her Son's tragic drowning and death.³³

Juries have often found public and private entities liable for multi-million-dollar judgments. Those entities have often settled prior to trial for multi-million-dollar settlements.

The sum certain settlement amount stated herein is supported by the following Cases:

³³ See Revised Arizona Jury Instructions (Civil) 7th Personal Injury Damages 3.

A South Carolina jury awarded a family \$20.73 million in August 2022, after a father and his two children drowned near a resort in Myrtle Beach.³⁴ The verdict included \$13 million in compensatory damages and an additional \$7 million in punitive damages. The named defendant, a lifeguarding company, required its lifeguards to both observe the swimming areas while also renting equipment to other patrons. The family also proved that no lifeguard ever made an attempt to enter the water to save the father and two children.

In September 2014, a jury awarded a \$12.3 million verdict to the family of a 5-year-old girl who drowned in a Boys & Girls Club pool in Connecticut.³⁵ That award included \$7.3 million for the little girl's estate and medical and funeral expenses, in addition to \$5 million for the girl's 7-year-old brother who witnessed his sister drown. The Club's liability arose from its failure to employ enough lifeguards and failure to train its lifeguards properly. The jury awarded this verdict despite the defense arguing that the young brother bore some fault in the young girl's death.

An apartment complex and its maintenance subcontractors reached an \$11.95 million settlement with a family for the negligent drowning death of a 4-year-old.³⁶ The child drowned after he and his 6-year-old son entered a pool area through a damaged gate. His father was not monitoring his sons. The complex's two subcontractors quickly tendered their \$1 million policy limits, while the management company and the apartment complex tendered a \$4 million policy. The apartment complex ultimately paid an additional \$5.95 million to avoid further litigation.

³⁴ https://www.postandcourier.com/myrtle-beach/jury-awards-20-73m-to-drowning-victims-family-in-myrtle-beach-lawsuit-verdict/article_2e943ee0-126d-11ed-afa0-738982025090.html

³⁵ <https://www.courant.com/community/waterbury/hc-waterbury-drowning-verdict-0919-20140918-story.html>

³⁶ <https://haggardlawfirm.com/11-95-million-settlement-in-drowning-wrongful-death-case/#:~:text=The%20Haggard%20Law%20Firm's%20Michael,and%20into%20a%20community%20pool>

A jury found an in-home, state-licensed daycare operator liable for an \$11.8 million verdict for the drowning death of a 2-year-old.³⁷ The jury specifically awarded the two parents \$4.5 million, *individually*, for past and future loss of love, destruction of the parent-child relationship, and emotional distress.

A South Carolina apartment complex reached a \$6 million settlement with the family of a 3-year-old boy's drowning death.³⁸ The apartment complex neglected to maintain the self-closing gate, which allowed the boy to enter the pool area after wandering out of sight of his grandmother. The complex's failure to follow reasonable safety measures served as the basis of its liability.

A jury in California jury awarded a family a \$4.25 million verdict for the drowning death of the family's 15-year-old son, after finding the boy's school employed an inattentive lifeguard and allowed too many children in the pool.³⁹ The jury's verdict was ten times the amount offered by the school prior to trial.

In June 2021, the City of Victorville settled for \$2.5 million in a wrongful death drowning of a father.⁴⁰ The father and husband drowned when his car became submerged in floodwaters which were caused by dangerous conditions that the city was allegedly aware of. Specifically, the city's employees had failed to clear out drainage culverts, resulting in the flood waters that swept the father's car away. The city reached this settlement after initially raising 18 affirmative defenses

³⁷ Jennifer Tobin, as personal representative for the Estate of Gabriel Michael Tobin, deceased, Jennifer Tobin and Christopher Tobin, individually, and the marital community comprised thereof v. State of Washington, Victor Berdecia, Amy Cichowski, Mary Kay Quinlan, Lisa Fish and Phillip Fish d/ba/ Little Fish's Day Care; 2008 Jury Verdicts LEXIS 37042.

³⁸ <https://www.yarboroughhapplegate.com/events/6m-settlement-reached-in-apartment-complex-pool-drowning/>

³⁹ <https://michels-lew.com/about/results/verdict-of-4-25-million-15-year-old-drowns-due-to-inattentive-schools-lifeguard/>

⁴⁰ <https://www.vvdailypress.com/story/news/courts/2021/06/19/victorville-settles-wrongful-death-suit-2-5-million-after-man-drowned-2017/7752450002/>

in a motion to dismiss, including an allegation that the father was intoxicated with an illicit substance at the time of his death. A committee decided to settle the wife's and son's claims after a judge refused to dismiss the lawsuit.

New Jersey's Burlington County Special Services School reached a \$1.9 million settlement with the family of a 16-year-old autistic student who drowned while taking part in the school's weekly swimming class.⁴¹ The school's two lifeguards and a teacher failed to notice that the young man had not resurfaced after he had swam into the deep end of the pool. Video footage obtained by the family's counsel depicted the young man struggling for one minute before losing consciousness. The school and the family reached the \$1.9 million settlement at mediation.

Finally, in 2010 a jury awarded the wife, adult daughter, and minor son a \$1,475,000 verdict for the drowning death of their husband and father.⁴² The father, a retired firefighter, fell into a pond while golfing alone.

Accordingly, our sum certain settlement amount is well supported by the above-listed Cases and the applicable facts of this specific matter and relationship. Ms. Toro suffers constant mental and emotional anguish due to her Son's drowning and death. Ms. Toro has read her Son's final words, his desperate cries for help, and the callous, indifferent responses from the Tempe Police Officers. She will live the rest of her life with the knowledge that her Son's death was completely avoidable. She will never have the privilege and opportunity of seeing her Son alive again. That was taken away from her.

⁴¹ <https://rossettidevoto.com/verdicts/1-9-million-recovery-in-wrongful-death/>

⁴² Kathleen Ventimiglia, individually, and as the Guardian Ad Litem for Stephen Ventimiglia and Kelli Ventimiglia v. United States of America; Chamblin-Landes Construction, Inc., a California corporation; WWD Corporation, a California corporation; David Fuller, individually; Jennifer Rudolph, individually; Larry Gabriel, individually; and Larry Spencer Construction;

Simply put, the City of Tempe was not prepared for this incident and failed to timely and properly respond to this incident with the urgency with which the situation required. Mr. Bickings drowned as Tempe Police Officers watched and told him he was not drowning. Tempe Police did not have a working key that they needed. Both Tempe Police and Fire Boats did not fit under the pedestrian bridge. It took almost six hours for the Dive Team to finally go into Tempe Town Lake after Mr. Bickings and locate/recover his body. The City of Tempe failed to train and provide its Officers with lifesaving equipment despite knowledge of the frequency with which people drowned in Tempe Town Lake. Given the importance of Tempe Town Lake to the City of Tempe, as outlined above and as confirmed on the City's website, the City of Tempe should have been ready for this incident here. Sadly, it was not. Mr. Bickings and Ms. Toro had a meaningful, important relationship that was cut short and ended due to the City of Tempe; its Agencies/Departments/Enterprises; and its Officers, employees, and agents' failings here. Considering the facts surrounding and public outrage regarding Mr. Bickings' drowning and death, a sizable and substantial jury verdict is expected, if this matter does not resolve prior to litigation.

In the days following Mr. Bickings' drowning and death, Tempe Mayor Corey Woods expressed his "sincere condolences" to Mr. Bickings' family and friends for his tragic drowning. The Tempe City Manager Andrew Ching described Mr. Bickings' death as a "devastating" event. In one of its most recent statements concerning his death, the City of Tempe "underscores that Bickings' death is a true tragedy."⁴³

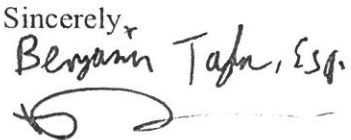
⁴³ <https://www.tempe.gov/Home/Components/News/News/16801/1483>

Therefore, the settlement check should be made out to "Taylor & Gomez LLP IOLTA In Trust for Turee Toro". Our law firm Tax Identification Number and/or W-9 will be timely provided upon request.

Going forward, if you send anything to our law firm in writing through the mail, please kindly include both Partners' names on the correspondence and please send said correspondence to both of our Office addresses, Taylor & Gomez LLP, 2600 North 44th Street, Suite B-101, Phoenix, Arizona 85008 and 4022 East Broadway Road, Suite 113, Phoenix, Arizona 85040. We can also be reached via e-mail at bt@taylorgomezlaw.com and dg@taylorgomezlaw.com, and at the fax number listed in the letterhead above.

Thank you for your time, attention, and consideration. We look forward to amicably resolving this important matter with you.

Sincerely,

A handwritten signature in black ink that reads "Benjamin Taylor, Esq." with a stylized flourish underneath.

Benjamin Taylor, Esq.
Dominic Gomez, Esq.
Partners

Enclosures as noted above.





TEMPE POLICE DEPARTMENT

General Offense Report

GO# TE 2022-57453

Operational Status: ADMINISTRATIVE

north into the water. Bickings was swimming directly into the water and did not appear to be in distress at this time.

05:13:00 hours: Officer Berman asked the other officers to watch in case Bickings came out of the water. Officer Berman stated that he was going to get the boat. Officer Berman leaves the scene and goes to the Marina.

- It should be noted that only certain officers are certified to use the Tempe Police Boat and Officer Berman was the only officer present who had been certified.

05:13:01 hours: Bickings swam north approximately 160 feet, then turned to go west under the bridge. *- Total distance is approximately 215 feet from where he entered the water.*

05:13:27 hours: Officer Gebbie advised over the radio that Bickings went into the lake and was trying to swim away. He asked for Tempe Fire Department to respond for assistance.

- Bickings appeared to be treading water at that time, west of the pedestrian bridge.

05:14 hours: TPD dispatch advised that Fire Department was enroute (TPD CAD).

05:14:20 hours: Officer Bennett told Bickings that they are getting the boat and asked Bickings what his plan is. Bickings replied, "I'm gonna drown". Officer Bennett said, "no you're not" and Bickings replied, "yes I am". Officer Bennett directed Bickings to swim to the side and Bickings said, "I can't". Bickings appeared to still be treading water at this time.

05:14:35 hours: Officer Gebbie directed Bickings to swim to the pylon to hold on. The large concrete support structure was approximately 50 feet away and accessible from the water under the bridge.

05:14:44 hours: Bickings asked for help and yelled, "I can't" every time the officers told him to try to get to the "pylon".

Bickings remained approximately in the same area, treading water and then began spinning in circles.

05:15:10 hours: Smith yelled out to Bickings in the water and ran onto the pedestrian bridge near the officers. Smith grabbed the top of the guard railing on the bridge and was detained when she continued to struggle against Officer Bennett.

- The distance from the top of the guard rail, where Smith attempted to pull herself over, to the water was approximately 13.5 feet at the time of this incident.

05:15:56 hours: Officers began asking Smith to tell Bickings to swim out of the water or to get to the pylon to hold on. Smith yelled at the officers and then began to yell at Bickings to "swim" repeatedly.

- At this time, Bickings appeared to be struggling to keep his head above the water.

05:16 hours: TFD CAD shows the call dispatched to Fire Department.

05:16 hours: TCA video shows male subject speaking with DTA employee while Bickings is visible in the water. Another civilian on a bicycle rode past onto the pedestrian bridge. The first civilian eventually turned and rode his scooter away.

05:16:30 hours: Bickings head went under the water and he comes back up.

05:16:35 hours: Bickings went under the water and did not resurface. Officer Gebbie asked dispatch to confirm that TFD is enroute.

05:17 hours: TCA video shows DTA employee get off his bicycle and speak to another citizen near the pedestrian bridge. They are both looking at where Bickings was in the water. They spoke for approximately two minutes. Another citizen walked across the bridge at this time. The DTA employee walked away and then returned shortly afterwards and stayed near his bicycle at the pedestrian bridge.

05:17:26: Officer Berman arrived at the Marina.

- The Tempe Town Lake Marina is approximately 2.6 miles away. A general internet search showed that the drive time from the scene to the Marina is approximately 7 minutes. Officer Berman took approximately 4.5 minutes to get from one location to the other.

- The Marina has a locked gate to access the boat docks where the TPD boat is secured. The boat key is locked on the boat. The TPD boat required two people per policy to operate. Sergeant Neff was the only



TEMPE POLICE DEPARTMENT

General Offense Report

GO# TE 2022-57453

Operational Status: ADMINISTRATIVE

other certified officer available.

05:18:08 hours: Bickings' hat floated to the surface of the water and was later recovered by TFD.

0521 hours: First TFMRD Units arrived in the scene area.

05:22:30: Sergeant Neff and Sergeant Papke arrived at the Marina to assist with getting the TPD boat deployed.

- Officer Berman prepared the boat, checked for lifesaving equipment, and completed checks while waiting for second operator's arrival.

0522 hours: Tempe Fire Department personnel arrived at the scene.

05:23:10: The TPD boat was being deployed from the Marina.

0524 hours: (TFD Call Comments) GETTING BOAT, PD IN THEIR BOAT AND HEADING THAT WAY, WE WILL BE HEADING THAT WAY/ COPY, WE ARE BETWEEN PED BRIDGE AND DAM

0525 hours: TFD employee met with Officer Gebbie on the bridge.

0526 hours: (TFD Call Comments) TMP PD, PT WENT UNDER HAS NOT COME UP, PD BOAT COMING, TRYING TO MAKE ACCESS TO WHERE THEY LAST SAW PT, HAVING FB 275 STAND BY

05:26:19: The TPD boat arrived at the buoy line east of the bridge. *This buoy line is locked at each shore of the lake. The padlock had been changed and police had not been provided a working key, so they were unable to get past the buoy line.*

0528 hours: (TFD Call Comments) STAND DOWN- NOT SENDING ANYONE IN THE WATER

0533 hours: (TFD Call Comments) GO BACK AND GET S276 MIGHT NEED THE RAFT

0534 hours: City of Tempe employee arrived in vehicle at the shore and spoke to the officers on the boat. He denied that he had a key, but suggested that they gain speed, pull up the boat's motor at the last minute and use momentum to go over the buoy line.

0537 hours: PD boat was able to pass by the buoy line to approach the bridge by forcing their way over the buoy line.

0538 hours: PD boat was on the east side of the bridge, but unable to fit under to get to the west side of the pedestrian bridge. Tempe Fire Department boat would not fit under bridge either.

0607 hours: TFD deployed an inflatable raft into the water and were able to get to the west side of the pedestrian bridge.

0642 hours: Hat and shoes collected from water by TFMRD and turned over to PD.

1102 hours: TFMRD Dive Team went into the water.

1122 hours: Bickings was recovered from the bottom of the lake by the dive team and pronounced deceased. The dive team confirmed that their depth was not recorded since it was too shallow, they estimated the depth was approximately 12-13 feet.

1136 hours: Bickings was removed from the water and turned over to PD at the top of the boat ramp, east of the pedestrian bridge. This was where he remained until the OME took disposition at the scene.

The BWC footage, TCA surveillance and CAD calls are uploaded to Evidence.com. Please review these for complete details.

[REDACTED] :

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]