

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

**MARY PISKURA, Fiduciary of the
Estate of Kevin Piskura, Deceased
7160 Brenda Lee Drive
Walton Hills, Ohio 44146**

and

**MARY PISKURA, Individually and as
next of kin
7160 Brenda Lee Drive
Walton Hills, Ohio 44146**

and

**CHARLES PISKURA, Individually and
as next of kin
7160 Brenda Lee Drive
Walton Hills, Ohio 44146**

Plaintiffs

vs.

**TASER INTERNATIONAL, INC.
17800 N. 85th Street
Scottsdale, Arizona 85255**

and

**CITY OF OXFORD
c/o Manager Douglas R. Elliott, Jr.
101 East High Street
Oxford, Ohio 45056**

and

Case No.

Judge

COMPLAINT

(Jury Demand Endorsed Hereon)

OXFORD POLICE DEPARTMENT)
c/o Chief Stephan D. Schwein)
101 East High Street)
Oxford, Ohio 45056)

and)

STEPHAN D. SCHWEIN)
Chief of Oxford Police Department)
101 East High Street)
Oxford, Ohio 45056)

and)

GEOFF ROBINSON)
Oxford Police Department Officer)
101 East High Street)
Oxford, Ohio 45056)

and)

JOHN DOES I - V, Names Unknown)
Manufacturers, suppliers, distributors)
and/or maintenance contractors)
c/o Taser International, Inc.)
17800 N. 85th Street)
Scottsdale, Arizona 85255)

and)

JOHN DOES VI-X, Names Unknown)
Individual police officers)
c/o Oxford Police Department)
101 East High Street)
Oxford, Ohio 45056)

Defendants)

JURISDICTION

1. Jurisdiction against the governmental Defendants (that is all Defendants other than TASER, International, Inc.) is conferred upon this Court by 28 U.S.C. §1331 (federal question) and by the doctrine of pendent jurisdiction pursuant to 28 U.S.C. §1367.

2. The claims against TASER International, Inc., are within the supplemental jurisdiction of the Court and because of diversity of citizenship, pursuant to 28 U.S.C. §1332.

VENUE

3. Plaintiffs' claims herein arises out of an incident involving various police officers in the County of Butler, State of Ohio, and within this judicial district.

PARTIES AND BACKGROUND

4. Plaintiff, Mary Piskura, has been appointed Fiduciary of the Estate of Kevin Piskura by the Cuyahoga County Probate Court and brings this wrongful death and survivorship action as the personal representative of the Estate of Kevin Piskura (hereinafter "Piskura"), for the exclusive benefit of the surviving next of kin of the deceased.

5. At all times mentioned herein, Plaintiff, Mary Piskura, was the mother and next of kin of Kevin Piskura, deceased.

6. At all times mentioned herein, Plaintiff, Charles Piskura, was the father and next of kin of Kevin Piskura, deceased.

7. Decedent, Kevin Piskura, Age 24, had a life expectancy of an additional fifty eight (58) years at the time of this death. His beneficiaries have suffered, and will continue to suffer, damages for loss of services and support over the time he was expected to live.

8. As a direct and proximate result of his death, the decedent's beneficiaries have suffered, and will continue to suffer, damages for the loss of his society over his life expectancy, including loss

of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training and education.

9. At all times mentioned herein, Defendant, City of Oxford, is a government entity operating pursuant to the laws of the State of Ohio. Defendant, City of Oxford, is a political subdivision subject to suit.

10. At all times mentioned herein, Defendant, Oxford Police Department, is a government entity operating pursuant to the laws of the State of Ohio. Defendant, City of Oxford, is a public agency subject to suit.

11. At all times mentioned herein, Defendant, Stephan D. Schwein (hereinafter “Schwein”), was and is the Chief of Police for the Oxford Police Department, and is the decision maker for the Department.

12. At all times mentioned herein, Defendant, Geoff Robinson (hereinafter “Robinson”), was employed as a patrolman by the Oxford Police Department, and pursuant thereto, was acting in the course and scope of his employment therein and under color of state law.

13. With regard to those claims arising under Ohio law, Schwein and Robinson have been named in their personal capacities for purposes of establishing liability under R.C. §2744.03(A)(6)(b).

14. At all times mentioned herein, Defendant, TASER International Inc., is a Delaware Corporation with its principal place of business in the State of Arizona, and pursuant thereto, designs, manufactures, fabricates, markets, sells and distributes, Electrical Control Devices (ECDs), including the X26 model.

15. At all times mentioned herein, Defendants, John Does I - V, are either individuals or duly

organized business associations whose names are currently unknown despite due diligence. These companies or individuals are the owners, manufacturers, suppliers or distributors responsible for the X26 Model electrical control device (ECD) known as the TASER involved in the incident as described herein. Plaintiff has been unable to discover the names or locations of the John Doe I - V Defendants.

16. At all times mentioned herein, Defendants, John Does VI - X, are individuals whose names are currently unknown despite due diligence. These individuals are police officers for the City of Oxford who may be partially responsible for and/or involved in the incident as described herein. Plaintiff has been unable to discover the names or locations of the John Doe VI - X Defendants despite due diligence.

17. Defendant, TASER International, Inc., manufactured, sold, distributed, fabricated, assembled, inspected, tested, serviced, marketed, warranted, and advertised the subject TASER electrical control device (ECD) which contained design and/or manufacturing defects, including the model utilized by the City of Oxford's Police Department on decedent, Kevin Piskura.

18. On or about April 19, 2008 at approximately 2:00 a.m., the decedent, Kevin Piskura, was attending a Miami of Ohio University homecoming weekend and was a business invitee at the Brick Street Bar in Oxford, Ohio. While present, a verbal and/or physical altercation took place between the Brick Street Bar bouncers and various patrons.

19. During the altercation, Officer Geoff Robinson and John Does VI - X, responded to the scene and observed the decedent outside the bar during an argument or altercation between bar bouncers and several patrons. At the scene Defendant, Robinson, ordered the decedent to step back or back away. According to several witnesses, decedent attempted to comply with his orders but Defendant,

Robinson, suddenly and without justification discharged his X26 ECD in probe mode striking the decedent in the chest with both ECD probes and subjecting the decedent to fifty thousand (50,000) volts of electricity for a period of eleven (11) continuous seconds.

20. According to multiple independent witnesses at the scene, including the parent of a Miami of Ohio college student, the decedent was not a threat to the officers or other bystanders present. Without any objective justification to do so and by unreasonably, inappropriately, and unnecessarily discharging an ECD into the chest of the decedent and subjecting the decedent to fifty thousand (50,000) volts of electricity for a period of eleven (11) continuous seconds, Defendant police officers overreacted, in an irresponsible manner, to the situation that confronted them, thereby amounting to the use of excessive force.

21. At all times mentioned herein, the individual Defendant officers from the City of Oxford Police Department acted with deliberate indifference to the safety, security and well-being of the decedent, and were further reckless, willful and wanton in their conduct, including:

- a. Subjecting Decedent to unreasonable use of force;
- b. Selecting, retaining, and assigning employees with demonstrable propensities for excessive force, violence, and other misconduct;
- c. Failing to adequately train, supervise, and control employees in the dangers of repeated or prolonged TASER shocks, including, without limitation, the use of potentially lethal tactics, taking into custody of persons such as the decedent, who are perhaps intoxicated, but not otherwise engaged in criminal activity, and who may have pre-existing medical conditions which make such tactics unreasonably dangerous.

- d. Failing to implement protocols and train officers in the proper way to contain, treat and secure persons such as the decedent who may be in an agitated state because of voluntary intoxication.
- e. Failing to adequately discipline police officers involved in misconduct;
- f. Condoning and encouraging officers in the belief that they can violate the rights of persons such as the decedent in this action with impunity, and that such conduct will not adversely affect their opportunities for promotion and other employment benefits, and
- g. Failing to promulgate, distribute and enforce reasonable ECD policies and procedures which not only limit the number and length of ECD applications but limits the use of ECDs to situations where a subject poses an immediate threat to the officer or member of the public.

22. As a direct result of receiving an eleven (11) second shock from the TASER device, decedent, Kevin Piskura, went into cardiac arrest and became unresponsive at the scene. He was transferred to a local hospital by ambulance, then life flighted to a trauma center. The decedent was admitted to the Intensive Care Unit and subsequently died on April 24, 2008.

23. As a consequence of this incident, the decedent's death was attributed to anoxic encephalopathy and multiple system organ failure after cardiac arrest due to the officers use of excessive force including the use of a TASER ECD.

Cause of Action of Mary Piskura, Fiduciary of the Estate of Kevin Piskura, Deceased

COUNT ONE

42 U.S.C. § 1983

(Against Defendants City of Oxford, Oxford Police Department, Stephan D. Schwein, Geoff Robinson, and John Does VI - X)

24. Plaintiffs incorporate by reference all of the foregoing allegations as if fully rewritten herein.

25. At all times mentioned herein, Plaintiffs and decedent are citizens of the United States and thus entitled to the full benefits and equal protection of the Federal Constitution and all laws and regulations enacted thereunder.

26. In the manner aforementioned, the City and its officials, employees, agents, and representatives were acting at all times under the color of the statutes, ordinances, regulations, customs, and law.

27. In the manner aforementioned, the City and its officials, employees, agents, and representatives knowingly and purposely deprived decedent of his clearly established rights, privileges, and immunities as secured by the Constitution and laws of the United States in violation of 42 U.S.C. §1983.

28. The City's officials, employees, agents, and representatives knew, or should have known, that their acts and omissions as described herein were prohibited under federal law.

29. The City's mistreatment of decedent was perpetrated pursuant to the municipality's policies and customs.

30. The foregoing wrongful acts of the City, its officials, employees, agents, and representatives were a direct and proximate cause of the death of decedent, Kevin Piskura..

31. As a direct and proximate result of the City's interference with Plaintiffs' and Decedent's

federal constitutional and statutory rights, they have suffered the aforementioned damages and losses which are expected to be ongoing.

COUNT TWO

WRONGFUL DEATH/STATUTORY PRODUCT LIABILITY

(Against Defendants, TASER International, Inc. and John Does I - V)

32. Plaintiff incorporates by reference all of the foregoing allegations as if fully rewritten herein.

33. Defendants, TASER International, Inc., and John Does I - V, designed, manufactured, sold, distributed, fabricated, assembled, inspected, tested, serviced, marketed, warranted, and advertised the subject TASER Model X26 ECD which contained design and/or manufacturing defects, which were capable of causing, and in fact did cause, personal injuries to people while being used in the manner reasonably foreseeable, thereby rendering same unsafe and dangerous for its intended use.

34. Defendant, TASER International, Inc. and John Does I - V, are manufacturers defined in Section 2307.71 (A)(9) of the Ohio Revised Code and designed, formulated, produced, created, made, constructed, assembled, marketed, distributed, and sold the aforementioned X26 ECD.

35. The aforementioned X26 ECD was defectively manufactured within the meaning of the Ohio Revised Code Section 2307.74 and as otherwise provided by law.

36. The aforementioned X26 ECD was defective in design and/or formulation pursuant to the provisions of the Ohio Revised Code Section 2307.75 and as otherwise provided by law.

37. The aforementioned X26 ECD was defective due to inadequate warnings or instruction pursuant to the provisions of Ohio Revised Code Section 2307.76 and as otherwise provided by law.

38. The aforementioned X26 ECD was defective because it did not conform to representations

made by Defendants pursuant to provisions of Ohio Revised Code Section 2307.77 and as otherwise provided by law.

39. The aforementioned defects in the X26 ECD directly and proximately caused decedent's death, damages and losses, thus entitling Plaintiffs to full and complete relief against the Defendants as authorized by Section 2307.73 and 2307.79 of the Ohio Revised Code and as otherwise provided by law.

40. As a direct and proximate result of the above-described defects in the subject product, as aforementioned, and the conduct of Defendants, TASER International, Inc., and John Does I - V, as alleged above, in combination with the wrongful conduct of the other Defendants, decedent, Kevin Piskura, sustained serious personal injuries resulting in his death.

41. With respect to the subject Model x26 ECD, Defendants, TASER International, Inc., and John Does I - V, were the designers, assemblers, manufacturers, sellers, distributors, fabricators, inspectors, testers, servicers, repairers, marketers, warrantors, and/or advertisers thereof, or were otherwise involved in the stream of commerce to the extent that the laws of the State of Ohio impose strict liability in tort for injuries caused by defects therein.

42. Defendants, TASER International, Inc., and John Does I - V, knew that the TASER weapon's design, manufacture, assembly, marketing, and distribution by them was defective and dangerous; that each of the Defendants knew that because of the defects, their ECDs could not be used safely for the purpose for which they were intended; that Defendants, and each of them, knowing that its ECDs were defective and dangerous, in conscious disregard of the safety of the public placed this product on the market without warning customers or the unknowing public of the defects and dangers and knew when it did so that this weapon would be sold and used without

knowledge of the defects and dangers; and that Defendants and each of them, by placing the defective and dangerous weapon on the market, expressly and impliedly represented that it was safe for the purpose for which it was intended. The other Defendants herein, in purchasing and using the defective weapon as herein alleged, did rely on each of the Defendants' representations. In doing the things aforementioned, Defendants, TASER International, Inc., and John Does I - V, and each of them, were guilty of malice, oppression and fraud, and Plaintiffs are therefore entitled to recover exemplary and punitive damages in an amount to be determined at trial.

43. As a direct and proximate result of Defendants' aforementioned conduct and defective and unreasonable nature of its product, Plaintiffs have incurred burial, funeral and other related expenses.

44. Plaintiff, Mary Piskura, Fiduciary of the Estate of Kevin Piskura, therefore, says that she has been injured and damaged in a sum in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) in both compensatory and punitive damages.

COUNT THREE

WRONGFUL DEATH, COMMON LAW NEGLIGENCE AND PRODUCT LIABILITY

(Against Defendants, TASER International, Inc. and John Does I - V)

45. Plaintiff incorporates by reference against Defendants, TASER International, Inc., and John Does I - V, all of the foregoing allegations as if fully rewritten herein.

46. At all times mentioned herein, Defendants, TASER International, Inc., and John Does I - V, were engaged in the business and profession of designing, manufacturing, selling, distributing, fabricating, assembling, buying, inspecting, testing, servicing, repairing, marketing, warranting, and advertising TASER ECDs which these Defendants knew, or in the course of reasonable care should

have known, would be used without inspection for defects or dangers in their parts, mechanisms, or design.

47. At all times mentioned herein, Defendants', TASER International, Inc., and John Does I - V, ECDs are unreasonably dangerous and defective for use on human beings because, among other reasons, they were sold without warnings as to the effect of direct shocks to the chest, prolonged shocks, the danger of shocking people who are under the influence of alcohol, and the effects of TASER shocks on respirations such that the weapon causes unnecessary deaths.

48. At all times mentioned herein, Defendants, TASER International, Inc., and John Does I - V, sold TASER ECDs to local law enforcement agencies such as Defendants without adequate warning of or training in its potential for causing cardiac arrest resulting in death and great bodily injury, especially when shocks are administered directly to the chest in and around the heart.

49. At all times mentioned herein, Defendants, TASER International, Inc., and John Does I - V, negligently and carelessly designed, manufactured, sold, distributed, installed, fabricated, assembled, inspected, tested, marketed, warranted, and advertised their unreasonably dangerous and defective TASER ECDS, in that it was capable of causing, and in fact did cause, personal injuries to persons while being used in a manner reasonably foreseeable, thereby rendering the product unsafe and dangerous for use in its intended manner.

50. At all times mentioned herein, Defendant, Officer Geoff Robinson (and/or John Does VI - X), shocked decedent, Kevin Piskura, while he was in an intoxicated state. As a direct and proximate result of the aforementioned conduct of the individual Defendants, TASER International, Inc., and John Does I - X, Plaintiffs were injured and sustained damages as alleged herein, including the death of decedent, Kevin Piskura.

51. Plaintiffs are informed and believe and thereon allege that Defendants, TASER International, Inc., and John Does I - V, acted in a despicable, malicious, and oppressive manner, in conscious disregard of the rights of decedent, Kevin Piskura, and other people whom they knew, or reasonably should have known, were likely to be shocked with TASER ECDs by law enforcement officers not adequately warned or trained about the extreme and unreasonable danger of this product, and that the ECDs posed an unreasonable risk of serious bodily injury or death to people such as Mr. Piskura.

52. Based on these facts, Defendants, TASER International, Inc., and John Does I - V, knew that TASER ECDs could not be used safely for the purposes for which they were intended, and that this weapon was defective and dangerous, but despite that knowledge and in conscious disregard of the safety of the public, Defendants, TASER International, Inc., and John Does I - V, placed this product on the market without warning customers or the unknowing public of the defects and dangers. Defendants, TASER International, Inc. and John Does I - V, further knew when it placed this product on the market it would be sold to and used by law enforcement agencies without adequate knowledge of its defects and dangers, and expressly and impliedly represented that it was safe for the purpose for which it was intended. In doing the aforementioned, Defendants, TASER International, Inc., and John Does I - V, acted in a despicable, malicious, oppressive, and fraudulent manner, in conscious disregard of the rights and safety of the decedent, entitling decedent's estate to recover exemplary and punitive damages in an amount to be determined at trial.

53. As a direct and proximate result of Defendants' aforementioned conduct and negligence, Plaintiffs have incurred burial, funeral and other related expenses.

54. As a direct and proximate result of his death, the decedent's beneficiaries have suffered, and will continue to suffer, damages for the loss of his society over his life expectancy, including loss

of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training and education.

55. Plaintiff, Mary Piskura, Fiduciary of the Estate of Kevin Piskura, therefore, says that she has been injured and damaged in a sum in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) in both compensatory and punitive damages.

COUNT FOUR

WRONGFUL DEATH/INTENTIONAL AND NEGLIGENT CONCEALMENT AND MISREPRESENTATION

(Against Defendants TASER International, Inc., and John Does I - V)

56. Plaintiff incorporates by reference all of the foregoing allegations as if fully rewritten herein.

57. Plaintiff is informed and believes that the Defendant officers were trained in the use of the TASER by compact disc media, oral and written instruction, training, warnings, and other methods provided directly or indirectly to the Defendant officers, the City of Oxford and the Oxford Police Department by Defendants, TASER International, Inc., and John Does I - V.

58. Prior to April 19, 2008, Plaintiff is informed and believes that Defendants, TASER International, Inc., and John Does I - V, misrepresented, failed to disclose and/or failed to warn the Oxford Police Department and the officers on the scene of the following material facts, among others:

- a. Falsely represented that its 26-watt ECDs are not lethal;
- b. Falsely represented that its 26-watt ECDs cannot cause cardiac arrest or cardiac arrhythmia;
- c. Falsely represented that its 26-watt ECDs cannot cause ventricular

fibrillation;

- d. Falsely represented that a TASER 26-watt ECD can be safely fired at the front center of a suspect's body mass;
- e. Falsely represented that "after initially deploying the TASER X26 upon the suspect, a law enforcement officer should be prepared to deliver additional cycles.";
- f. Falsely represented that a TASER 26-watt ECD may be safely used on suspects under the influence of alcohol;
- g. Falsely represented that a TASER 26-watt ECD affects the sensory and motor nervous systems, but cannot affect the cardiac system of a suspect;
- h. Failed to disclose and/or warn that a TASER 26-watt ECD is a potentially lethal device which could cause ventricular fibrillation or asystole, cardiac arrest, cardiac arrhythmia and hypoxic brain injury as a result;
- I. Failed to disclose and/or warn that the risk of death to someone in an agitated and delusional state because of voluntary intoxication is greatly increased by longer ECD shocks, and that law enforcement, including the officers of Oxford Police Department, should endeavor to deploy the ECD shocks as briefly as possible to minimize or eliminate the risk of cardiac arrest, cardiac arrhythmia, brain damage and/or death;
- j. Failed to disclose and/or warn that longer cycles and multiple uses of ECDs on a single person increased the risk of ventricular fibrillation or asystole, cardiac arrest, cardiac arrhythmia, and the serious potential consequences

which the Decedent suffered;

- k. Falsely represented in Instructor notes to the slide on “the decision to deploy” that “When used within the design parameters of the device, the TASER is a very effective, non-lethal, control device,” when it is in fact potentially lethal;
- l. Falsely represented that “There is no medical evidence that the TASER T-Waves in any way causes or contributes to heart or respiratory failure.”;
- m. TASER falsely trains that officers should “Keep the cycle going until suspect restrained,” despite the risk of inducing ventricular fibrillation if the probes are on the chest; and
- n. In TASER’s Medical Safety Slide Training Version 12, TASER falsely represented that:

The Advanced TASER M26 was applied directly to the chest of experimental animals without causing heart failure during tests at the University of Missouri;

Using “worst case” scenarios, cardiac safety experts found no induction by the M26 weapon of abnormal heart rhythms;

No arrhythmia provocation occurred even when the animals were given the stimulant drugs epinephrine and isoproterenol, agents that make the heart more susceptible to electrical stimulation, “there are no lasting after-effects from the electrical current itself.”;

59. Defendant, TASER International, Inc., and John Does I - V, intentionally and negligently

represented to the Oxford Police Department and the individual Defendants all of the material statements set forth hereinabove, including those set forth in the preceding paragraph, and many more of a similar nature.

60. These representations were, in fact, false. Defendants, TASER International, Inc., and John Does I - V, knew that the misrepresentations were false when it made them, and/or made the representations recklessly and without regard for their truth.

61. Defendants, TASER International, Inc., and John Does I - V, intended that law enforcement agencies, such as the Oxford Police Department, when purchasing its products, and that individuals officers such as the Defendant officers, rely on the misrepresentations when using its products, and in fact, they did rely on these misrepresentations in purchasing, deploying, training, instructing, and otherwise using TASER manufactured ECDs as a law enforcement tool in interacting with members of the public such as decedent, Kevin Piskura.

62. Defendants, TASER International, Inc., and John Does I - V, intentionally and/or negligently failed to disclose to the Oxford Police Department and other law enforcement agencies and to the Defendant officers and other law enforcement officers material and important facts that were known only to Defendants, TASER International, Inc., and John Does I - V, and could not have been discovered by law enforcement agencies, all as described herein above. These important and material facts include, but are not limited to: that its ECDs can be in fact “lethal”; that its ECDs can, and do on occasion, cause or aggravate acidosis, cardiac arrest, cardiac arrhythmia, hypoxic brain injury and death; that the risk of cardiac arrest or cardiac arrhythmia is significantly decreased if electrical discharges from the ECD are minimized and discharges into the chest are avoided. Furthermore, Defendants, TASER International, Inc., and John Does I - V, actively concealed these

important material facts from law enforcement agencies, and/or prevented such agencies from discovering these facts. Instead, Defendants, TASER International, Inc., and John Does I - V, intentionally and negligently misrepresented the cardiac safety of its ECDs, as set forth above.

63. At all times mentioned herein, The Oxford Police Department and the Defendant officers were reliant upon Defendants, TASER International, Inc., and John Does I - V, for appropriate warnings, instructions, and for the necessary medical and scientific evidence so that officers of Oxford Police Department could be properly trained and instructed in the use of the ECDs.

64. The Oxford Police Department, its officers, and other law enforcement agencies and their officers did not fully know, appreciate and/or understand the cardiac risks associated with ECD discharges which risks were concealed by Defendants, TASER International, Inc., and John Does I - V.

65. Defendants, TASER International, Inc., and John Does I - V, intended to deceive the Oxford Police Department, other law enforcement agencies, and the general public, of the true facts in order to promote and sell its ECDs with artificial and inflated safety claims. The Oxford Police Department and other law enforcement agencies reasonably relied on Defendants', TASER International, Inc., and John Does I - V, deceptions.

66. As a legal result of Defendants, TASER International, Inc., and John Does I - V, misrepresentations and concealment, Plaintiff suffered economic and non-economic damages in an amount to be awarded according to proof.

67. Plaintiff is informed and believes and thereon alleges that Defendants, TASER International, Inc., and John Does I - V, acted in a despicable, malicious, oppressive, and fraudulent manner, in conscious disregard of the rights and safety of the decedent, entitling Plaintiff in her capacity as

Fiduciary to recover exemplary and punitive damages in an amount to be awarded to the decedent's Estate according to proof.

68. As a direct and proximate result of Defendants' aforementioned conduct and negligence, Plaintiffs have incurred burial, funeral and other related expenses.

69. Plaintiff, Mary Piskura, Fiduciary of the Estate of Kevin Piskura, therefore, says that she has been injured and damaged in a sum in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) in both compensatory and punitive damages.

COUNT FIVE

WRONGFUL DEATH/RECKLESS, WILLFUL AND WANTON MISCONDUCT

(All Defendants except TASER International, Inc. And John Does I - V)

70. Plaintiff incorporates by reference all of the previous allegations contained in the foregoing as if fully rewritten herein.

71. At all times mentioned herein, the individual Defendant officers from the City of Oxford Police Department acted with deliberate indifference to the safety, security and well-being of the decedent, and were further reckless, willful and wanton in their conduct, including:

- a. Subjecting Decedent to unreasonable use of force;
- b. Selecting, retaining, and assigning employees with demonstrable propensities for excessive force, violence, and other misconduct;
- c. Failing to adequately train, supervise, and control employees in the dangers of repeated or prolonged TASER shocks, including, without limitation, the use of potentially lethal tactics, taking into custody of persons such as the decedent, who are perhaps intoxicated, but not otherwise engaged in criminal

activity, and who may have pre-existing medical conditions which make such tactics unreasonably dangerous.

- d. Failing to implement protocols and train officers in the proper way to contain, treat and secure persons such as the decedent who may be in an agitated state because of voluntary intoxication.
- e. Failing to adequately discipline police officers involved in misconduct;
- f. Condoning and encouraging officers in the belief that they can violate the rights of persons such as the decedent in this action with impunity, and that such conduct will not adversely affect their opportunities for promotion and other employment benefits, and
- g. Failing to promulgate, distribute and enforce reasonable ECD policies and procedures which not only limit the number and length of ECD applications but limits the use of ECDs to situations where a subject poses an immediate threat to the officer or member of the public.

72. At all times mentioned herein, the Defendants owed the Decedent and Plaintiffs a duty of due care, and that duty was breached through their aforementioned reckless, willful and wanton misconduct which were a direct and proximate cause of Kevin Piskura's death.

73. At all times mentioned herein, the Defendants owed decedent, Kevin Piskura, a duty of due care, and that duty was breached in that their reckless, willful and wanton misconduct in the training and supervision of officers, particularly with regard to incidents involving agitated, intoxicated persons such as the decedent, and with regard to the use of an ECD.

74. At all times mentioned herein, the Defendants acted in a willful, wanton and reckless manner

and the actions were a direct and proximate result of Kevin Piskura's death and Plaintiff's resulting damages.

75. As a direct and proximate result of Defendants' aforementioned conduct and negligence, Plaintiffs have incurred medical, burial, funeral and other related expenses..

76. Plaintiff, Mary Piskura, Fiduciary of the Estate of Kevin Piskura, therefore, says that she has been injured and damaged in a sum in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00).

COUNT SIX

SURVIVORSHIP

(Against All Defendants)

77. Plaintiffs incorporate by reference all of the statements and allegations contained in the foregoing as if fully rewritten herein.

78. The decedent's next of kin suffered extreme mental anguish and emotional distress as a result of the Defendants' aforementioned negligent conduct as previously described herein.

79. As a direct and proximate result of the Defendants' aforementioned conduct and negligence, the decedent was caused to suffer severe pain and mental anguish from the time of the incident until the time of his death, including knowledge of his impending death or injury.

80. As a direct and proximate result of Defendants' aforementioned conduct and negligence, the deceased, Kevin Piskura, was caused to sustain severe and conscious physical, emotional, and mental pain during the time of the incident. Further, Defendants proximately caused the premature and wrongful death of Kevin Piskura.

81. As a direct and proximate result of the defective product and Defendants' aforementioned

conduct and actions, Plaintiffs have incurred medical expenses for the care and treatment of Decedent Kevin Piskura from the time of the incident until the time of his death.

82. The conduct of the Defendants (other than City of Oxford and Oxford Police Department) was willful, malicious, oppressive and in conscious disregard for the rights of the Plaintiffs and the decedent himself, thus justifying punitive damages against the Defendants.

83. Plaintiff's therefore say that they have been injured and damaged in a sum in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) in compensatory and punitive damages.

Cause of Action of Plaintiff, Mary Piskura and Charles Piskura

Individually and as Next of Kin

COUNT ONE

LOSS OF CONSORTIUM

(Against All Defendants)

84. Plaintiffs, Mary Piskura and Charles Piskura, individually and as the parents and next of kin of decedent, Kevin Piskura incorporate by reference all of the previous allegations as if fully rewritten herein.

85. As a direct and proximate result of the Defendants' aforementioned conduct and defective product, Plaintiffs have lost the support, love, comfort and society, and have sustained emotional distress from the time of the incident until the time of Kevin's death.

86. As a direct and proximate result of Defendants' aforementioned conduct and negligence, Plaintiffs have incurred burial, funeral and other related expenses.

87. Plaintiff's therefore say that they have been injured and damaged in a sum in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) in compensatory and punitive damages.

PRAYER

WHEREFORE, Plaintiff, Mary Piskura, Fiduciary of the Estate of Kevin Piskura, prays for judgment against the Defendants jointly and/or severally in a sum in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) for her Cause of Action in compensatory damages and against Defendants TASER, International, Inc. and John Does VI - X to the extent legally permitted; and Plaintiffs, Mary Piskura and Charles Piskura, individually and as next of kin, pray for judgment against the Defendants jointly and/or severally in a sum in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) damages for their Cause of Action; all together with legal fees, litigation expenses, court costs, and any other legal, equitable, or declaratory relief deemed appropriate.

RESPECTFULLY SUBMITTED,

/s/ W. Craig Bashein

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Trial by jury is hereby demanded.

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