

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
(Northern Division)

YVONNE M. BOUGHTER, Individually  
and in her Representative Capacity, as  
Personal Representative of the  
Estate of PATRICK J. BOUGHTER, and  
the Estate of KELLY M. BOUGHTER

AND

MORGAN R. BOUGHTER,  
Plaintiffs  
v.

TOWN OF OCEAN CITY, MARYLAND-  
DEPARTMENT OF EMERGENCY SERVICES  
FIRE/EMS DIVISION  
6501 Coastal Highway  
Ocean City, MD 21842

AND

BROOKS MORRIS  
9154 Melson Church Rd  
Delmar, MD 21875-2115

AND

BRYON TRIMBLE  
9906 Old Ocean City Blvd  
Berlin, MD 21811-3229

AND

JOHN DOES 1, 2, and 3,  
Defendants

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[www.911Dispatch.com](http://www.911Dispatch.com)

CASE NO.

JURY TRIAL DEMANDED

**COMPLAINT AND PRAYER FOR JURY TRIAL**

NOW COME, Plaintiffs, Yvonne M. Boughter, Individually and in her Representative Capacity as Personal Representative of the Estate Patrick J. Boughter and Kelly M. Boughter,

and Morgan Boughter as surviving daughter of Patrick Boughter and surviving sister of Kelly Boughter, by and through their attorney Steven A. Allen, Dean F. Piermattei and Rhoads & Sinon LLP, and bring suit against the Defendants Town of Ocean City Maryland- Department of Emergency Services- Fire/EMS Division, Brooks Morris, Bryon Trimble, and John Does 1, 2, and 3, and in support thereof state as follows:

### **PARTIES AND JURISDICTION**

1. At all times relevant herein, Yvonne Boughter and Patrick Boughter, deceased, were husband and wife, and Morgan Boughter and Kelly Boughter, deceased, were their daughters (hereinafter collectively referred to as the "Boughter Family"). The Boughter Family at all relevant times herein were citizens of Pennsylvania, and lived at 2012 South 5<sup>th</sup> Avenue, Lebanon, Lebanon County, Pennsylvania 17042.

2. The Defendants, Town of Ocean City Maryland is a local government, a municipal corporation formed under Title 23A of the Maryland Code, and liable for acts and omissions of its employees acting with the course and scope of their employment pursuant to the Local Government Tort Claims Act, Md. Code. Ann. §5-301. The Ocean City Department of Emergency Services-Fire/EMS Division, is a division of the Town of Ocean City, located at 6501 Coastal Highway, Ocean City, MD 21842, which provides emergency response units and assistance.

3. The Defendant, Brooks Morris, whose last known address is 9154 Melson Church Road, Delmar, MD 21875-2115, is believed to be a Maryland resident and an employee of the Ocean City Department of Emergency Services-Fire/EMS Division.

4. At all times relevant herein, Brooks Morris worked as an EMS technician charged with responding to emergency 911 calls.

5. The Defendant, Bryon Trimble, whose last known address is 9906 Old Ocean City Boulevard, Berlin, MD 21811-3229, is believed to be a Maryland resident and an employee of the Ocean City Department of Emergency Services-Fire/EMS Division.

6. At all times relevant herein, Bryon Trimble worked as an EMS technician charged with responding to emergency 911 calls.

7. The Defendants, John Does 1, 2 and 3, are believed to be a Maryland residents and employees of the Ocean City Department of Emergency Services-Fire/EMS Division.

8. At all times relevant herein, John Does 1, 2 and 3 worked for the Ocean City Department of Emergency Services-Fire/EMS Division and are charged with responding to emergency 911 calls.

9. On or about June 27, 2006, both Patrick J. Boughter and Kelly M. Boughter died as a result of carbon monoxide poisoning while staying as guests at the Days Inn Hotel in Ocean City, Maryland.

10. An Estate was established for both Patrick J. Boughter and Kelly M. Boughter (the "Boughter Estates") on August 25, 2006, in the County of Lebanon, Pennsylvania. Yvonne M. Boughter is the Executor/Administrator and Personal Representative for the Boughter Estates.

11. Jurisdiction of this Court is founded upon Title 28 §1332 of the Judiciary and Judicial Procedure.

12. The amount in controversy exceeds the Jurisdictional minimum requirement of \$75,000.00.

**VENUE**

13. Venue in this action lies in Maryland – Northern- Division pursuant to 28 U.S.C. §100(1) and §1391 of the Judiciary and Judicial Procedure.

**FACTS RELEVANT TO ALL COUNTS**

14. On or about June 16, 2006, Yvonne Boughter made a reservation for the Boughter Family to stay at the Days Inn Hotel, 2210 Baltimore Avenue, Ocean City, Maryland 21842 (“Days Inn Hotel”), for the period of June 26, 2006 through June 29, 2006.

15. The reservation was accepted and Yvonne M. Boughter’s credit card was charged at that time.

16. On June 26, 2006, the Boughter Family arrived at the Days Inn Hotel, and was assigned to Room 121, located on the first floor.

17. Unbeknownst to the Boughter Family, the Days Inn Hotel had a prior history of carbon monoxide poisoning, involving at least one incident, whereby a prior guest of the hotel suffered carbon monoxide poisoning as a result of a carbon monoxide leak from a hot water heater located in the basement almost directly beneath the Boughter Family’s room. This incident occurred on or about June 21, 2005, and involved a faulty water heater.

18. On June 27, 2006, the Boughter Family was asleep in Room 121 at the Days Inn Hotel.

19. Yvonne Boughter awoke to observe her family ill with her daughter Morgan vomiting, and her husband having difficulty talking and vomiting, and she stated her family needed assistance.

20. At or about 9:43 a.m. on June 27, 2006, Yvonne Boughter called 911 from her cell phone (hereinafter "the first 911 call").

21. The call was received by the Worcester County, Maryland, Emergency Services Division, and then transferred to the Ocean City Department of Emergency Services-Fire/EMS Division.

22. Yvonne Boughter informed the Defendants that her husband is "really sick". She went on to describe that the whole family is sick and has been vomiting all night. She specifically told them that she was at the Days Inn Hotel on the Boardwalk, and was located in Room 121. The dispatcher then repeated Room 121 back to Yvonne Boughter for confirmation and Mrs. Boughter confirmed that she was in fact in Room 121. Mrs. Boughter also indicated that she was staying in the room with her husband and kids, and that there were a total of four people in Room 121.

23. During the first 911 call, Mrs. Boughter provided the Defendants with her cell number.

24. Mrs. Boughter also was asked during the first 911 call if they were having difficulties breathing, and she reported to the Defendants that, “[m]y husband is just making noises. He can’t even talk to me.” Mrs. Boughter also gave her full name to the Defendants.

25. Defendants responded that they will send paramedics to Yvonne Boughter. Yvonne Boughter thereafter at some point slipped back into unconsciousness waiting for the paramedics.

26. Approximately 15 minutes before Yvonne Boughter’s first 911 call, another guest at the same Days Inn Hotel, whose family was staying in Rooms 125 and 127 – immediately adjacent to the Boughter Family’s room – contacted 911 stating that, “Something is wrong with my daughter and I, we just don’t feel good at all. Would you please send somebody up here?”. At that point the prior caller told the Defendants that they could not breathe, and they had a pounding headache and just didn’t feel like they were able to stay awake.

27. Subsequent to Yvonne Boughter’s first 911 call to the Defendants, transcripts of the Defendants’ discussions show that they knew that there was a “second call, different room at the Days Inn Hotel, Room 121 for sick subjects experiencing similar things, also four patients.”

28. Later in the Defendants’ discussions, it was again discussed that the Boughters were at the Days Inn Hotel at 2200 Baltimore Avenue, and were located in “Room 1-2-1, 121.”

29. On information and belief, emergency unit #7505 -- consisting of Defendants Morris and Trimble and some or all of the John Does 1, 2 and 3 -- was dispatched to the Days Inn Hotel in response to Yvonne Boughter’s call.

30. The Defendants failed to investigate the Boughters' call for help and never responded to Room 121 to provide assistance to the Boughter Family.

31. The Defendants left the Days Inn Hotel without providing any assistance to the Boughter Family or without inquiring as to whether the Boughter Family was located on the premises and without performing any investigation to determine whether the Boughters were safe or in continuing need of emergency assistance.

32. At or around 1:53 p.m. on June 27, 2006, Yvonne Boughter awoke again and called 911 a second time.

33. The call was again received by the Worchester County, Maryland-Emergency Services Division, and then transferred to the Ocean City Department of Emergency Services-Fire/EMS Division.

34. Yvonne Boughter informed the Defendants: "Yea. . . um. . . I called you earlier and nobody came yet. My husband has passed away, my daughter looks like she passed away also. She's mottled and cold to the touch."

35. On June 27, 2006 at approximately 1:58 p.m. Defendants were dispatched and arrived at the Days Inn Hotel at approximately 2:02 p.m.

36. By the time Defendants arrived at Room 121, Patrick and Kelly Boughter had died from carbon monoxide poisoning and were laying in their own vomit on the beds next to Yvonne and Morgan.

37. While being poisoned by carbon monoxide, the Boughter Family slipped in and out of consciousness, suffered severe pain and distress, witnessed each other suffering, and also witnessed the death of two of the family members.

38. Readings taken at the scene shortly after Defendants arrived at Room 121, showed that the Boughter Family was exposed to extremely high levels of carbon monoxide. Subsequent autopsies performed on Patrick and Kelly Boughter showed that they died from carbon monoxide poisoning while at the Days Inn Hotel.

39. The Boughter Family was exposed to lethal levels of carbon monoxide for prolonged periods of time causing injuries to the Boughter Family as more fully set forth herein, which could have been prevented had Defendants promptly investigated and properly responded to the Boughter Family's first 911 call.

40. On December 22, 2006, Plaintiff Yvonne Boughter provided the Town of Ocean City with the notice required by the Local Government Tort Claims Act, Md. Code. Ann. §5-304, to commence proceedings against employees of a local government.

41. Yvonne Boughter, as surviving spouse of Patrick Boughter and the surviving parent of Kelly Boughter, brings this action for wrongful death of her husband, wrongful death of her daughter, for the Estates of Patrick Boughter and Kelly M. Boughter for the conscious pain and suffering and other damages suffered by Patrick J. Boughter and Kelly M. Boughter and for her own individual personal injuries.



42. Morgan Boughter as the surviving daughter of her deceased parent, Patrick Boughter, brings this action individually for wrongful death and for personal injuries she sustained.

43. The Defendants who were charged with responding to Yvonne Boughter's first 911 call acted with actual malice and consciously and deliberately acted with an evil or wrongful motive in an intent to injure the Boughter Family by failing to proceed to and/or enter Room 121 when they knew the Boughter Family was in distress and in need of help, and knew the exact location of the Boughter Family, and accordingly, punitive damages should be awarded against these Defendants.

**COUNT I**  
**YVONNE BOUGHTER v. DEFENDANTS**  
**(GROSS NEGLIGENCE/WRONGFUL DEATH FOR PATRICK BOUGHTER)**

44. Paragraphs 1 through 43 are incorporated herein by reference.

45. On June 27, 2006, Defendants were acting within the course and scope of their employment when Yvonne M. Boughter placed the emergency 911 calls.

46. The Defendants owed the Boughter Family the duty to exercise reasonable and ordinary care in course of rendering emergency medical services and to refrain from conduct that constitutes a wonton and reckless disregard for human life or the rights of others.

47. Defendants owed a duty to Plaintiffs to act in a manner which was not grossly negligent or a deliberate disregard for human life.

48. Defendants knew or had reason to know of the dangers associated with not fully or properly investigating and/or responding to the Boughters' first 911 call.

49. Defendants breached their duty of care owed to the Boughter Family and acted in a manner which was grossly negligent and was a wonton and reckless disregard for human life by:

- a. Failing to go to and/or enter Room 121 where the Boughters were located knowing that the Boughters were in need of emergency assistance, and knowing that the Boughters were in Room 121 of the Days Inn Hotel;
- b. Failing to provide any assistance to the Boughter Family following Yvonne Boughter's first 911 call;
- c. Failing to send any individual to properly investigate the Boughters' call for help notwithstanding the fact that they knew the Boughters' situation and need for help, and the exact location of the Boughter Family, and knowing the Defendants were not providing help;
- d. Failing to provide any assistance or engaging others to provide assistance to the Boughter Family knowing the facts as set forth above, while knowing the Boughter Family was relying upon the representation that assistance would be forthcoming;
- e. Failing to call Yvonne Boughter's cell phone as a follow up to ensure that the Boughter Family was safe or as part of the process of providing assistance to the Boughter Family;
- f. Failing to recognize the signs and symptoms described by Yvonne Boughter as carbon monoxide poisoning requiring immediate medical assistance, especially in light of complaints of similar symptoms from guests in adjacent rooms at the Days Inn Hotel;
- g. Failing to inquire of anyone located at the Days Inn Hotel about Yvonne Boughter and her family so as to provide assistance to the Boughter Family;
- h. Failing to conduct any type of investigation to determine whether the Boughter Family was on the premises and safe, or alternatively, whether the Boughter Family was in continuing need of assistance;
- i. Failing to determine that there was a carbon monoxide problem at the hotel, even though they knew guests staying in adjacent rooms to the Boughter Family room were experiencing similar symptoms as the Boughters, which are classic signs of carbon monoxide poisoning;
- j. Failing to investigate and determine prior to Yvonne Boughter's second call to 911 whether or not the Boughter Family did in fact receive assistance as a result of the first 911 call placed by Yvonne Boughter;

- k. Failing to provide proper assistance or perform proper follow up to the Boughter Family after Yvonne Boughter's first 911 call to the Defendants;
- l. Failing to immediately evacuate the Days Inn Hotel and/or the rooms located on the first floor of the Hotel upon observance of the symptoms of carbon monoxide poisoning presented by a guest in adjacent rooms to the Boughter Family's room;
- m. Failing to have established proper procedures, training and practices in place that would provide for a proper response to Plaintiffs' call for help and a proper investigation to allow for assistance to be provided to Plaintiffs; and,
- n. Failing to accurately convey and receive information about the Boughter Family emergency so as to allow for a proper response to the Boughter Family's request for assistance.

50. As a direct and proximate result of the Defendants' gross negligence, which caused the wrongful death of Patrick Boughter, Yvonne Boughter, the surviving widow of Patrick J. Boughter, and Morgan Boughter, the surviving daughter of Patrick J. Boughter, sustained pecuniary loss, mental anguish, emotional pain and suffering, loss of society, comfort, protection, marital care, parental care, filial care, attention, advice, counsel, guidance, training, education and other items of special and general damages.

WHEREFORE, the Plaintiffs demand judgment in their favor and against Defendants in the amount of \$20,000,000, together with interest, punitive damages, and costs of these proceedings as allowed by law.

**COUNT II**  
**YVONNE BOUGHTER v. DEFENDANTS**  
**(GROSS NEGLIGENCE/WRONGFUL DEATH FOR KELLY BOUGHTER)**

51. Paragraphs 1 through 50 are incorporated herein by reference.

52. Yvonne Boughter is the mother of Kelly Boughter and is the primary beneficiary in an action for wrongful death in accordance with Maryland Code, Courts and Judiciary Proceedings Article Section 3-904(a).

53. Defendants' gross negligence and breach of its duties owed to Plaintiffs, proximately caused the injuries and death of Kelly M. Boughter, with no negligence on the part of Kelly M. Boughter and Yvonne Boughter contributing thereto.

54. As a direct and proximate result of Defendants' gross negligence in causing the wrongful death of Kelly M. Boughter, Yvonne Boughter, the surviving mother of Kelly M. Boughter, sustained pecuniary loss, mental anguish, emotional pain and suffering, loss of society, comfort, protection, attention, advice, counsel, and other items of special and general damages.

WHEREFORE, the Plaintiffs demand judgment in their favor and against Defendants in the amount of \$20,000,000, together with interest, punitive damages, and costs of these proceedings as allowed by law.

**COUNT III**  
**YVONNE BOUGHTER v. DEFENDANTS**  
**(GROSS NEGLIGENCE/PERSONAL INJURY)**

55. Paragraphs 1 through 54 are incorporated herein by reference.

56. As a direct and proximate result of the gross negligence of Defendants, Plaintiff Yvonne Boughter suffered personal injuries with no negligence of Yvonne Boughter contributing thereto.

57. Not only was Yvonne Boughter directly impacted and injured by the Defendants' gross negligence, she was also in the zone of danger in which it was foreseeable to Defendants that she would suffer injury and damages as a result of Defendants' gross negligence.

58. As a directed and proximate result of Defendants' gross negligence, Yvonne Boughter suffered and will continue to suffer severe injuries and harm, including but not limited to physical, psychiatric and emotional injuries, pain, suffering, physical impairment,

disfigurement, inconvenience, loss of earnings, loss of financial support, loss of earning capacity, loss of life's pleasures, mental anguish, emotional pain and suffering, medical and mental health care expenses and other items of special and general damages.

WHEREFORE, the Plaintiffs demand judgment in their favor and against Defendants in the amount of \$20,000,000, together with interest, punitive damages, and costs of these proceedings as allowed by law.

**COUNT IV**  
**MORGAN BOUGHTER v. DEFENDANTS**  
**(GROSS NEGLIGENCE/PERSONAL INJURY)**

59. Paragraphs 1 through 58 are incorporated herein by reference.

60. As a direct and proximate result of the gross negligence of Defendants, Plaintiff Morgan Boughter suffered personal injuries with no negligence of Morgan Boughter contributing thereto.

61. Not only was Morgan Boughter directly impacted and injured by the Defendants' gross negligence, she was also in the zone of danger in which it was foreseeable to Defendants that she would suffer injury and damages as a result of Defendants' gross negligence.

62. As a directed and proximate result of Defendants' gross negligence, Morgan Boughter suffered and will continue to suffer severe injuries and harm, including but not limited to physical, psychiatric and emotional injuries, pain, suffering, physical impairment, disfigurement, inconvenience, loss of earnings, loss of financial support, loss of earning capacity, loss of life's pleasures, mental anguish, emotional pain and suffering, medical and mental health care expenses and other items of special and general damages.

WHEREFORE, the Plaintiffs demand judgment in their favor and against Defendants in the amount of \$20,000,000, together with interest, punitive damages, and costs of these proceedings as allowed by law.

**COUNT V**  
**YVONNE BOUGHTER AS THE PERSONAL REPRESENTATIVE FOR THE ESTATE**  
**OF PATRICK BOUGHTER v. DEFENDANTS**  
**(GROSS NEGLIGENCE/SURVIVAL ACTION)**

63. Yvonne Boughter as the Personal Representative of the Estate of Patrick Boughter incorporates herein by reference paragraphs 1 through 62 above.

64. Yvonne Boughter as the Personal Representative of the Estate of Patrick J. Boughter brings this survival action for and/or on behalf of Patrick Boughter and his Estate.

65. As a direct and proximate result of the gross negligence of Defendants with no negligence on the part of Patrick Boughter, Patrick Boughter suffered harm, including but not limited to physical injuries, conscious pain and suffering, mental anguish, pre-death fright, death, medical expenses, funeral expenses, and other special and general damages.

WHEREFORE, the Plaintiffs demand judgment in their favor and against Defendants in the amount of \$20,000,000, together with interest, punitive damages, and costs of these proceedings as allowed by law.

**COUNT VI**  
**YVONNE BOUGHTER AS THE PERSONAL REPRESENTATIVE FOR THE ESTATE**  
**OF KELLY BOUGHTER v. DEFENDANTS**  
**(GROSS NEGLIGENCE/SURVIVAL ACTION)**

66. Yvonne Boughter as the Personal Representative of the Estate of Kelly Boughter incorporates herein by reference paragraphs 1 through 65 above.

67. Yvonne Boughter is the Personal Representative of the Estate of Kelly Boughter and brings this survival action for and/or on behalf of Kelly Boughter and her Estate.

68. As a direct and proximate result of the gross negligence of Defendants, with no negligence of Kelly Boughter contributing thereto, Kelly Boughter suffered injury and harm, including but not limited to physical injuries, conscious pain and suffering, mental anguish, pre-death fright, death, medical expenses and funeral expenses, and other special and general damages.

WHEREFORE, the Plaintiffs demand judgment in their favor and against Defendants in the amount of \$20,000,000, together with interest, punitive damages, and costs of these proceedings as allowed by law.

Respectfully submitted,

/s/ Steven A. Allen  
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**PRAYER FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury of all counts contained in this Complaint.

/s/ Steven A. Allen  
Steven A. Allen