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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

\$350

Peter B. Yeremian, Administrator of the
Estate of Peter J. Yeremian, Deceased
317 Netherington Drive
Broomall, PA 19008

Plaintiff,

-VS-

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY
1234 Market Street
Philadelphia, PA 19107

Defendant.

CIVIL ACTION NO.: **11 6842**

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

(42 USC 1983; Motor Vehicle; Survival; Wrongful Death)

I JURISDICTION

1. This action is brought pursuant to 42 U.S.C. §1983. Jurisdiction of this matter is vested in this Court under 42 U.S.C. 1983 and 28 U.S.C. 1331, 1343 and 1367.

II PARTIES

2. Plaintiff Peter B. Yeremian is an adult individual residing at the address as shown in the caption to this Complaint.
3. Plaintiff Peter B. Yeremian is the Administrator of the Estate of Peter J. Yeremian, Deceased. A true and correct copy of the Letters of Administration is attached hereto, made a part hereof and marked Exhibit "1."
4. Plaintiff brings this action on behalf of the Estate of Peter J. Yeremian, as a survival action; and on behalf of the persons entitled to maintain an action for benefits under the applicable Wrongful Death statute.

5. Defendant Southeastern Pennsylvania Transportation Authority (hereinafter referred to as “defendant” or “Septa”) is a corporate or other jural entity, organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 1234 Market Street, Philadelphia, PA 19107.
6. Defendant Septa is a state agency / authority, created by the Pennsylvania legislature; and, accordingly, Septa is subject to the same responsibilities, obligations and requirements of the Pennsylvania and United States Constitutions as are any other state agencies / actors.

III AGENCY, EMPLOYMENT AND CONTROL

7. At all times pertinent to the cause of action set forth hereinafter, Septa was the owner and operator, and in control of, the Route 100 Norristown High Speed Line, which runs to, from and between the 69th Street Terminal and the Norristown Transportation Center.
8. At all times pertinent to the cause of action set forth hereinafter, Septa was operating the Route 100 Norristown High Speed Line train by and through its agents, servants, workmen and/or employees, within the course and scope of their employment, and in furtherance of Septa’s business of transporting passengers for hire.
9. All references hereinafter to the conduct, misconduct, actions and/or omissions of Septa employees shall be deemed to be references to Septa itself, unless otherwise specifically set forth.

IV PERTINENT FACTUAL ALLEGATIONS

10. Date of Incident: On or about January 29, 2010.
11. Time of Incident: At, about, and/or between 20:00 hours and 21:30 hours.
12. Location of Incident: On Septa's Route 100 train (identified by the defendant as Train 132).
13. Plaintiff's decedent boarded the defendant's train at the 69th Street Terminal at approximately 20:00 hours.
14. Defendant's employee/train operator, Benjamin Huleatt (hereinafter referred to as "Huleatt"), observed and reported that, at the time of boarding the train, plaintiff's decedent was staggering and possibly intoxicated.
15. Plaintiff's decedent took a seat on the train, approximately four rows from the rear of the train.
16. When the train arrived at the Norristown Transportation center at about 20:40 hours, Huleatt tried to awaken the plaintiff's decedent, who was slouched to the right.
17. Unable to awaken plaintiff's decedent, Huleatt contacted the Septa dispatcher, whose identity is known to Septa and Huleatt, but not to plaintiff at this time; and the dispatcher instructed Huleatt to complete his regular train operation and return to the 69th Street Terminal, at which time the Septa police would become involved.
18. Sometime after the Septa train arrived back at the 69th Street Terminal at approximately 21:20 hours, it was determined that plaintiff's decedent was dead.
19. Defendant Septa has been provided with full notice of the incident and the death of plaintiff's decedent as a result of the incident. In fact, Septa reported the incident to the police and conducted its own investigation of the incident.

V INJURIES, DAMAGES AND LOSSES

20. As a direct and proximate result of the conduct of the defendant and its agents and employees, as more particularly set forth hereinafter, plaintiff's decedent, Peter J. Yeremian, died.
21. As a direct and proximate result of the conduct of the defendant and its agents and employees, plaintiff's decedent, Peter J. Yeremian, suffered extreme pain and anguish while on the defendant's vehicle, during its operation.
22. As a direct and proximate result of the conduct of the defendant and its agents and employees, plaintiff's decedent, Peter J. Yeremian, and the persons entitled to recover from the defendant under Pennsylvania's Wrongful Death and Survival Actions statute, sustained economic losses, including plaintiff's decedent's loss of prospective income, medical and funeral expenses.
23. As a direct and proximate result of the conduct of the defendant and its agents and employees, resulting in the death of plaintiff's decedent, plaintiff is entitled to recover, on behalf of those persons/entities entitled to recover under Pennsylvania's Wrongful Death / Survival Statutes, all damages enumerated in those statutes, incorporated herein by reference.

COUNT ONE
PLAINTIFF V. DEFENDANT
VEHICLE EXCEPTION TO SOVEREIGN IMMUNITY
42 PA. CONS. STAT. ANN. 8522

24. Plaintiff incorporates herein all prior and subsequent allegations of this Complaint, as if the same were set forth at length herein.
25. At all times pertinent to this cause of action, defendant's vehicle was moving.

26. At all times pertinent to this cause of action, defendant, including its agents and employees, willingly, knowingly and with actual and/or constructive knowledge of Peter J. Yeremian's condition, elected to keep its vehicle in operation (i.e., moving), rather than stop the vehicle and render aid to Peter J. Yeremian.
27. Peter J. Yeremian's death occurred as a result of the defendant's insistence on keeping its vehicle moving.
28. In addition to this *de jure* waiver of sovereign immunity, defendant also had a common law duty to plaintiff's decedent under the facts as pertinent to this cause of action.
29. The defendant is a common carrier, and as such is required by law to use the highest degree of care for the safety of its passengers. Any failure of the defendant to use such care under the circumstances as pertinent herein constitutes negligence.
(Adapted from Pennsylvania Standard Civil Jury Instruction 3.05.)
30. Furthermore, defendant in this case had knowledge or notice that Peter J. Yeremian was affected by a physical or mental disability, upon entering defendant's vehicle, that would increase his travel difficulties; and the defendant chose to ignore same, thus establishing negligence on the part of Septa. (Adapted from Pennsylvania Standard Civil Jury Instruction 3.06.)
31. Pennsylvania has adopted Restatement (Second) of Torts, Section 323, which states, in pertinent part, that "One who undertakes, gratuitously or for consideration, to render services to another which [Septa] should recognize as necessary for the protection of the other's person...is subject to liability to the other for physical harm resulting from [Septa's] failure to exercise reasonable care to perform [its]

undertaking, if (a) [Septa's] failure to exercise such care increased the risk of harm, or (b) the harm is suffered because of the other's reliance upon the undertaking."

32. Pennsylvania has also adopted the Restatement (Second) of Torts, Section 324, which provides that "One who, being under no duty to do so, takes charge of another who is helpless to adequately aid or protect himself is subject to liability to the other for any bodily harm caused to him by (a) the failure of [Septa] to exercise reasonable care to secure the safety of the other while within [Septa's] charge; (b) [Septa's] discontinuing [its] aid or protection, if by doing so [Septa] leaves the other in a worse position than when [Septa] took charge of him."
33. The defendant is also subject to the Restatement (Second) of Torts, Section 314A, Special Relations Giving Rise to Duty to Aid or Protect: (1) A common carrier is under a duty to its passengers to take reasonable action (a) to protect them against unreasonable risk of physical harm, and (b) to give them first aid after [Septa] knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others."
34. Septa breached its duty to plaintiff's decedent, resulting in the death of plaintiff's decedent, in one or more of the following ways:
 - a. Failing to exercise the appropriate standard of care for the protection of plaintiff's decedent.
 - b. Acknowledging that plaintiff's decedent had a physical or mental disability, upon entering defendant's vehicle, such as would increase his travel difficulties, and then choosing to ignore those disabilities, and to not render aid or protection to plaintiff's decedent, in favor of continuing to operate

defendant's vehicle so as to keep the vehicle on schedule, regardless of the resulting harm to plaintiff's decedent.

- c. Undertaking services necessary for the protection of plaintiff's decedent, and then failing to exercise reasonable care to perform that undertaking, thus increasing or causing the harm to Peter J. Yeremian.
- d. Failing to exercise reasonable care to secure the safety of plaintiff's decedent while under the care of the defendant; and / or discontinuing that aid or protection, thereby leaving plaintiff's decedent in a worse condition and / or position than when Septa took charge of plaintiff's decedent.
- e. Failing to take reasonable actions to protect Peter J. Yeremian against unreasonable risk of physical harm.
- f. Failing to render first aid to plaintiff's decedent after Septa knew or had reason to know that Peter J. Yeremian was ill or injured.
- g. Failing to care for plaintiff's decedent until he could be cared for by others.
- h. Placing the operation and schedule of its vehicles in a position paramount to its legal obligations to its passengers, including Peter J. Yeremian.
- i. Failing to establish written policies to be followed by its employees when confronted with an impaired passenger, such as plaintiff's decedent, so as to guarantee that Septa and its agents/employees would fulfill their legal obligations to protect their passengers.
- j. Failing to enforce established policies for attending to impaired passengers.
- k. Failing to train its agents and employees in the proper procedures for responding to, and protecting, impaired or disabled passengers.

- i. Failing to supervise its agents and employees to verify and enforce policies and procedures relating to the protection of impaired or disabled passengers.
- m. Allowing to exist a system of disregard for the safety and protection of disabled passengers.

35. For the aforelisted reasons, defendant is obligated to the plaintiff for all injuries, damages and losses to which the plaintiff, and the persons/entities he represents, are entitled under the Wrongful Death and Survival Statutes in Pennsylvania.

WHEREFORE, plaintiff demands judgment against the defendant, in this Count One, in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00), and in excess of the amount requiring compulsory arbitration.

COUNT TWO
PLAINTIFF V. DEFENDANT
PERSONAL PROPERTY EXCEPTION TO SOVEREIGN IMMUNITY
42 PA. CONS. STAT. ANN. 8522

- 36. Plaintiff incorporates herein all prior and subsequent allegations of this Complaint, as if the same were set forth at length herein.
- 37. The train car occupied by Peter J. Yeremian at the time of his incident and death was the personal property of the defendant, under the care, custody and control of the defendant at all times pertinent to this cause of action.
- 38. The incident in question occurred as a result of the defendant's insistence on placing the location, relocation and movement of its personal property into a position paramount to the safety of its passengers, including plaintiff's decedent.
- 39. In addition to its *de jure* waiver of sovereign immunity, defendant also had a common law duty to plaintiff's decedent under the facts as pertinent to this cause of action.

40. The defendant is a common carrier, and as such is required by law to use the highest degree of care for the safety of its passengers. Any failure of the defendant to use such care under the circumstances as pertinent herein constitutes negligence.

(Adapted from Pennsylvania Standard Civil Jury Instruction 3.05.)

41. Furthermore, defendant in this case had knowledge or notice that Peter J. Yeremian was affected by a physical or mental disability, upon entering defendant's vehicle, that would increase his travel difficulties; and the defendant chose to ignore same, thus establishing negligence on the part of Septa. (Adapted from Pennsylvania Standard Civil Jury Instruction 3.06.)

42. Pennsylvania has adopted Restatement (Second) of Torts, Section 323, which states, in pertinent part, that "One who undertakes, gratuitously or for consideration, to render services to another which [Septa] should recognize as necessary for the protection of the other's person...is subject to liability to the other for physical harm resulting from [Septa's] failure to exercise reasonable care to perform [its] undertaking, if (a) [Septa's] failure to exercise such care increased the risk of harm, or (b) the harm is suffered because of the other's reliance upon the undertaking."

43. Pennsylvania has also adopted the Restatement (Second) of Torts, Section 324, which provides that "One who, being under no duty to do so, takes charge of another who is helpless to adequately aid or protect himself is subject to liability to the other for any bodily harm caused to him by (a) the failure of [Septa] to exercise reasonable care to secure the safety of the other while within [Septa's] charge; (b) [Septa's] discontinuing [its] aid or protection, if by doing so [Septa] leaves the other in a worse position than when [Septa] took charge of him."

44. The defendant is also subject to the Restatement (Second) of Torts, Section 314A, Special Relations Giving Rise to Duty to Aid or Protect: (1) A common carrier is under a duty to its passengers to take reasonable action (a) to protect them against unreasonable risk of physical harm, and (b) to give them first aid after [Septa] knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.”
45. Septa breached its duty to plaintiff’s decedent, resulting in the death of plaintiff’s decedent, in one or more of the following ways:
- a. Failing to exercise the appropriate standard of care for the protection of plaintiff’s decedent.
 - b. Acknowledging that plaintiff’s decedent had a physical or mental disability, upon entering defendant’s vehicle, such as would increase his travel difficulties, and then choosing to ignore those disabilities, and to not render aid or protection to plaintiff’s decedent, in favor of continuing to operate defendant’s vehicle so as to keep the vehicle on schedule, regardless of the resulting harm to plaintiff’s decedent.
 - c. Undertaking services necessary for the protection of plaintiff’s decedent, and then failing to exercise reasonable care to perform that undertaking, thus increasing or causing the harm to Peter J. Yeremian.
 - d. Failing to exercise reasonable care to secure the safety of plaintiff’s decedent while under the care of the defendant; and / or discontinuing that aid or protection, thereby leaving plaintiff’s decedent in a worse condition and / or position than when Septa took charge of plaintiff’s decedent.

- e. Failing to take reasonable actions to protect Peter J. Yeremian against unreasonable risk of physical harm.
- f. Failing to render first aid to plaintiff's decedent after Septa knew or had reason to know that Peter J. Yeremian was ill or injured.
- g. Failing to care for plaintiff's decedent until he could be cared for by others.
- h. Placing the operation of its vehicles in a position paramount to its legal obligations to its passengers, including Peter J. Yeremian.
- i. Failing to establish written policies to be followed by its employees when confronted with an impaired passenger, such as plaintiff's decedent, so as to guarantee that Septa and its agents/employees would fulfill their legal obligations to protect their passengers.
- j. Failing to enforce established policies for attending to impaired passengers.
- k. Failing to train its agents and employees in the proper procedures for responding to, and protecting, impaired or disabled passengers.
- l. Failing to supervise its agents and employees to verify and enforce policies and procedures relating to the protection of impaired or disabled passengers.
- m. Allowing to exist a system of disregard for the safety and protection of disabled passengers.

46. For the aforelisted reasons, defendant is obligated to the plaintiff for all injuries, damages and losses to which the plaintiff, and the persons/entities he represents, are entitled under the Wrongful Death and Survival Statutes in Pennsylvania.

WHEREFORE, plaintiff demands judgment against the defendant, in this Count Two, in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00), and in excess of the amount requiring compulsory arbitration.

COUNT THREE
PLAINTIFF V. DEFENDANT
PENNSYLVANIA CONSTITUTION, ARTICLE 1, SECTION 1

47. Plaintiff incorporates herein all prior and subsequent allegations of this Complaint, as if the same were set forth at length herein.
48. Defendant Septa is deemed by law to be a state actor, subject to the same constitutional obligations and responsibilities as the Commonwealth of Pennsylvania itself.
49. The Constitution of the Commonwealth of Pennsylvania, in Article 1, Section 1, provides that **“All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”**
50. By its actions and inactions, as hereinbefore set forth, defendant Septa violated plaintiff’s decedent’s right to the enjoyment of life.
51. Defendant’s failures, as set forth in Paragraphs 34 and 45, supra, arose, existed and were practiced by defendant and its agents and employees pursuant to custom, practices, policies or uses of defendant Septa.
52. As a result of these customs, practices, policies and uses, plaintiff’s decedent suffered all of the injuries, damages and losses previously set forth herein, resulting in, and including, the death of Peter J. Yeremian.

WHEREFORE, plaintiff demands judgment against the defendant, in this Count Three, in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00), and in excess of the amount requiring compulsory arbitration.

COUNT FOUR
PLAINTIFF V. DEFENDANT
PENNSYLVANIA CONSTITUTION, ARTICLE 1, SECTION 26

53. Plaintiff incorporates herein all prior and subsequent allegations of this Complaint, as if the same were set forth at length herein.
54. Defendant Septa is deemed by law to be a state actor, subject to the same constitutional obligations and responsibilities as the Commonwealth of Pennsylvania itself.
55. The Constitution of the Commonwealth of Pennsylvania, in Article 1, Section 26, provides that **“Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.”**
56. By its actions and inactions, as hereinbefore set forth, defendant Septa denied to plaintiff’s decedent the enjoyment of his civil rights as guaranteed under the Pennsylvania Constitution, and discriminated against plaintiff’s decedent in the exercise of his civil rights.
57. Defendant’s failures, as set forth in Paragraphs 34 and 45, supra, arose, existed and were practiced by defendant and its agents and employees pursuant to custom, practices, policies or uses of defendant Septa.

58. As a result of these customs, practices, policies and uses, plaintiff's decedent suffered all of the injuries, damages and losses previously set forth herein, resulting in, and including, the death of Peter J. Yercmian.

WHEREFORE, plaintiff demands judgment against the defendant, in this Count Four, in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00), and in excess of the amount requiring compulsory arbitration.

COUNT FIVE
PLAINTIFF V. DEFENDANT
42 UNITED STATES CODE (ANNOTATED) SECTION 1983

59. Plaintiff incorporates herein all prior and subsequent allegations of this Complaint, as if the same were set forth at length herein.
60. Defendant Septa is deemed by law to be a state actor, subject to the same constitutional obligations and responsibilities as the Commonwealth of Pennsylvania itself.
61. At all times relevant hereto, defendant Septa and its agents, employees, officials and policymakers, were acting under color of law and pursuant to and within the authority granted to them by state and/or county and/or municipal regulations, laws, statutes and customs.
62. At all times relevant hereto, and for at least two years prior to Peter J. Yeremian's death, Septa and its agents, employees, officials and policymakers, disregarded or otherwise failed to establish policies, and/or failed to enforce policies, and/or failed to monitor employees carrying out policies, and/or failed to train/instruct employees in policies that would have avoided the harm (death) that resulted to Peter J. Yeremian,

in spite of Septa's duty to the public in general, and Peter J. Yeremian in particular, to protect the health and safety of its passengers, as set forth herein, supra.

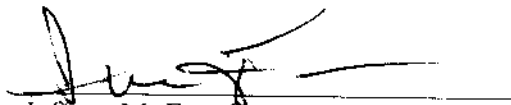
63. Prior to the death of Peter J. Yeremian, defendant Septa had actual and/or constructive knowledge of similar incidents on or about its vehicles, resulting in death or increased risk of harm to its passengers, so Septa was aware, or should have been aware, of the consequences to Peter J. Yeremian if Septa ignored or otherwise abrogated its duty to plaintiff's decedent.
64. Despite such knowledge and awareness, Septa elected to abandon its duty to Peter J. Yeremian, resulting in his death.
65. Peter J. Yeremian's death constitutes a deprivation of his federal constitutional rights, including but not limited to substantive due process rights to liberty and/or privacy and/or bodily integrity and/or freedom from pain and/or death resulting from state-created actions or inactions, all of which may be redressed pursuant to 42 U.S.C. 1983.
66. At all times relevant hereto, and for at least two years prior to Peter J. Yeremian's death, the conduct described herein of Septa and its agents, employees, officials and policymakers, shocked the conscience and was arbitrary and/or capricious.
67. The conduct of Septa as previously set forth herein (Paragraphs 34 and 45) was caused by and was a product of a Septa policy, custom or practice.
68. At all times relevant hereto, Septa and its agents, employees, officials and policymakers maintained and/or acquiesced to a policy or custom of failing and/or declining to provide appropriate and necessary care to its passengers in need of same, including Peter J. Yeremian, which constitutes deliberate indifference to Peter J.

Yeremian's and other Septa passengers' constitutional rights, including but not limited to substantive due process rights to liberty and/or privacy and/or bodily integrity and/or freedom from pain and/or death resulting from state-created actions or inactions, all of which may be redressed pursuant to 42 U.S.C. 1983.

69. At all times relevant hereto, prior to plaintiff's decedent's death, defendant Septa and its agents, employees, officials and policymakers, acted in willful disregard to the safety of Peter J. Yeremian, had contact with and/or formed a special relationship with him in particular and users of Septa's vehicles, did and could foresee the harm that came to him, acted under color of state law so as to cause him harm and death, and/or permit harm or death to be caused to him, and subjected Peter J. Yeremian to a "state-created danger" pursuant to *Kneipp v. Tedder*, 95 F.3d 1199 (3rd Cir. 1996) and its progeny, such that the harm which came to him was foreseeable.

70. All of the above conduct on the part of Septa, its agents, employees, officials and policymakers, resulted in Peter J. Yeremian's death.

WHEREFORE, plaintiff demands judgment against the defendant, in this Count Five, in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00), and in excess of the amount requiring compulsory arbitration.



Jeffrey M. Freedman, Esquire
1710 Locust Street
Philadelphia, PA 19103
Atty ID # 15818
(215) 599-5591
(215) 599-5595 facsimile

Date:

10/31/11

EXHIBIT ONE

Register of Wills
Certificate of Grant of Letters



No. 2311-1183

ESTATE OF **PETER J. YEREMIAN**

also known as:

(no aliases)

Social Security No.211-64-5060

WHEREAS, PETER J. YEREMIAN late of MARPLE TOWNSHIP died on the 29th day of January, 2010 and WHEREAS, the grant of letters of administration is required for the administration of the estate.

THEREFORE, I, HUGH A. DONAGHUE, ESQUIRE, Register of Wills in and for the County of Delaware, in the Commonwealth of Pennsylvania, has this day granted Letters of Administration to

PETER B. YEREMIAN

who has duly qualified as ADMINISTRATOR of the estate of the above named decedent and has agreed to administer the estate according to law, all of which fully appears of record in my Office at Media, Pennsylvania.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my Office on the 1st day of May, 2010.

Christae M. Front

Chief Deputy Register of Wills

Commonwealth of Pennsylvania }
Delaware County } ss:

I, HUGH A. DONAGHUE, ESQ., Register for
the Probate of Wills and Granting Letters
Testamentary and of Administration in and
for the County of Delaware, in the
Commonwealth of Pennsylvania, do hereby
Certify that on the 1st day of May, 2010

PETER B. YEREMIAN

was duly and legally appointed as ADMINISTRATOR of the estate of
PETER J. YEREMIAN
also known as:

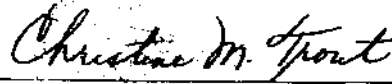
(no aliases)

who died 01/29/2010 late of Delaware County, Pennsylvania, and has
been duly qualified as such according to law as can be verified by reference to the
records in my office, and that the letters have not been revoked.

WITNESS my hand and seal of office, at Media in the County aforesaid, this
20th day of May, 2011

File No. 2311-1183

[Duplicate Copy]



Chief Deputy Register of Wills