

**BY: STEVEN G. WIGRIZER
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weissj@wnwlaw.com
Identification No. 30396/310446
**WAPNER, NEWMAN, WIGRIZER,
BRECHER & MILLER, P.C.**
2000 Market Street, Suite 2750
Philadelphia, PA 19103
(215) 569 - 0900

This is a Major Jury Case.
Jury Trial is Demanded.
Assessment of Damages Hearing Required.

ATTORNEYS FOR PLAINTIFFS

GEORGE B. SIMPSON, Administrator of the :
Estate of Mary Lea Simpson, :
310 Crescent Village Circle, Apt. 1337 :
San Jose, CA 95134 :
 :
Plaintiff, :
 :
vs. :
 :
THE SALVATION ARMY OF GREATER :
PHILADELPHIA :
7505 Malvern Avenue :
Philadelphia, PA 19131 :
 :
[SEE ATTACHED RIDER] :
 :
 :

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION

AUGUST TERM, 2013

No.

COMPLAINT - CIVIL ACTION

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL AND INFORMATION SERVICE
ONE READING CENTER
PHILADELPHIA, PA 19107
TELEPHONE: (215) 238-6333

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara mdidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATA-MENTE. SI NO TIENE ABOGADO O SINO TIENE EL DI-NERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEPHONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE FILADELFIA
SERVICIO DE REFERENCIA E INFORMACION LEGAL
ONE READING CENTER
FILADELFIA, PA 19107
TELÉFONO: (215) 238-6333

RIDER

**(TRUSTEES OF) THE SALVATION
ARMY IN PENNSYLVANIA** :
701 North Broad Street :
Philadelphia, PA 19123 :

and :

**THE SALVATION ARMY EASTERN
TERRITORY** :
701 North Broad Street :
Philadelphia, PA 19123 :

and :

**THE NATIONAL HEADQUARTERS OF
THE SALVATION ARMY** :
615 Slaters Lane :
Alexandria, VA 22313 :

and :

ALISTAIR FRASER :
13 Dussenbury Drive :
Florida, NY 10921 :
West Nyack, NY 10994-1739 :

and :

JOHN CRANFORD :
2020 Spring Mill Road :
Lafayette Hill, PA 19444 :

and :

CHARLES DEITRICK :
25 Hemptor Road :
New City, NY 10956 :

and :

RICHARD BASCIANO :
300 West 43rd Street, Suite 400 :
New York, NY 10036 :

and :

STB INVESTMENTS CORPORATION :
a/k/a**STB INVESTMENT CORPORATION** :
9232 Burbank Road :
Philadelphia, PA 19115 :

and :

2100 WEST MARKET STREET :
CORPORATION :
2130 Arch Street, 2nd Floor :
Philadelphia, PA 19107 :

and :

303 W. 42nd STREET CORPORATION :
300 West 43rd Street, Suite 400 :
New York, NY 10036 :

and :

THOMAS SIMMONDS :
300 West 43rd Street, Suite 400 :
New York, NY 10036 :

and :

FRANK CRESCI :
300 West 43rd Street, Suite 400 :
New York, NY 10036 :

and :

NICETOWN HOUSE DEVELOPMENT :
CORPORATION, a/k/a and/or d/b/a :
GRIFFIN CAMPBELL CONSTRUCTION :
1605 Butler Street :
Philadelphia, PA 19140 :

and :

GRIFFIN T. CAMPBELL :
1605 Butler Street :
Philadelphia, PA 19123 :

and :

S&R CONTRACTING
4945 N. 7th Street
Philadelphia, PA 19120

and

SEAN BENSCHOP
1824 68th Street
Philadelphia, PA 19126

and

PLATO STUDIO ARCHITECT, LLC
2000 Hamilton Street, Suite 912
Philadelphia, PA 19130

and

PLATO MARINAKOS
2000 Hamilton Street, Suite 912
Philadelphia, PA 19130

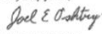
Defendants.

COMPLAINT – CIVIL ACTION

PRELIMINARY STATEMENT

1. This wrongful death and survival action involves the avoidable death of Mary Lea Simpson, a remarkable young woman whose life was tragically taken at the age of twenty-four.
2. On the morning of June 5, 2013, Mary, a business invitee, was shopping at The Salvation Army Thrift Store located at 2140 Market Street in Philadelphia.
3. At that time, Mary was one of nineteen (19) individuals in the thrift store.
4. At the aforementioned time and place, a demolition project was underway on the neighboring properties located at 2136-2138 Market Street.
5. At approximately 10:42 a.m. on June 5, 2013, the building being demolished at 2136-2138 Market Street collapsed onto the neighboring Salvation Army thrift store, trapping all nineteen people.

6. Of the nineteen people trapped in the rubble, six died agonizing and painful deaths from asphyxiation.
7. Mary Lea Simpson was one of those six.
8. The June 5, 2013 Market Street Building Collapse was the most devastating construction tragedy in the history of Philadelphia.
9. This collapse was caused by the negligence, carelessness, recklessness, intentional misrepresentations, and conscience-shocking behavior of the Defendants named herein.
10. This claim involves the conduct of parties who *knew* the danger the demolition posed to members of the general public, like Mary Lea Simpson:

May 15, 2013
 Steven C. Nudel, Esquire
 Law Offices of Steven C. Nudel
 219 Pine Street
 Harrisburg, PA 17101
 Via: Facsimile to 1-717-236-5080
 Re: 2138 and 2140 Market Street, Philadelphia, Pennsylvania
 Dear Mr. Nudel:
 In follow up of our telephone conversations regarding the demolition of 2138 Market Street, I can advise that my client, STB Corporation, the owner of 2138 Market Street, Philadelphia, Pennsylvania, proposes to do the following to safeguard the interests of the public, The Salvation Army and STB Corporation:
 1. The roof of 2140 Market Street will be covered with a tarp and on top of the tarp plywood will be laid. This will protect the roof if any debris fall on the roof area;
 2. Boom trucks which consist of a four wheel base and a long extending boom or arm at the end of which is a bucket/basket area for holding a worker will be stationed on the street and alleyway. The workers will be suspended over the roof and next to the wall to be demolished. Thus the worker will not be relying on 2140 Market Street or its roof for support. The worker will demolish the wall in a direction away from 2140 Market Street so that the wall is pushed out onto the 2138 Market Street parcel area;
 3. Thus no equipment or personnel will be stationed on the roof of 2140 Market Street.
 It is now a matter of urgency that this demolition be accomplished immediately. The building at 2138 Market Street is in a state of partial demolition, the City has granted a demolition permit and the longer it remains undemolished the greater the risks to the public and all property owners of an uncontrolled collapse of part or loose debris. We are therefore requesting The Salvation Army's cooperation
 so the demolition can be finished in an expeditious fashion as possible to minimize risks. Thank you for your prompt attention.
 Very truly yours,

 JOEL E. OSHTRY
 JEO/ae

The building at 2138 Market Street is in a state of partial demolition, the City has granted a demolition permit and the longer it remains undemolished the greater the risks to the public and all property owners of an uncontrolled collapse of part or loose debris. We are therefore requesting The Salvation Army's cooperation

11. This claim is brought because the Defendants could, and should have, acted to prevent a result they *actually* predicted:



Thomas Simmonds
 tsimmonds@earthlink.net
 05/22/2013 04:54 PM

To: "Alan Greenberger@Phila.Gov"
 -Alan.Greenberger@Phila.Gov
 cc:
 doc
 Subject: FW: 2140 Market Street - Salvation Army

THOM SIMMONDS
 300 WEST 43RD STREET
 NEW YORK, NEW YORK 10036
 347.234.0468

From: Thomas Simmonds
 Sent: Wednesday, May 22, 2013 4:54 PM
 To: 'Alan.Greenberger@Phila.gov'
 Cc: 'John.Mondak@Phila.gov'; Alex Woffington; Plato Marinakis; oshtyler@aol.com; Frank Cresti
 Subject: FW: 2140 Market Street - Salvation Army

Alan: I hope you are well. I am sending you this thread so you can see what I am confronted with concerning the Salvation Army. In spite of the numerous telephone conversations, countless e-mails and communications (most of which Salvation Army either ignores or responds to "late" for lack of a better word), this is how/when whoever this Mr. Fraser decides to respond to a situation that poses a threat to life and limb safety caused by Salvation Army's flagrant disregard for either my or my attorney's communications. Is there anything at all you can do to enable us to complete our demolition of the 2138 Market Street property in a professional, legal manner without having to deal with such unprofessional – and clearly uncaring – people who claim to be on a charitable mission? The job would have been completed last week if they cooperated with us as requested. **This nonsense must end before someone is seriously injured or worse: those are headlines none of us want to see or read. Kindly advise.**

Thank you – I know you are extremely busy,
 Thom

BTW – this is their typical MO – they write an e-mail, I respond and they "disappear" for a few weeks.

THOM SIMMONDS
 300 WEST 43RD STREET
 NEW YORK, NEW YORK 10036
 347.234.0468

This nonsense must end before someone is seriously injured or worse: those are headlines none of us want to see or read. Kindly advise.

12. This wrongful death and survival action is brought because on June 5, 2013 those avoidable headlines were written.



THE PARTIES

13. Plaintiff *George B. Simpson* (hereinafter as “Plaintiff”) is an adult citizen residing at the above captioned address.

14. At all material times hereto, Mary Lea Simpson, deceased, was the daughter of Dr. Zachary W. Simpson and Starr Harris Simpson, and sister to Plaintiff George B. Simpson.

15. Plaintiff is the duly-appointed Administrator of the Estate of Mary Lea Simpson by grant of Letters of Administration from the Register of Wills of the County of Delaware, Commonwealth of Pennsylvania, dated June 28, 2013.

16. Defendants *The Salvation Army in Greater Philadelphia, The Trustees of the Salvation Army in Pennsylvania, The Salvation Army Eastern Territory, and the National Headquarters of the Salvation Army* (hereinafter as “the Salvation Army”) are corporations or other business entities whose principal places of business are located at the above captioned addresses.

17. At all relevant times hereto The Salvation Army owned, operated, controlled, possessed and/or managed, a retail business, the “Salvation Army Thrift Store” located at 2140 Market Street, Philadelphia, PA 19103.

18. Defendant *Alistair Fraser* (hereinafter “Fraser”) is the Operations Manager for the Salvation Army Eastern Territory and is an adult citizen residing at the above captioned address.

19. Fraser was the Salvation Army employee responsible for architectural and/or engineering concerns relating to the operation of the Salvation Army Thrift Store.

20. Defendant *Charles Deitrick* (hereinafter “Deitrick”) is the General Secretary of the Salvation Army and is an adult citizen residing at the above captioned address.

21. Defendant *John Cranford* (hereinafter “Cranford”) is the Administrator of the Salvation Army in Philadelphia and is an adult citizen residing at the above captioned address.

22. Defendants Deitrick and Cranford were at all relevant times hereto corporate officers of The Salvation Army, and had personal knowledge of the condition of the properties located at 2136, 2138, and 2140 Market Street.

23. Defendant, *Richard Basciano* (hereinafter as “Basciano”), is an adult citizen residing at the above captioned address.

24. At all relevant times, Basciano regularly conducted substantial business and related activity in the County of Philadelphia and the Commonwealth of Pennsylvania.

25. Defendant *STB Investments Corporation a/k/a STB Investment Corporation* (hereinafter as “STB”) is a Pennsylvania corporation or other business entity with its principal place of business located at the above captioned address or at 300 West 43rd Street, Suite 400, New York, NY 10036.

26. At all relevant times hereto, STB regularly conducted substantial business and related activity in the County of Philadelphia and the Commonwealth of Pennsylvania.

27. It is believed and therefore averred that Basciano is the majority owner and/or shareholder of STB.

28. It is believed and therefore averred that Basciano acted as the Project Superintendent for the demolition project located at 2136-2138 Market Street in Philadelphia.

29. Defendant *Thomas Simmonds* (hereinafter “Simmonds”) is an adult citizen residing at the above captioned address.

30. At all relevant times, Simmonds was the “Property Manager” for STB, including the STB properties located at 2136-2138 Market at the time of the demolition.

31. Defendant *Frank Cresci* (hereinafter “Cresci”) is an adult citizen residing at the above captioned address.

32. At all relevant times, Cresci was an owner and/or shareholder of STB.

33. Defendant *2100 West Market Street Corporation* is a corporation or other business entity organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at the above captioned address.

34. Defendant *303 West 42nd Street Corporation* is a corporation or other business entity with its principal place of business located at the above captioned address.

35. All references to the “STB Defendants” contained throughout this Complaint shall be deemed to refer to Defendants STB, 2100 West Market Street Corporation and 303 West 42nd Street Corporation.

36. Basciano and The STB Defendants are individuals or corporations or other business entities who at all times relevant hereto, owned, operated, controlled, possessed, maintained and/or managed the properties located at 2136-2138 Market Street.

37. Defendant *Nicetown House Development Corporation* a/k/a and/or d/b/a *Griffin Campbell Construction* (hereinafter as “Campbell Construction”), is a Pennsylvania Corporation or other business entity with its principal place of business located at the above captioned address.

38. Campbell Construction was contracted by the STB Defendants to perform the demolition work located at 2136-2138 Market.

39. Defendant *Griffin T. Campbell* (hereinafter “Campbell”) is an adult citizen residing at the above captioned address.

40. Defendant Campbell is the owner and/or primary shareholder of Campbell Construction.

41. Defendant *S&R Contracting* is a corporation or other business entity organized and existing under the laws of the Commonwealth of Pennsylvania with its principle place of business located at the above captioned address.

42. Defendant Sean Benschop (hereinafter as “Benschop”) is an adult citizen residing at the above captioned address.

43. Benschop is the owner and/or primary shareholder of S&R Contracting.

44. Defendants Benschop and/or S&R Contracting owned and operated the excavator used in the demolition of 2136-2138 Market Street in Philadelphia, PA.

45. Defendant *Plato Studio Architect, LLC* a/k/a *Plato Studio* (hereinafter as “Plato Studio”) is a corporation or other business entity organized and existing under the laws of the Commonwealth of Pennsylvania with its principle place of business located at the above captioned address.

46. Defendant *Plato Marinakos, Jr.* (hereinafter as “Marinakos”) is an adult citizen residing at the above captioned address.

47. Marinakos is the owner, operator, and sole shareholder of Plato Studio.

48. Marinakos is an architect and expeditor.

49. Defendants Marinakos and Plato Studio contracted with the STB Defendants to be responsible for architectural design, plan implementation, and expediting the required permits for the demolition project located at 2136-2138 Market Street in Philadelphia, PA.

50. At all times relevant hereto, all Defendants named herein, individually and/or collectively, acted and/or failed to act through their agents, servants, employees, contractors, and/or workmen and such acts and/or omissions were within the course and scope of Defendants' operations and businesses, and were under the direction, control and/or authority of Defendants.

51. All Defendants were responsible for the safe demolition of the premises located at 2136-2138 Market Street, Philadelphia, Pennsylvania.

52. The Philadelphia Court of Common Pleas is the proper jurisdiction and venue for this litigation.

FACTS COMMON TO ALL COUNTS

53. In 1994, Basciano, either individually or collectively with the STB Defendants, began purchasing properties on Market Street in Philadelphia between 21st and 23rd streets.

54. These purchases included the properties located at 2136-2138 Market Streets which, at all relevant times hereto, were individually and/or collectively owned, operated, maintained, managed, controlled and/or otherwise possessed by Basciano and the STB Defendants.

55. These purchases by Basciano and the STB Defendants also included adult movie theaters, peep show parlors, and pornographic supply stores including, but not limited to, “The Forum” and “Les Gals.”

56. It is believed and therefore averred, that in 2011, as the property values of those purchased properties began to increase, Basciano and the STB Defendants began formulating re-development plans.

57. The properties Basciano and the STB Defendants purchased on Market Street between 21st and 23rd Street were unmaintained and became dilapidated.

58. In 2012, Basciano and the STB Defendants shut down the adult entertainment properties and agreed to demolish the properties with the stated intention to construct new residential and commercial buildings.

59. It was the stated intention of Basciano and the STB Defendants to sell the properties by attempting to find a developer who would purchase them.

60. It was critical to the re-development plan of Basciano and the STB Defendants to acquire all of the remaining properties located along the 2100 and 2200 block of Market Street.

61. The Salvation Army Thrift Store that was destroyed in the Market Street Building Collapse is located at 2140 Market Street.

62. However, the Salvation Army was unwilling to sell the 2140 Market Street property to Basciano and the STB Defendants.

63. When asked about the unwillingness of the Salvation Army to sell to him and the STB Defendants, Basciano was quoted as stating: "They should be embarrassed for playing hardball."

64. Based upon information and belief, in January 2013, Basciano and the STB Defendants began accepting bids for the demolition work to be performed on the properties they owned between the 2100 and 2200 blocks of Market Street.

65. On February 1, 2013 Basciano and STB, through their Architect/expeditor, Defendant Marinakos of Plato Studio, applied to begin demolition on the project at 2136-2138 Market Street.

66. Prior to submitting that application, Basciano and the STB Defendants received multiple bids for the demolition work at 2136-2138 Market that ranged between \$112,000 and approximately \$500,000.

67. The \$112,000 bid was by far the lowest and was placed by Campbell Construction.

68. However, in the February 1, 2013 permit application submitted by Basciano, The STB Defendants, Campbell Construction, and Marinakos, listed the estimated cost of the demolition as “\$10,000.00” despite their knowledge that the actual bid was \$112,000.00:

BUILDING PERMIT		City of Philadelphia Department of Licenses and Inspections 1401 John F. Kennedy Blvd. Philadelphia, PA 19102		Permit Number: 451309	
This permit may be revoked if the information has been misrepresented or not provided.				Fee: \$ 460.00	Date Issued: 02/01/13
Location of work: 02136 MARKET ST PHILADELPHIA, PA 19103-3103 2136 THROUGH 2138 MARKET				District: Central District	
				Phone Number: 215-685-3786	
Owner: S T B INVESTMENTS CORP A PENNA CORP C/O OSHTRY SUITE 313 1819 JOHN F KENNEDY BLV PHILADELPHIA PA, 191031733		Licensed Contractor: GRIFFIN CAMPBELL CONSTRUCTION 1605 BUTLER STREET PHILADELPHIA,PA 19140- (215)459-4462 x		Area: 14552 S.F.	Estimated Cost: \$10,000.00
				Plan Examiner: JOHN DOHERTY	

69. Basciano, the STB Defendants, and Marinakos intentionally falsified the estimated cost to reduce the permit fee.

70. Basciano and the STB Defendants then dispatched Marinakos to conduct a survey of the Salvation Army thrift store located at 2140 Market Street.

71. In his February 5, 2013 report, Marinakos warned Basciano and the STB Defendants of numerous structural problems with the Salvation Army’s store:

During our inspection, we determined that many areas of the building need immediate attention and repairs.

1. Evidence of roof leaking. See photo 10 damaged ceiling tile
2. Roof membrane is bubbling and needs to be re-attached to the substrate see photo 14 thru 18
3. Install a new roof membrane over the entire existing building to keep the water from entering the building photo 14 thru 18
4. Repoint and stabilize existing brick in rear loading dock photo 9
5. The aluminum facing is missing sections near the loading dock photo 3
6. Plywood facing is exposed and needs to be replaced photo 3
7. Extensive water damaged interior plaster at stairs to the basement photo 11
8. Damage face brick along sidewalk photo 6,7,8
9. Roof drain not connected photo 4

72. Marinakos’ Report further emphasized that the structural integrity of The Salvation Army thrift store was “barely sound an in an extreme state of neglect and disrepair:”

Based on our field inspection and our engineering judgment, it is our conclusion that the structural condition of the subject building is barely sound and in extreme state of neglect and disrepair. All the structural defects and deteriorations noted above should be repaired per our recommendations. Please note that the owner may choose to further stabilize the building.

73. The sum and substance of Marinakos' February 5, 2013 report was that there were numerous structural problems with the Salvation Army's thrift store located at 2140 Market.

74. From this point forward it became clear that, in the months leading up to the collapse, it was highly foreseeable to Basciano, the STB Defendants, the Salvation Army, Campbell Construction, and Marinakos that a construction catastrophe was imminent.

75. Despite this knowledge, Basciano, the STB Defendants, Campbell Construction, and Marinakos moved forward with the demolition process at 2136-2138 prior to *even obtaining a permit* from The City of Philadelphia.

76. Furthermore, pursuant to OSHA § 1926.850(a), an engineering survey must be completed to determine the "possibility of unplanned collapse" before demolition commences.

77. It was the responsibility of Basciano and the STB Defendants to ensure that a demolition/engineering survey was completed of the construction site located at 2136-2138 Market.

78. However, Campbell Construction started demolition at 2136-2138 Market Street in Spring 2013 without obtaining a demolition/engineering survey.

79. Campbell Construction was ordered to start the demolition by Basciano and the STB Defendants, who knew that a demolition/engineering survey was never obtained.

80. Additionally, neither Basciano nor the STB Defendants ever notified the City of Philadelphia that demolition was set to commence.

81. Had Basciano, the STB Defendants, Campbell Construction, or Marinakos provided the City with such notification, that notice would have triggered an inspection and/or visit to the project by the City's permit department.

82. As a result of a failure to notify the City and receive the proper permits, Basciano and the STB Defendants were cited for beginning the demolition without providing this critical notice.

83. By May of 2013, it was readily apparent to Basciano, the STB Defendants, and the Salvation Army that if demolition were to continue, a catastrophe was imminent.

84. By May of 2013, Basciano, the STB Defendants, and the Salvation Army knew, or should have known that the only way to safely demolish 2136-2138 Market Street would have been by hand, from the top down.

85. A safe demolition of 2136-2138 Market Street would have required either erecting a scaffolding system or using a boom lift to enable workers to access the top of the building.

86. However, scaffolding was never erected and a boom lift was never used.

87. Instead, in early May 2013, Basciano and the STB Defendants moved forward with their underfunded and destined-to-fail plan for demolition.

88. On May 9, 2013, Thomas Simmonds, STB's Property Manager, sent a letter to Major Charles Deitrick, the General Secretary of the Salvation Army of the Eastern District, which clearly indicated the dangers associated with continued demolition at 2136-2138 Market in light of the poor condition of Salvation Army's 2140 Market location:



Thomas Simmonds
 <tsimmonds@reality42.com>
 05/09/2013 09:49 AM

To "Charles.Deltrick@USE.SalvationArmy.org"
 <Charles.Deltrick@USE.SalvationArmy.org>
 cc "Alan.Greenberger@Phila.gov"
 <Alan.Greenberger@Phila.gov>,
 "John.Mondlak@Phila.gov" <John.Mondlak@Phila.gov>,
 bcc
 Subject FW: 2140 Market Street, Phila., PA

Major Deitrick: It's unfortunate that more than 3 months have elapsed since I sent you the attached letter and – with the exception of communicating that you received it to Alex Wolfington – you have failed to respond to its contents that affect your property at 2140 Market Street. Our demolition is reaching its conclusion. Our property at 2136-38 Market Street (a four-story building) is about to be leveled and we have two issues: 1) the chimney on your property extends four stories and is supported by our property. Our architect has suggested that you arrange to have it reduced since its "support" (our building) will soon be gone; 2) to prevent any accidents and damage to your property from occurring, we would require access to your property (the roof) to temporarily install protection to avoid the aforementioned.

TIME IS OF THE ESSENCE so kindly get back to me today to discuss the aforementioned.

Thank you,
 Thom Simmonds

THOM SIMMONDS
 PROPERTY MANAGER
 S.T.B. Investments Corp.
 300 WEST 43RD STREET – Suite 400
 NEW YORK, NEW YORK 10036
 347.234.0468 (Mobile)
 212.247.4910 (201) (Office)

89. The Salvation Army responded to this e-mail an hour later to arrange a conference call for May 10, 2013.

From: Alex Wolfington [alex@wolfnet.co]
 Sent: Thursday, May 09, 2013 2:40 PM
 To: Thomas Simmonds; Plato AIA Marinakos; John Mondlak; Major Cranford; Major Charles Deitrick; Carmella A Rutella; Karen Cranford; Frank Cresci
 Subject: CONFERENCE CALL RE: 2100 BLOCK OF Market Street, Phila., PA

Thursday May 9, 2013

Major and Tom;

We have scheduled a conference call for tomorrow with the following new call in details:

DAY: Friday
DATE: May 10, 2013
TIME: 9:00 AM (EST)
CONF: Call in Number: 712-775-7000
Code: 807-187 #

TOPIC: Demolition in the 2100 Block of Market Street, Philadelphia

PARTICIPANTS:

Major Charles Deitrick 845-732-4113
 Major John Cranford
 Karen Cranford
 Alistair Fraser
 Tom Simmonds
 Frank Cresci
 Plato AIA Marinakos
 Alex Wolfington

Please confirm your participation by an email response to all the parties. Thank you.
 Best,

ALEX (C: 610-304-3345)

Alex Wolfington
 Wolfnet
 O: (610)-526-9700
 C: (610)-304-3345
 E: <alex@wolfnet.co>

Major Charles Deitrick 845-732-4113

90. There were several participants on that May 10 call, including: (a) Simmonds; (b) defendant Frank Cresci, in his capacity as owner/shareholder of STB; (c) Marinakos on behalf of Basciano and the STB Defendants and (d) Defendant Alistair Fraser, the Operations Manager for the Salvation Army.

91. Immediately following this call, STB's real estate consultant sent an email outlining the plan of action that was decided by the parties:

Friday, May 10, 2013

Alistair:

Pursuant to our conference call at 9:00 a.m. this morning, it is my understanding that we will implement the following steps regarding the demolition of 2138 Market Street (Philadelphia):

- 1) Joel Oshstry, Esq will reach out for the Salvation's Army Attorney at 717-236-5000 to mutually prepare an "Access Agreement" with the intent of reaching and executing an Agreement by the end of next week
- 2) Alistar Fraser will prepare a description of his concerns as it relates to the flashing, chimney and walls at 2140 Market Street throughout the "2138" demolition process
- 3) Plato Marinakos will prepare a description of what steps he will be taking regarding the post-demolition protection of 2140 Market Street
- 4) If need be, Alistar will come to Philadelphia early next week to meet with Plato for an onsite clarification of the demolition work to be completed
- 5) The parties will agree to work on collaborative and neighborly basis to expedite the completion of a smooth demolition process

Please let me know if I have not accurately set forth our understanding.

BEST,

ALEX (C:610-304-3345)

Alex Wolfington

Wolfnet

O: (610)-526-9700

C (610)-304-3345

E: < alex@wolfnet.co >

E: < Alex@wolfingtonnetwork.com >

92. Major Deitrick responded to this email minutes later, stating that the Salvation Army would fulfill their neighborly obligations, but would work to “*protect [their] investments.*”

From: Charles Deitrick [mailto:Charles.Deitrick@USE.SalvationArmy.Org]
Sent: Friday, May 10, 2013 9:57 AM
To: Alex Wolfington
Cc: Alistair.Fraser@USE.salvationarmy.org; Major Cranford; Plato Marinakos; Thomas Simmonds
Subject: Re: POST CONFERENCE CALL ACTION PLAN

There is no commitment for Alistair to come to Philadelphia, We will have a local Architect represent us, This will be identified and shared. We will work at the timing of the professionals that are engaged. As was stated we will work to meet our neighborly goals but at same time protect our own investments. As stated no commitments are made at this point other than to work together in dialogue to proceed.

Thank you
Have Blessed Day
Major Charles Deitrick
General Secretary
Adult Rehabilitation Centers Command
Phone 845-732-4113 Fax 845-732-9705
440 West Nyack Rd West Nyack, N.Y. 10994
PO Box 9134 Bardonia, N.Y. 10954
Charles.Deitrick@use.salvationarmy.org

As was stated we will work to

meet our neighborly goals but at same time protect our own investments.

93. Simmonds responded by asking the Salvation Army to have Fraser list their concerns:

Thomas Simmonds <tsimmonds@realty42.com>
05/10/2013 10:04 AM
To: Charles Deitrick <Charles.Deitrick@USE.SalvationArmy.Org>, Alex Wolfington <alex@wolflnet.co>, Alistair.Fraser@USE.salvationarmy.org <Alistair.Fraser@USE.salvationarmy.org>, Major Cranford <john.cranford@use.salvationarmy.org>, Plato Marinakos <plato@plato-studio.com>
Subject: POST CONFERENCE CALL ACTION PLAN

Major Deitrick/Mr. Fraser: Thank you again for the enlightening conversation we had earlier this morning. Will you be providing me with your roof/east wall concerns today for our architect to review or will that be coming from the local architect you reference below? Kindly advise.

Thank you,
Thom

THOM SIMMONDS
300 WEST 43RD STREET
NEW YORK, NEW YORK 10036
347.234.0468

94. Major Dietrich told Basciano and the STB Defendants that Fraser would send a list of initial concerns, but a more comprehensive list was forthcoming.

From: Charles Deitrick [<mailto:Charles.Deitrick@USE.SalvationArmy.Org>]
Sent: Friday, May 10, 2013 10:30 AM
To: Thomas Simmonds
Cc: Alex Wolfington; Alistair.Fraser@USE.salvationarmy.org; Major Cranford; Plato Marinakos
Subject: RE: POST CONFERENCE CALL ACTION PLAN

Alistair will send a list from his experience but , we will also work through our architect for a

comprehensive response.

Thank you
Have Blessed Day
Major Charles Deitrick
General Secretary
Adult Rehabilitation Centers Command
Phone 845-732-4113 Fax 845-732-9705
440 West Nyack Rd West Nyack, N.Y. 10994
PO Box 9134 Bardonia, N.Y. 10954
Charles.Deitrick@use.salvationarmy.org
Web :www.SalvationArmyARC.org

95. Thirty minutes later, Fraser sent a list of his initial concerns.

From: Alistair Fraser [<mailto:Alistair.Fraser@USE.SalvationArmy.Org>]
Sent: Friday, May 10, 2013 10:37 AM
To: Thomas Simmonds
Cc: Alex Wolfington; 'Charles Deitrick'; Major Cranford; Plato Marinakos
Subject: 2140 Market Street

Gentlemen,

When 2138 Market is demolished -

1. Who is responsible for reducing the height of our chimney and verifying that it meets code ?
2. The roof flashing will be removed what will be done to with roof terminations to ensure that our building is watertight ?
3. The exterior of the common wall between 2138 and 2140 will be exposed who is responsible for ensuring that it is watertight ?
4. How do we ensure that our building retains it's structural integrity during and after the demolition of 2138 ?
5. Who is responsible for fixing any wall cracks or ceiling sacks that may result from vibrations caused by your demolition work ?

96. Simmonds responded later that day to stress the “**TIME SENSITIVE**” nature of their “comprehensive response,” specifically warning that 2136-2138 Market “is nearly demolished and every minute that passes increases the liability exposure to all parties:”

From: Thomas Simmonds
Sent: Friday, May 10, 2013 10:41 AM
To: 'Charles Deitrick'
Cc: Alex Wolfington; Alistair.Fraser@USE.salvationarmy.org; Major Cranford; Plato Marinakos; 'oshtrylaw@aol.com'; 'Alan.Greenberger@Phila.gov'; 'John.Mondlak@Phila.gov'
Subject: RE: POST CONFERENCE CALL ACTION PLAN

Major: Thank you for clarifying. I just spoke to our architect Plato Marinakos (copied above) who stressed the **TIME SENSITIVE** nature of the “comprehensive response” since, as you are aware, 2136-38 Market Street is nearly demolished and every minute that passes increases the liability exposure for all parties. Accordingly I request receipt the aforementioned response no later than noon, Monday, May 13, 2013 so that none of the components of this matter are unduly delayed.

By way of introduction, I have copied our attorney Joel Oshtry above who will be contacting your attorney Steve Nudell (717-236-5000) re the “access agreement” per your advice.

Thank you,
Thom

97. As is clearly shown above, Simmonds requested the Salvation Army's "comprehensive response" by the following Monday.


98. Meanwhile, Basciano, the STB Defendants, and Campbell showed no intention of slowing down their demolition – dispatching Defendant Sean Benschop and his corporation S&R Contracting, to obtain a quote for the use of an aerial lift to demolish the building.

99. Allegedly, Benschop's plan was to park the boom lift on 22nd Street, telescope the lift over the Salvation Army to access the top of 2136-2138 Market Street and then demolish the building by hand.

100. On May 13, 2013, Benschop received the following quote from Ahern Rentals:

Page: 1

SEND PAYMENTS TO:
 AHERN RENTALS
 PO BOX 271390
 LAS VEGAS NV 89127-1390
 TEL: 702-362-0623
 FAX: 702-966-4864



CYCLE INVOICE

CUSTOMER ASSISTANCE:
 PHILADELPHIA
 10 MCDONALD BLVD
 ASTON PA 19014-3202
 TEL: 610-497-2290
 FAX: 610-497-2291
 MON - FRI 6:00-5:00
 SATURDAY CLOSED
 SUNDAY CLOSED

<p>Customer: 000001-001000 0010 0000 001000 S & R CONTRACTING 4945 N 7TH ST PHILADELPHIA PA 19120-3707</p>	<p>Customer #.. 276533 Invoice #... 12080063-1 Invoice Date 5/30/13 Date Out.... 5/13/13 7:00 AM Billed thru. 6/10/13 Job Loc..... REMODEL;21ST AND MARKET;PHI Job #..... ONE COMMERCE P.O. #..... PENDING Ordered By.. TYNISHA/STEPHE/MJD Written By.. CYCLE BILL Sales Rep... 5028 - STEPH FRITZSCHE Terms..... Net 10 Days</p>
<p>Job Site: REMODEL 21ST AND MARKET PHILADELPHIA, PA 19019 C#: 267-444-4008 J#: 267-444-4008 Map page/grid: 3296/A9</p>	

Qty	Equipment	Min	Day	Week	4 Week	Amount
1	BOOM, TELESCOPING, 66', DSL, W/JIB, 4X4 EQ#: 73280 Make: JLG Model: 660SJ Ser #: 0300115176 HR OUT: 3732.40 HR IN: TOTAL: 3732.40 CUSTOMER CALL WHEN DONE	385.00	385.00	1342.00	3480.00	3480.00
SALES ITEMS:						
Qty	Item number	Unit	Price			
1	160642	EA	7.500			7.50
	ENVIRONMENTAL CHARGE					
	DELIVERY CHARGE - NORMAL		5/13/13	7:00 AM		80.00
S & R CONTRACTING: TYNISHA 267-444-4008 05/13 BETWEEN 0700-0900 CUSTOMER TO CALL OFF/SPECIAL RATES Taxable Sub-total: 3985.10						Rental-total: 3567.50 Damage waiver: 417.60 (6%) Tax: 239.11 Total: 4224.21
BILLED FOR FOUR WEEKS 5/13/13 THRU 6/10/13						

101. It is clear from the above quote that a boom lift was available to complete the demolition for \$4,224.21.

102. Basciano, the STB Defendants, and Campbell rejected the plan for a boom lift, determining that \$4,224.21 was too expensive.

103. On May 13, 2013 at 12:31pm, with the noon deadline imposed by Basciano and the STB Defendants for the Salvation Army to submit their plan, Simmonds, emailed the Salvation Army, stating the parties were now at an “impasse.”



Thomas Simmonds
<tsimmonds@realty42.com>
05/13/2013 12:31 PM

To: 'Charles Deitrick'
<Charles.Deitrick@USE.SalvationArmy.Org>
cc: 'Alex Wolfington' <alex@wolfnet.co>,
"Alistair.Fraser@USE.salvationarmy.org"
<Alistair.Fraser@USE.salvationarmy.org>, 'Major Cranford'
bcc:
Subject: RE: POST CONFERENCE CALL ACTION PLAN

Gentlemen: It is now 12:30 and I requested your architect's "comprehensive response" by noon – 30 minutes ago. Please advise – the next photo I send you via e-mail will show you that we're now at an impasse.
Thank you,
Thom

THOM SIMMONDS
300 WEST 43RD STREET
NEW YORK, NEW YORK 10036
347.234.0468

104. Moments later, Simmonds sent another email to the Salvation Army indicating that there was danger to the properties and the public and that injunctive relief would be needed.



Thomas Simmonds
<tsimmonds@realty42.com>
05/13/2013 12:39 PM

To: 'Major Cranford' <john.cranford@use.salvationarmy.org>,
'Charles Deitrick'
<Charles.Deitrick@USE.SalvationArmy.Org>,
cc: "Alan.Greenberger@Phila.gov"
<Alan.Greenberger@Phila.gov>,
"John.Mondlak@Phila.gov" <John.Mondlak@Phila.gov>,
bcc:
Subject: 2136-38 Market Street

Gentlemen: As a follow-up to my last e-mail, attached please see photo of the captioned property. Your response is required to avoid potential danger to the subject properties as well as to the public. **PLEASE REPLY TO THIS URGENT MATTER WITHIN ONE (1) HOUR** or we will be required to seek injunctive relief due to your failure to timely respond.

THOM SIMMONDS
300 WEST 43RD STREET
NEW YORK, NEW YORK 10036
347.234.0468

From: canon@realty42.com [mailto:canon@realty42.com]
Sent: Monday, May 13, 2013 12:35 PM
To: Thomas Simmonds
Subject: Attached Image



1587_001.pdf

105. Along with Simmonds' 12:39 p.m. e-mail was the following photograph showing Basciano, the STB Defendants, and Campbell had already begun demolition:



106. At approximately 5:30 p.m. on May 13, 2013, attorneys for Basciano, the STB Defendants and the Salvation Army were working on an “access agreement:”



Thomas Simmonds
<tsimmonds@realty42.com>
05/13/2013 05:29 PM

To 'Major Cranford' <john.cranford@use.salvationarmy.org>, 'Charles Deitrick' <Charles.Deitrick@USE.SalvationArmy.Org>, cc "Alan.Greenberger@Phila.gov" <Alan.Greenberger@Phila.gov>, "John.Mondlak@Phila.gov" <John.Mondlak@Phila.gov>, bcc
Subject RE: 2136-38 Market Street

Major Deitrick: I received your voice message (4:47PM) re the above property. Joel Oshtry spoke with Steve Nudell today about the “access agreement” but advised Joel that he is not aware of any architect's involvement on your behalf. Mr. Nudell advised Mr. Oshtry that he would be contacting your offices for that information. I suggest you coordinate communication among Mr. Nudell, your architect and Joel Oshtry immediately so that we can conclude the demolition on the block.

Thank you,
Thom

THOM SIMMONDS
300 WEST 43RD STREET
NEW YORK, NEW YORK 10036
347.234.0468

107. On May 15, 2013, the attorney for Basciano and the STB Defendants, sent a letter to the attorney for the Salvation Army, which outlined a plan for an alleged safe demolition:

May 15, 2013

Steven C. Nudel, Esquire
Law Offices of Steven C. Nudel
219 Pine Street
Harrisburg, PA 17101

Via: Facsimile to 1-717-236-5080

Re: 2138 and 2140 Market Street, Philadelphia, Pennsylvania

Dear Mr. Nudel:

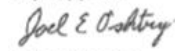
In follow up of our telephone conversations regarding the demolition of 2138 Market Street I can advise that my client, STB Corporation, the owner of 2138 Market Street, Philadelphia, Pennsylvania, proposes to do the following to safeguard the interests of the public, The Salvation Army and STB Corporation:

1. The roof of 2140 Market Street will be covered with a tarp and on top of the tarp plywood will be laid. This will protect the roof if any debris fall on the roof area;
2. Boom trucks which consist of a four wheel base and a long extending boom or arm at the end of which is a bucket/basket area for holding a worker will be stationed on the street and alleyway. The workers will be suspended over the roof and next to the wall to be demolished. Thus the worker will not be relying on 2140 Market Street or its roof for support. The worker will demolish the wall in a direction away from 2140 Market Street so that the wall is pushed out onto the 2138 Market Street parcel area;
3. Thus no equipment or personnel will be stationed on the roof of 2140²¹⁴⁰ Market Street.

It is now a matter of urgency that this demolition be accomplished immediately. The building at 2138 Market Street is in a state of partial demolition, the City has granted a demolition permit and the longer it remains undemolished the greater the risks to the public and all property owners of an uncontrolled collapse of part or loose debris. We are therefore requesting The Salvation Army's cooperation

so the demolition can be finished in an expeditious fashion as possible to minimize risks. Thank you for your prompt attention.

Very truly yours,



JOEL E. OSHTRY

JEO/se

The building at 2138 Market Street is in a state of partial demolition, the City has granted a demolition permit and the longer it remains undemolished the greater the risks to the public and all property owners of an uncontrolled collapse of part or loose debris. We are therefore requesting The Salvation Army's cooperation

108. The Salvation Army **never** responded to this letter or the fear of an “uncontrolled collapse.”

109. On May 16, 2013, Simmonds emailed Cresci, Marinakos and others to voice concern over the Salvation Army’s blatant lack of regard for the safety of the public and its’ patrons.

From: Thomas Simmonds [tsimmonds@realty42.com]
Sent: Thursday, May 16, 2013 5:26 PM
To: 'Oshtrylaw@aol.com'
Cc: Alex Wolfington; Alan Greenberger; John Mondlak; 'plato@plato-studio.com'; Frank Cresci
Subject: RE: Steve Nudell

Joel: It truly is unfortunate – and a disgrace – that the Salvation Army (purporting to be on a charitable mission) – obviously has no regard for safety to life and limb or our “mission” to redevelop a gaping hole in Center City’s landscape. I will bring this to the attention of the Majors and see if they can provide any “assistance”.
Thank you,
Thom

THOM SIMMONDS
300 WEST 43RD STREET
NEW YORK, NEW YORK 10036
347.234.0468

110. Minutes later, Simmonds sent another email to Fraser, the Salvation Army, and City representatives warning everyone that these delays “pose a threat to life, limb and public safety:”

John Mondlak

From: Thomas Simmonds [tsimmonds@realty42.com]
Sent: Thursday, May 16, 2013 5:29 PM
To: 'Alistair Fraser'
Cc: Alex Wolfington; 'Charles Deitrick'; Major Cranford; Plato Marinakos; 'Oshtrylaw@aol.com'; Alan Greenberger; John Mondlak; Frank Cresci
Subject: RE: 2140 Market Street

Gentlemen: Our attorney Joel Oshtry has yet to receive a response from your attorney Steve Nudell whom you advised me to contact in connection with completion of our demo work adjacent to your property. Please advise – your/his continued delays in responding pose a threat to life, limb and public safety.
Thank you,
Thom

THOM SIMMONDS
300 WEST 43RD STREET
NEW YORK, NEW YORK 10036
347.234.0468

THE TO CONTACT IN CONNECTION WITH COMPLETION OF OUR DEMO WORK ADJACENT TO
continued delays in responding pose a threat to life, limb and public safety.
Thank you.

111. Outrageously, the Salvation Army waited six days to respond.

112. On May 22, 2013, Defendant Fraser emailed Simmonds, Marinakos and Salvation Army official to indicate that he had not heard received a response to his May 10, 2013 e-mail (see ¶ 94):

From: Alistair Fraser [mailto:Alistair.Fraser@USE.SalvationArmy.Org]
Sent: Wednesday, May 22, 2013 3:45 PM
To: Thomas Simmonds
Cc: Alex Wolfington; 'Charles Deltrick'; Major Cranford; Plato Marinakos
Subject: Re: 2140 Market Street

Gentlemen,
We have not yet received a response from your architect, Plato.

From: Alistair Fraser/ARC/USE/SAArmy
To: Thomas Simmonds <tsimmonds@realty12.com>
Cc: 'Alex Wolfington' <alex@wolfnet.co>, 'Charles Deltrick' <Charles.Deltrick@USE.SalvationArmy.Org>, Major Cranford <john.cranford@use.salvationarmy.org>, Plato Marinakos <plato@plato-studio.com>
Date: 05/10/2013 10:37 AM
Subject: 2140 Market Street

113. Almost immediately, Simmonds emailed City officials to complain about the conduct of Fraser and the Salvation Army:



Thomas Simmonds
<tsimmonds@realty12.com>
05/22/2013 04:54 PM

To: "Alan.Greenberger@Phila.Gov"
<Alan.Greenberger@Phila.Gov>
cc:
bcc:
Subject: FW: 2140 Market Street - Salvation Army

THOM SIMMONDS
300 WEST 43RD STREET
NEW YORK, NEW YORK 10036
347.234.0468

From: Thomas Simmonds
Sent: Wednesday, May 22, 2013 4:54 PM
To: 'Alan.Greenberger@Phila.gov'
Cc: 'John.Hondlak@Phila.gov'; Alex Wolfington; Plato Marinakos; oskrylaw@aol.com; Frank Cresci
Subject: FW: 2140 Market Street - Salvation Army

Alan: I hope you are well. I am sending you this thread so you can see what I am confronted with concerning the Salvation Army. In spite of the numerous telephone conversations, countless e-mails and communications (most of which Salvation Army either ignores or responds to "late" for lack of a better word), this is how/when whoever this Mr. Fraser is decides to respond to a situation that poses a threat to life and limb solely caused by Salvation Army's flagrant disregard for either my or my attorney's communications. Is there is anything at all you can do to enable us to complete our demolition of the 2138 Market Street property in a professional, legal manner without having to deal with such unprofessional – and clearly uncaring – people who claim to be on a charitable mission? The job would have been completed last week if they cooperated with us as requested.

This nonsense must end before someone is seriously injured or worse: those are headlines none of us want to see or read. Kindly advise.

Thank you – I know you are extremely busy,
Thom

BTW – this is their typical MO – they write an e-mail, I respond and they "disappear" for a few weeks.

THOM SIMMONDS
300 WEST 43RD STREET
NEW YORK, NEW YORK 10036
347.234.0468

This nonsense must end before someone is seriously injured or worse: those are headlines none of us want to see or read. Kindly advise.

114. Based upon information and belief, following May 22, 2013 all substantive communications between Basciano/STB Defendants and the Salvation Army ceased.

115. Outrageously, Basciano, the STB Defendants, Campbell, and Benschop proceeded with their demolition of 2136-2138 Market Street despite clear knowledge that an appropriate and safe demolition plan was not in place.

116. Instead, per the instructions of Basciano, the STB Defendants and Campbell, Benschop proceeded with the demolition, using an excavator to knock the building down, starting with the front and working his way back.

117. On June 2, 2013, Benschop was in the process of tearing down the front of 2136-2138 with an excavator. The following are still images taken from a video shot from a video that was taken June 2, 2013 (three days before the collapse), which show the front of the building being torn down by an excavator:





118. As these images show, Benschop used the excavator to demolish the front of the building by ripping out the floors, removing the lateral stability that the floors provided to the four story brick walls.

119. The four story brick walls were free standing and did not contain columns or reinforcing steel.

120. The demolition of the front façade and floors at the front of the building violated OSHA 1926.850(j).

121. By June 4, 2013, most of the front of the building had been demolished, however the façade remained mostly intact:



122. By ripping out the front of the building, the lateral support for the sidewall of the building had been removed.

123. OSHA Regulation 1926.854(b) provides: “no wall section . . . shall be permitted to stand alone without lateral bracing, unless such wall was originally designed and constructed to stand without such lateral support, and is in a condition safe enough to be self-supporting.”

124. As shown in the below photograph (facing West towards the Salvation Army), there was no lateral bracing of any kind to prevent the wall from collapsing.



125. By late afternoon on the day before the collapse the front façade had been taken down, thus removing the only remaining lateral support for the wall.



126. OSHA § 1926.850(j) requires that “each story of the exterior wall and floor construction shall be removed and dropped into the storage space before commencing the removal of exterior walls and floors in the story below.”

127. The demolition conducted by Campbell and Benschop of 2136-2138 Market did not occur from the top down.

128. Instead, prior to June 5, 2013, the front portion of 2136-2138 Market Street was removed from the roof to ground level in violation of this provision.

129. Safe construction industry practices dictate that when demolishing a structure which is adjacent to an occupied structure (such as the Salvation Army) the roof of the occupied structure must be protected.

130. ANSI A10.6-2006; 6.14 provides:

6.14 When an adjacent occupied structure is lower than the one being demolished, its roof shall be protected with acceptable barriers, debris catchers and other substantial and effective covering.

131. None of the safety precautions discussed above were taken.

132. Instead, an incompetent contractor was tasked to do the demolition in the cheapest way possible.

133. At approximately 8:00 a.m. on June 5, 2013, the front of 2136-2138 Market Street appeared as depicted below:



134. It is believed and therefore averred that on every morning the demolition site was active, Basciano and his wife, Lois Palmer, would drive to the jobsite and Basciano would observe the construction being performed.

135. It is believed and therefore averred that, in addition to observing the work, Basciano would meet with Campbell and micro-manage virtually every aspect of the construction.

136. It is believed and therefore averred that Basciano exercised direct control over the means and methods of the work being performed during the demolition of 2136-2138 Market.

137. By engaging in this managerial behavior and expressing the capacity to perform this general oversight, Basciano effectively inserted himself into the role of Construction Superintendent.

138. On June 5, 2013, the morning of the catastrophe, while the West Wall of 2136-2138 Market Street was un-braced and Benschop was using the excavator to claw away at the remaining insides of the building, Richard Basciano was on site meeting with Campbell and asserting managerial oversight over the jobsite.

139. At the time Basciano was on site on the morning of the collapse the front portion of 2136-2138 Market Street had been demolished, destroying the lateral support for the four story brick wall looming above the thrift store and in blatant violation of applicable federal regulations.

140. Basciano, Campbell, and Benschop saw this with their own eyes the morning of the collapse.

141. As Basciano stood on the demolition project on the morning of the collapse he and/or the STB Defendants knew that the Salvation Army building would be open for business and occupied by customers and employees and that the four story free standing wall looming above the Salvation Army Store was not braced and lacked lateral support.

142. Similarly, Alistair Fraser knew that the dangerously defective roof of the thrift store would be open to the public to use as lawful business invitees.

143. All Defendants knew, or should have known, that Benschop should never have been permitted to use the excavator in such close proximity to an un-braced wall.

144. The vibrations from the excavator were sufficient to cause the wall to collapse.

145. Basciano saw the work being performed and allowed the work to continue to be performed in a reckless and dangerous fashion.

146. Eyewitnesses indicate that Basciano was on site in the moments leading up to the most deadly construction accident in the history of Philadelphia.

147. Tragically, the Salvation Army engaged in conscience-shocking behavior and kept its store open for fifteen (15) days following the breakdown of communications on May 22, 2013.

148. It was on that fifteenth day, the morning of June 5, 2013, when Simmonds' memorialized fear of "headlines" became the reality:



149. At approximately 10:00 p.m. on June 5, 2013, Mary Lea Simpson was pronounced dead, with the cause of death listed as "traumatic compression of torso."

150. Plaintiff's decedent, Mary Lea Simpson, died a slow and painful death as a result of asphyxiation.

151. May Lea Simpson's death would have been prevented if not for the negligent, reckless, and outrageous acts of the Defendants.

152. As a result of the negligent acts and/or omissions attributed to all Defendants, Mary Lea Simpson died as a result of the collapse of 2136-2138 Market Street.

153. As a result of the negligent acts and/or omissions attributed to each of the defendants and/or their agents, servants, officers and/or employees, Plaintiff's decedent sustained severe injuries *prior* to her death, including, but not limited to:

- a. Physical pain;
- b. Suffering; and
- c. Mental distress.

154. All of Plaintiff's decedent's aforementioned injuries, which occurred both before and after her death:

- a. Have prevented Mary Lea Simpson from engaging in and enjoying the normal activities of life;
- b. Will prevent Mary Lea Simpson from engaging in and enjoying the normal activities of life in the future;
- c. Have prevented Mary Lea Simpson from attending to her usual duties, activities and occupations, causing a loss of earnings;
- d. Will prevent Mary Lea Simpson from attending to her usual duties, activities and occupations in the future causing a loss of earning capacity; and
- e. Have required Mary Lea Simpson's Wrongful Death beneficiaries to spend money and incur obligations as a result of her death.

COUNT ONE
PLAINTIFF v. THE SALVATION ARMY
NEGLIGENCE, RECKLESSNESS, and OUTRAGEOUS CONDUCT

155. Plaintiff hereby incorporates by reference all of the averments and allegations contained in the foregoing paragraphs as though the same were set forth herein.

156. The Salvation Army Defendants held their store open to the public for business purposes, and thus owed the patrons and business invitees, including Mary Leah Simpson, the highest duty of care.

157. At all times relevant hereto, Mary Lea Simpson was a business invitee on the Salvation Army's property and was entitled to the highest degree of care for her health and safety.

158. At all times relevant hereto, The Salvation Army knew or should have known of the dangerous and defective condition of its retail store located at 2140 Market Street caused by the adjoining unsafe demolition project.

159. The Salvation Army knew or should have known that the "huge crack" in the wall of the structure of its retail store created a hazardous, dangerous, and defective condition on the premises of its store which made the building unsafe, and indicated that the demolition adjacent to the store posed a significant risk to its patrons, including the potential for a collapse.

160. Despite knowledge of the defect on the premises, The Salvation Army negligently, carelessly, and recklessly continued to conduct business activity and to operate their retail store located at 2140 Market Street for weeks during the demolition project, including the date of collapse.

161. The Salvation Army knew and/or should have known that their continued operation of its retail store which had previously been structurally damaged by the demolition work could result in death or serious injuries to individuals on the premises of their retail store.

162. Despite this knowledge, The Salvation Army acted with reckless indifference to the safety of others by continuing to operate their retail store during the demolition project.

163. The Salvation Army failed to take reasonable and timely measures to appropriately correct and/or repair and/or warn the authorities of the unreasonably dangerous and defective conditions caused by the demolition.

164. The Salvation Army failed to close the store as a result of the unreasonably dangerous condition, and failed to warn those lawfully on the premises about the unreasonably dangerous conditions which The Salvation Army permitted to exist.

165. The injuries sustained by Mary Lea Simpson were caused by the negligence, carelessness, gross negligence, recklessness and/or outrageous conduct of the Salvation Army, acting by and through their agents, servants, workers and/or employees, including but not limited to, Major Charles Deitrick, Major John Cranford and Alistair Fraser, both generally and in the following particular respects:

- a. Failing to close the thrift store despite the known dangers caused by the demolition;
- b. Keeping the thrift store open despite the known dangers caused by the demolition;
- c. Keeping the thrift store open despite a 4 story, un-braced wall looming over the store;
- d. Failing to warn customers and employees of the dangers caused by the demolition;
- e. Failing to close the thrift store despite having seen the walls shaking during demolition;

- f. Failing to close the thrift store despite being warned of the danger to life and limb and the possibility of an uncontrolled collapse;
- g. Failing to perform an engineering survey;
- h. Failing to ensure that an engineering survey was performed;
- i. Exposing customers and employees to unacceptable risks of harm;
- j. Not allowing the contractors proper and necessary access to the store;
- k. Not allowing contractors proper and necessary access to the roof of the stores;
- l. Failing to retain competent employees, contractors, and/or subcontractors;
- m. Failing to ensure that proper lateral bracing was in place to prevent collapse;
- n. Failing to ensure that safe demolition practices were employed on site;
- o. Preventing workers from safely demolishing the building by not giving them the resources they need for safe demolition;
- p. Failing to adequately inspect the project for dangerous and hazardous conditions;
- q. Violating applicable OSHA regulations, including but not limited to 1926.850; 1926.854; and the General Duty Clause;
- r. Violation applicable ANSI standards, including but not limited to ANSI A10.6-2006; 6.14
- s. Failing to provide special precautions which would have protected customers and employees from the particular and unreasonable risks of harm which defendant recognized;
- t. Failing to train and supervise their employees properly;
- u. Failing to hire competent employees, safety inspectors, contractors and/or subcontractors;
- v. Breaching their duties under the Restatement of the Law of Torts (Second), including §310, 343, 344, 413, 414, 416, 427, 429, 525 and 557A;

- w. Failing to adequately warn The STB Defendants of the peculiar and/or unsafe conditions and/or special dangers existing upon the subject project;
- x. Failing to adopt, enact, employ and enforce proper and adequate safety programs, precautions, procedures, measures and plans;
- y. Exposing the customers and employees of the Salvation Army to unreasonable danger, by not informing them of the dangers and hazards associated with the structural instability;
- z. Failing to cause to be ceased and/or cause to be postponed the demolition operations until proper and necessary precautions could be taken to safeguard the customers and employees of the Salvation Army;
- aa. Failing to engage and employ a local architect/engineer;
- bb. Failing to adopt and/or enforce a site specific safety plan, demolition plan, engineering plan, and/or shoring plan;
- cc. Failing to ensure that all subcontractors performed all work in accordance with OSHA regulations;
- dd. Failing to close their store after receiving the Marinakos report of structural problems;
- ee. Failing to have the store tested for stability;
- ff. Failing to eliminate the hazards or warn Plaintiff about such hazards when Defendants expected or should have expected that Plaintiff would not discover or realize the danger of structural instability;
- gg. Failing to address safety considerations by contract;
- hh. Failing to ensure demolition work was not performed in or around areas that required shoring or areas of structural instability;
- ii. Negligence per se; and
- jj. Failing to properly sequence the work.

166. The conduct of The Salvation Army, as described above, demonstrated a reckless disregard for the safety and health of the customers and employees the Salvation Army and for the residents of Philadelphia, including Plaintiff's decedent.

167. By conducting themselves in the negligent, reckless, and outrageous manner set forth above, the acts and/or omissions of the Salvation Army were a substantial factor, a factual cause and/or increased the risk of harm to Mary Lea Simpson.

168. As a direct and proximate result of the Salvation Army's, recklessness and/or outrageous conduct, Mary Lea Simpson was killed and suffered substantial damages under Pennsylvania law, including without limitation, severe physical pain and suffering, discomfort, disfigurement, embarrassment, humiliation, mental anguish, severe emotional distress, loss of earnings and earning capacity, substantial past and future medical expenses as well as a loss of life and life's pleasures.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

COUNT TWO
PLAINTIFF v. THE SALVATION ARMY
INTENTIONAL MISREPRESENTATION

169. Plaintiff hereby incorporates by reference all of the averments and allegations contained in the foregoing paragraphs as though the same were set forth herein.

170. On June 5, 2013, The Salvation Army owed the lawful business invitees of its 2140 Market Street thrift store the highest duty of care.

171. At the time of the building collapse, Mary Lea Simpson was a lawful business invitee at the 2140 Market Street thrift store.

172. The Salvation Army knew for months prior to the demolition project that the 2140 Market Street thrift store was a structurally unsound and unsafe building.

173. Salvation Army employees and management observed the wall shaking in the days and weeks leading up to the collapse and would joke that they expected the wall to come down.

174. The Salvation Army knew that the risk of uncontrolled collapse posed an imminent threat to the customers and employees at the thrift store.

175. The Salvation Army represented to members of the public, including Mary Lea Simpson, that the 2140 Market Street thrift store was safe.

176. By representing to the public that the 2140 Market thrift store was safe, The Salvation Army made an intentional and conscious misrepresentation that involved a known and considerable risk of physical harm.

177. In determining what defines an intentional misrepresentation Pennsylvania has looked to Restatement (2d) of Torts § 310. Eckborg v. Hyde-Murphy Co., 442 Pa. 283, 276 A.2d 513 (Pa. 1971).

178. *Comment C* to Section 310 of the second Restatement provides that “a possessor of land who invites or permits others to enter the land for his own business purposes, or gratuitously” has made ***an intentional misrepresentation*** under the circumstances presented in this case.

179. In addition, pursuant to Restatement (2d) of Torts 344(b), it was the duty of the Salvation Army to “give a warning adequate to enable the visitors” to avoid the risk of a known harm.

180. The Salvation Army represented to its business invitees that the thrift store located at 2140 Market Street was safe to enter on June 5, 2013.

181. This representation was material to Mary Lea Simpson's presence in the thrift store at the time of the collapse.

182. The Salvation Army's representation that the building was safe was false.

183. This misrepresentation was made knowingly and intentionally.

184. The Salvation Army had *actual knowledge* of the risk of physical harm that was posed to its lawful business invitees on June 5, 2013.

185. The Salvation Army received multiple e-mails from the STB Defendants that contained architect Plato Marinakos' February 2013 Report expressing serious concern over the structural integrity of the 2140 Market Street thrift store.

186. In that February 5, 2013 report, Marinakos warned Basciano and the STB Defendants of numerous structural problems with the Salvation Army's store:

During our inspection, we determined that many areas of the building need immediate attention and repairs.

1. Evidence of roof leaking. See photo 10 damaged ceiling tile
2. Roof membrane is bubbling and needs to be re-attached to the substrate see photo 14 thru 18
3. Install a new roof membrane over the entire existing building to keep the water from entering the building photo 14 thru 18
4. Repoint and stabilize existing brick in rear loading dock photo 9
5. The aluminum facing is missing sections near the loading dock photo 3
6. Plywood facing is exposed and needs to be replaced photo 3
7. Extensive water damaged interior plaster at stairs to the basement photo 11
8. Damage face brick along sidewalk photo 6,7,8
9. Roof drain not connected photo 4

187. Marinakos' Report further emphasized that the structural integrity of The Salvation Army thrift store was "barely sound and in an extreme state of neglect and disrepair:"

Based on our field inspection and our engineering judgment, it is our conclusion that the structural condition of the subject building is barely sound and in extreme state of neglect and disrepair. All the structural defects and deteriorations noted above should be repaired per our recommendations. Please note that the owner may choose to further stabilize the building.

188. Moreover, an e-mail summary of the May 10 conference call (see ¶¶ 88-90) indicates that: (1) The Salvation Army brought in their employee, Defendant Fraser, to survey the situation; and (2) the parties agreed to work “collaboratively” to prevent a catastrophic situation:

Friday, May 10, 2013

Alistair:

Pursuant to our conference call at 9:00 a.m. this morning, it is my understanding that we will implement the following steps regarding the demolition of 2138 Market Street (Philadelphia):

- 1) Joel Oshstry, Esq will reach out for the Salvation's Army Attorney at 717-236-5000 to mutually prepare an "Access Agreement" with the intent of reaching and executing an Agreement by the end of next week
- 2) Alistair Fraser will prepare a description of his concerns as it relates to the flashing, chimney and walls at 2140 Market Street throughout the "2138" demolition process
- 3) Plato Marinakos will prepare a description of what steps he will be taking regarding the post-demolition protection of 2140 Market Street
- 4) If need be, Alistair will come to Philadelphia early next week to meet with Plato for an onsite clarification of the demolition work to be completed
- 5) The parties will agree to work on collaborative and neighborly basis to expedite the completion of a smooth demolition process

Please let me know if I have not accurately set forth our understanding.

BEST,

ALEX (C:610-304-3345)

Alex Wolfington
Wolfnet
O: (610)-526-9700
C (610)-304-3345
E: < alex@wolfnet.co >
E: < Alex@wolfingtonnetwork.com >

189. An email sent to Major Deitrick and Alistair Fraser on May 16, 2013 also warns the Salvation Army that its premises were unsafe prior to the collapse:

John Mondlak

From: Thomas Simmonds [tsimmonds@realty42.com]
Sent: Thursday, May 16, 2013 5:29 PM
To: 'Alistair Fraser'
Cc: Alex Wollington; 'Charles Deitrick'; Major Granford; Plato Marinakos; 'Oshtrylaw@aol.com'; Alan Greenberger; John Mondlak; Frank Cresci
Subject: RE: 2140 Market Street

Gentlemen: Our attorney Joel Oshtry has yet to receive a response from your attorney Steve Nudell whom you advised me to contact in connection with completion of our demo work adjacent to your property. Please advise – your/his continued delays in responding pose a threat to life, limb and public safety.
Thank you,
Thom

THOM SIMMONDS
300 WEST 43RD STREET
NEW YORK, NEW YORK 10036
347.234.0468

THE TO CONTACT IN CONNECTION WITH COMPLETION OF OUR DEMO WORK ADJACENT TO
continued delays in responding pose a threat to life, limb and public safety.
Thank you.

190. Fraser responded to the above e-mail six days later, but conversations between The Salvation Army and the STB Defendants ceased on May 22, 2013.

191. Despite knowledge of the extremely dangerous condition on its property, as well as the continuation of the demolition project and the risks the demolition project posed to business invitees of the 2140 Market Street thrift store, The Salvation Army continued to keep the thrift store open to the public for an additional fifteen (15) days prior to the incident.

192. The Salvation Army's motivation for intentionally misrepresenting the safety of the public while at the 2140 Market Street thrift Store was to make money.

193. The Salvation Army intentionally misrepresented and deceived the public into believing the 210 Market Street thrift store was safe so as to ensure that the public would continue shopping at the store.

194. In fact, on May 10, 2013, Major Deitrick, the Salvation Army's General Secretary admitted that the primary concern of the Salvation Army was to continue to make money, acknowledging the dangerous condition but stating it was necessary to "*protect our own investments.*"

From: Charles Deitrick [mailto:Charles.Deitrick@USE.SalvationArmy.Org]
Sent: Friday, May 10, 2013 9:57 AM
To: Alex Wolfington
Cc: Alistair.Fraser@USE.salvationarmy.org; Major Cranford; Plato Marinakos; Thomas Simmonds
Subject: Re: POST CONFERENCE CALL ACTION PLAN

There is no commitment for Alistair to come to Philadelphia, We will have a local Architect represent us, This will be identified and shared. We will work at the timing of the professionals that are engaged. As was stated we will work to meet our neighborly goals but at same time protect our own investments. As stated no commitments are made at this point other than to work together in dialogue to proceed.

Thank you
Have Blessed Day
Major Charles Deitrick
General Secretary
Adult Rehabilitation Centers Command
Phone 845-732-4113 Fax 845-732-9705
440 West Nyack Rd West Nyack, N.Y. 10994
PO Box 9134 Bardonia, N.Y. 10954
Charles.Deitrick@use.salvationarmy.org

**As was stated we will work to
meet our neighborly goals but at same time protect our own investments.**

195. Mary Lea Simpson justifiably relied upon the Salvation Army's false representation that its premises were safe on June 5, 2013.

196. The conduct of The Salvation Army, as described above, demonstrated a reckless disregard for the safety and health of the customers and employees that entered the Salvation Army's thrift store on June 5, 2013.

197. By conducting themselves in this outrageous manner and making the intentional misrepresentation of safety set forth above, the acts and/or omissions of the Salvation Army and its agents, servants, workers and/or employees were a substantial factor, a factual cause and/or increased the risk of harm to Mary Lea Simpson.

198. As a direct and proximate result of Mary Lea Simpson's justifiable reliance on the Salvation Army's intentional misrepresentation, Mary Lea Simpson was killed and suffered substantial damages under Pennsylvania law, including without limitation, severe physical pain

and suffering, severe emotional distress, loss of earnings and earning capacity, substantial past and future medical expenses as well as a loss of life and life's pleasures.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

COUNT THREE
PLAINTIFF v. ALISTAIR FRASER and THE SALVATION ARMY
PROFESSIONAL NEGLIGENCE

199. Plaintiff hereby incorporates by reference all of the averments and allegations contained in the foregoing paragraphs as though the same were set forth herein.

200. Defendant Fraser performed design, architectural, engineering, and/or construction services on behalf of the Salvation Army, and was specifically charged with reviewing the demolition plan and ensuring that the Salvation Army was sufficiently protected under the plan.

201. Defendant Fraser had a duty to render architectural, design, and/or engineering services consistent with the standards of care in the engineering, design and architectural industries.

202. The care, skill and/or knowledge exercised by Fraser on this project fell below and deviated from the professional standards in the engineering/architectural industry.

203. The deaths and injuries sustained by the Plaintiff and Plaintiff's decedent were caused by the negligence, carelessness, gross negligence, recklessness and/or outrageous conduct of Defendant Fraser in the following particular respects:

- a. Failing to perform an engineering/demolition survey;
- b. Failing to preplan the work;
- c. Allowing demolition to proceed despite knowledge that the wall adjoining the Salvation Army was un-braced and likely to fall;
- d. Failing to ensure that an engineering survey was performed;
- e. Failing to retain competent employees, contractors, and/or subcontractors;
- f. Failing to ensure that proper lateral bracing was in place to prevent collapse;
- g. Failing to ensure that safe demolition practices were employed on site;
- h. Allowing the demolition to take place without an adequate agreement in place with the STB Defendants to allow the work to safely proceed;
- i. Allowing heavy machinery to be used in close proximity to an un-braced wall;
- j. Allowing an excavator to be used to claw out the lateral support of the building;
- k. Failing to address the safety hazard presented by the un-braced wall looming above the store;
- l. Observing dangerous demolition practices and allowing them to continue;
- m. Preventing workers from safely demolishing the building by not giving them the resources they need for safe demolition;
- n. Failing to adequately inspect the project for dangerous and hazardous conditions;
- o. Failing to request, implement, and/or enforce a shoring plan, a demolition plan, and/or an engineering plan;
- p. Failing to inspect sufficiently the construction site and allowing, inter alia, workers to work in or around an area that was inadequately braced and structurally unstable;
- q. Violating applicable OSHA regulations, including but not limited to 1926.850; 1926.854; and the General Duty Clause;

- r. Violation applicable ANSI standards, including but not limited to ANSI A10.6-2006; 6.14
- s. Failing to provide special precautions which would have protected customers and employees from the particular and unreasonable risks of harm which Defendant recognized;
- t. Failing to provide adequate materials and equipment to ensure structural stability of the building;
- u. Failing to train and supervise their employees properly;
- v. Failing to hire competent employees, safety inspectors, contractors and subcontractors;
- w. Breaching their duties under the Restatement of the Law of Torts (Second), including §343, 413, 414, 416, 427 and 429;
- x. Failing to adequately warn of the peculiar and/or unsafe conditions and/or special dangers existing with the subject project;
- y. Failing to adopt, enact, employ and enforce proper and adequate safety programs, precautions, procedures, measures and plans;
- z. Exposing the customers and employees of the Salvation Army to the dangers and hazards of the structural instability;
- aa. Failing to have ceased and/or have postponed construction work until proper and necessary precautions could be taken to safeguard the customers and employees of The Salvation Army;
- bb. Failing to recommend, provide and enforce frequent inspections of the work area;
- cc. Failing to adopt and/or enforce a site specific safety plan, demolition plan, engineering plan, and/or shoring plan;
- dd. Failing to perform a Safety Task Analysis or Job Hazard Analysis;
- ee. Failing to ensure that all subcontractors performed all work in accordance with OSHA regulations;
- ff. Failing to have the subject area tested for stability or safety prior to allowing the subject ironwork work to begin;

- gg. Failing to eliminate the hazards or warn Plaintiff about such hazards when Defendants expected or should have expected that Plaintiff would not discover or realize the danger of structural instability;
- hh. Failing to address safety considerations by contract;
- ii. Failing to ensure demolition work was not performed in or around areas that required shoring or areas of structural instability;
- jj. Negligence per se; and
- kk. Failing to properly sequence the work.

204. The conduct of Alistair Fraser, as described above, demonstrated a reckless disregard for the safety and health of the customers and employees the Salvation Army and for the residents of Philadelphia, including Plaintiff's decedent.

205. By conducting themselves in the negligent, reckless, and outrageous manner set forth above, the acts and/or omissions of Fraser were a substantial factor, a factual cause and/or increased the risk of harm to Mary Lea Simpson.

206. As a direct and proximate result of Fraser's negligence, recklessness and/or outrageous conduct, Mary Lea Simpson was killed and suffered substantial damages under Pennsylvania law, including without limitation, severe physical pain and suffering, discomfort, disfigurement, embarrassment, humiliation, mental anguish, severe emotional distress, loss of earnings and earning capacity, substantial past and future medical expenses as well as a loss of life and life's pleasures.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

COUNT FOUR
PLAINTIFF v. CHARLES DEITRICK and JOHN CRANFORD
NEGLIGENCE, RECKLESSNESS, and OUTRAGEOUS CONDUCT

207. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

208. Defendants Charles Deitrick and John Cranford were parties to the email exchange between the Salvation Army and STB.

209. Defendants Cranford and Deitrick had direct knowledge that the demolition at 2136-2138 Market Street posed a threat to life and limb of all persons in the Salvation Army store.

210. Despite this, Defendant Deitrick stated that his focus was not on the safety of the employees and customers at the Salvation Army, but rather to “protect our own investment.”

From: Charles Deitrick [<mailto:Charles.Deitrick@USE.SalvationArmy.Org>]
Sent: Friday, May 10, 2013 9:57 AM
To: Alex Wolfington
Cc: Alistair.Fraser@USE.salvationarmy.org; Major Cranford; Plato Marinakos; Thomas Simmonds
Subject: Re: POST CONFERENCE CALL ACTION PLAN

There is no commitment for Alistair to come to Philadelphia, We will have a local Architect represent us, This will be identified and shared . We will work at the timing of the professionals that are engaged. As was stated we will work to meet our neighborly goals but at same time protect our own investments. As stated no commitments are made at this point other than to work together in dialogue to proceed.

Thank you
Have Blessed Day
Major Charles Deitrick
General Secretary
Adult Rehabilitation Centers Command
Phone 845-732-4113 Fax 845-732-9705
440 West Nyack Rd West Nyack, N.Y. 10994
PO Box 9134 Bardonia, N.Y. 10954
Charles.Deitrick@use.salvationarmy.org

211. Defendant Cranford was also a party to this email.

212. Armed with the knowledge that the adjacent demolition posed the danger of “uncontrolled collapse” and was a threat to life and limb of anyone in the Salvation Army store, Defendants Cranford and Deitrick made the unforgiveable decision to keep the Salvation Army store open while collapse was imminent.

213. The deaths and injuries sustained by the Plaintiff and Plaintiff's decedent were caused by the negligence, carelessness, gross negligence, recklessness and outrageous conduct of Defendants Deitrick and Cranford, as well as their intentional and fraudulent misrepresentation, acting by and through their agents, servants, workers and/or employees, both generally and in the following particular respects:

- a. Failing to close the thrift store despite the known dangers caused by the demolition;
- b. Keeping the thrift store open despite the known dangers caused by the demolition;
- c. Keeping the thrift store open despite a 4 story, un-braced wall looming over the store;
- d. Failing to warn customers and employees of the dangers caused by the demolition;
- e. Failing to close the thrift store despite having seen the walls shaking during demolition;
- f. Failing to close the thrift store despite being warned of the danger to life and limb and the possibility of an uncontrolled collapse;
- g. Failing to perform an engineering survey;
- h. Failing to ensure that an engineering survey was performed;
- i. Exposing customers and employees to unacceptable risks of harm;
- j. Not allowing the contractors proper and necessary access to the store;
- k. Not allowing contractors proper and necessary access to the roof of the stores;
- l. Failing to retain competent employees, contractors, and/or subcontractors;
- m. Failing to ensure that proper lateral bracing was in place to prevent collapse;
- n. Failing to ensure that safe demolition practices were employed on site;

- o. Preventing workers from safely demolishing the building by not giving them the resources they need for safe demolition;
- p. Failing to adequately inspect the project for dangerous and hazardous conditions;
- q. Violating applicable OSHA regulations, including but not limited to 1926.850; 1926.854; and the General Duty Clause;
- r. Violation applicable ANSI standards, including but not limited to ANSI A10.6-2006; 6.14
- s. Failing to provide special precautions which would have protected customers and employees from the particular and unreasonable risks of harm which Defendant recognized;
- t. Failing to train and supervise their employees properly;
- u. Failing to hire competent employees, safety inspectors, contractors and subcontractors;
- v. Breaching their duties under the Restatement of the Law of Torts (Second), including §343, 413, 414, 416, 427 and 429;
- w. Failing to adequately warn The Salvation Army of the peculiar and/or unsafe conditions and/or special dangers existing with the subject project;
- x. Failing to adopt, enact, employ and enforce proper and adequate safety programs, precautions, procedures, measures and plans;
- y. Exposing the customers and employees of the Salvation Army to unreasonable danger, by not informing them of the dangers and hazards associated with the structural instability;
- z. Failing to have ceased and/or have postponed operations until proper and necessary precautions could be taken to safeguard the customers and employees of the Salvation Army;
- aa. Failing to engage and employ a local architect/engineer;
- bb. Failing to adopt and/or enforce a site specific safety plan, demolition plan, engineering plan, and/or shoring plan;

- cc. Failing to ensure that all subcontractors performed all work in accordance with OSHA regulations;
- dd. Failing to close their store after receiving the Marinakos report of structural problems;
- ee. Failing to have the store tested for stability;
- ff. Failing to eliminate the hazards or warn Plaintiff about such hazards when Defendants expected or should have expected that Plaintiff would not discover or realize the danger of structural instability;
- gg. Failing to address safety considerations by contract;
- hh. Failing to ensure demolition work was not performed in or around areas that required shoring or areas of structural instability;
- ii. Ignoring warnings from STB that there was an imminent risk of uncontrolled collapse;
- jj. Ignoring warnings from STB that the construction posed a threat to life and limb of all those in the Salvation Army;
- kk. Failing to warn customers and employees of the risk of uncontrolled collapse;
- ll. Refusing to allow STB to safely demolish the building;
- mm. Refusing to grant STB access to the Salvation Army's roof;
- nn. Negligence per se; and
- oo. Failing to properly sequence the work.

214. The conduct of Defendants Deitrick and Cranford, as described above, demonstrated a reckless disregard for the safety and health of the customers and employees the Salvation Army and for the residents of Philadelphia, including Plaintiff's decedent.

215. By conducting themselves in the negligent, reckless, and outrageous manner set forth above, the acts and/or omissions of Defendants Deitrick and Cranford were a substantial factor, a factual cause and/or increased the risk of harm to Mary Lea Simpson.

216. As a direct and proximate result of Deitrick and Cranford's negligence, recklessness and/or outrageous conduct, Mary Lea Simpson was killed and suffered substantial

damages under Pennsylvania law, including without limitation, severe physical pain and suffering, discomfort, disfigurement, embarrassment, humiliation, mental anguish, severe emotional distress, loss of earnings and earning capacity, substantial past and future medical expenses as well as a loss of life and life's pleasures.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

COUNT FIVE
PLAINTIFF v. THE STB DEFENDANTS and BASCIANO
NEGLIGENCE, RECKLESSNESS, and OUTRAGEOUS CONDUCT

217. Plaintiff hereby incorporates by reference all of the averments and allegations contained in the foregoing paragraphs as though the same were set forth herein.

218. Mary Lea Simpson was a lawful business invitee of the Salvation Army on June 5, 2013.

219. Defendant STB is the owner of the property located at 2136-2138 Market Street, which collapsed onto the Salvation Army thrift store located at 2140 Market Street.

220. Defendants Simmonds and Cresci are owners/shareholders/corporate officers of STB.

221. Defendants 2100 West Market Street Corporation and 303 West 42nd Street Corporation are entities that appear on documentation filed with the City with respect to the properties located at 2136-2138 Market Street.

222. It is believed and therefore averred that Basciano was the majority owner and/or shareholder of the corporate entities that comprise the STB Defendants.

223. Basciano and the STB Defendants are on notice, or have constructive notice, of the rules and regulations set forth in the Pennsylvania Uniform Fraudulent Transfers Act, 12 Pa.C.S. § 5101 *et seq.*

224. At all relevant times, Basciano and the STB Defendants supervised the project, established plans, recommendations, designs, procedures and specifications for the performance of said work.

225. Basciano and the STB Defendants, having undertaken the inspection of the work, owed a duty to those persons affected by the work, including the employees and customers at the Salvation Army, to provide a reasonably safe environment free from unreasonable hazards such as a collapse.

226. Basciano and the STB Defendants were responsible for adopting, promulgating and enforcing proper, adequate, necessary and appropriate standards, guidelines and procedures to ensure the demolition project was safe for all those in its vicinity.

227. The injuries of Plaintiff's decedent were caused by the negligence, carelessness, gross negligence, recklessness and/or outrageous conduct of Basciano and the STB Defendants, acting by and through their agents, servants, workers and/or employees, both generally and in the following particular respects:

- a. Failing to ensure that an engineering survey was performed;
- b. Failing to retain competent employees, contractors, and/or subcontractors;
- c. Failing to ensure that proper lateral bracing was in place to prevent collapse;
- d. Failing to ensure that safe demolition practices were employed on site;

- e. Failing to properly examine bids to ensure that safety precautions were provided for;
- f. Choosing the lowest bidder despite knowing that this job could not safely be performed for the bid price;
- g. Allowing the demolition to take place without an adequate agreement in place with the Salvation Army to allow the work to safely proceed;
- h. Falsifying and/or improperly modifying permitting documents;
- i. Allowing heavy machinery to be used in close proximity to an un-braced wall;
- j. Failing to demolish the building by hand;
- k. Failing to demolish the building from the top down;
- l. Allowing an excavator to be used to claw out the lateral support of the building;
- m. Failing to correct the safety hazard of an un-braced wall looming above an occupied thrift store;
- n. Observing dangerous demolition practices and allowing them to continue;
- o. Preventing workers from safely demolishing the building by not giving them the resources they need for safe demolition;
- p. Refusing to pay for an aerial lift that would allow workers to demolish the building from the top down;
- q. Failing to plan, plot, design and supervise the construction work properly;
- r. Failing to adequately inspect the project for dangerous and hazardous conditions;
- s. Failing to keep the adjacent properties safe from the risk of collapse;
- t. Failing to provide adequate and proper shoring;
- u. Failing to use any shoring;
- v. Failing to request, implement, and/or enforce a shoring plan, a demolition plan, and/or an engineering plan;

- w. Failing to inspect sufficiently the construction site and allowing, inter alia, workers to work in or around an area that was inadequately braced and structurally unstable;
- x. Violating applicable OSHA regulations, including but not limited to 1926.850; 1926.854; and the General Duty Clause;
- y. Violation applicable ANSI standards, including but not limited to ANSI A10.6-2006; 6.14
- z. Failing to provide special precautions which would have protected customers and employees from the particular and unreasonable risks of harm which Defendants recognized;
- aa. Failing to provide adequate materials and equipment to ensure proper shoring and structural stability of the building;
- bb. Failing to train and supervise their employees properly;
- cc. Failing to hire competent employees, safety inspectors, contractors and subcontractors;
- dd. Breaching their duties under the Restatement of the Law of Torts (Second), including §343, 413, 414, 416, 427 and 429;
- ee. Failing to adequately warn The Salvation Army of the peculiar and/or unsafe conditions and/or special dangers existing with the subject project;
- ff. Failing to furnish and perform construction materials and services in conformity with the standard of practice prevailing in the construction industry at the time those materials and services were furnished and performed;
- gg. Violating and failing to comply with federal and state statutes, local ordinances and all other rules or regulations applicable, or in effect, pertaining to the performance of demolition work;
- hh. Failing to adopt, enact, employ and enforce proper and adequate safety programs, precautions, procedures, measures and plans;
- ii. Performing and furnishing construction services in an inadequate, unsafe and negligent manner;

- jj. Promulgating and/or adopting insufficient plans for the work in or around the structurally instability;
- kk. Exposing the customers and employees of the Salvation Army to unreasonable danger, by using inadequate tools, materials and equipment and not informing the customers and employees of the Salvation Army of the dangers and hazards of the structurally instability;
- ll. Failing to cease and/or postpone construction work until proper and necessary precautions could be taken to safeguard the customers and employees of the Salvation Army;
- mm. Failing to engage and employ appropriate numbers of workers at the site;
- nn. Failing to recommend, provide and enforce frequent inspections of the work area;
- oo. Failing to adopt and/or enforce a site specific safety plan, demolition plan, engineering plan, and/or shoring plan;
- pp. Failing to perform a Safety Task Analysis or Job Hazard Analysis;
- qq. Failing to require and enforce a requirement that workers sign off on site-specific safety rules;
- rr. Failing to ensure that all subcontractors performed all work in accordance with OSHA regulations;
- ss. Failing to have the subject area tested for stability or safety prior to allowing the subject ironwork work to begin;
- tt. Failing to eliminate the hazards or warn plaintiff about such hazards when Defendant expected or should have expected that Plaintiff would not discover or realize the danger of structural instability;
- uu. Failing to address safety considerations by contract;
- vv. Failing to ensure demolition work was not performed in or around areas that required shoring or areas of structural instability;
- ww. Improperly using an excavator for demolition;
- xx. Negligence per se; and

yy. Failing to properly sequence the work and to take measures to ensure that business activity at the Salvation Army Thrift Store ceased and desisted.

228. The conduct of Basciano and the STB Defendants, as described above, demonstrated a reckless disregard for the safety and health of the customers and employees of the Salvation Army and for the residents of Philadelphia, including Plaintiff's decedent.

229. By conducting themselves in the negligent, reckless, and outrageous manner set forth above, the acts and/or omissions of Basciano and the STB Defendants were a substantial factor, a factual cause and/or increased the risk of harm Mary Lea Simpson.

230. As a direct and proximate result of Basciano and The STB Defendants' negligence, recklessness and/or outrageous conduct, Mary Lea Simpson was killed and suffered substantial damages under Pennsylvania law, including without limitation, severe physical pain and suffering, discomfort, disfigurement, embarrassment, humiliation, mental anguish, severe emotional distress, loss of earnings and earning capacity, substantial past and future medical expenses as well as a loss of life and life's pleasures.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

COUNT SIX
PLAINTIFF v. BASCIANO, in his individual capacity
NEGLIGENCE, RECKLESSNESS, and OUTRAGEOUS CONDUCT

231. Plaintiff hereby incorporates by reference all of the averments and allegations contained in the foregoing paragraphs as though the same were set forth herein.

232. Basciano is on public notice, or has constructive notice, of the rules and regulations set forth in the Pennsylvania Uniform Fraudulent Transfers Act, 12 Pa.C.S. § 5101 *et seq.*

233. With respect to the 2136-2138 Market Street demolition project, as previously averred, Basciano held himself out to the public and conducted himself as the Construction Superintendent of the Project.

234. Basciano personally visited the site a significant number of times, personally selected bids, personally oversaw the work, and witnessed the work being performed in an unsafe and reckless manner.

235. Basciano maintained a consistent presence on site and retained ultimate control over the means and methods of demolition.

236. At all relevant times, Basciano supervised the project, established plans, recommendations, designs, procedures and specifications for the performance of said work.

237. Basciano, having undertaken the inspection and supervision of the work, owed a duty to those persons affected by the work, including the employees and customers at the Salvation Army, to provide a reasonably safe environment free from unreasonable hazards, such as a collapse.

238. Basciano was responsible for adopting, promulgating and enforcing proper, adequate, necessary and appropriate standards, guidelines and procedures to ensure the demolition project was safe for all those in its vicinity.

239. The injuries of Plaintiff's decedent were caused by the negligence, carelessness, gross negligence, recklessness and/or outrageous conduct of Basciano, acting as an individual, both generally and in the following particular respects:

- a. Failing to ensure that an engineering survey was performed;
- b. Failing to retain competent employees, contractors, and/or subcontractors;
- c. Failing to ensure that proper lateral bracing was in place to prevent collapse;
- d. Failing to ensure that safe demolition practices were employed on site;
- e. Failing to properly examine bids to ensure that safety precautions were provided for;
- f. Choosing the lowest bidder despite knowing that this job could not safely be performed for the bid price;
- g. Allowing the demolition to take place without an adequate and safe agreement in place with the Salvation Army to allow the work to safely proceed;
- h. Falsifying and/or improperly modifying permitting documents;
- i. Allowing heavy machinery to be used in close proximity to an un-braced wall;
- j. Failing to demolish the building by hand;
- k. Failing to demolish the building from the top down;
- l. Allowing an excavator to be used to claw out the lateral support of the building;
- m. Failing to correct the safety hazard of an un-braced wall looming above an occupied thrift store;
- n. Observing dangerous demolition practices and allowing them to continue;
- o. Preventing workers from safely demolishing the building by not giving them the resources they need for safe demolition;
- p. Refusing to pay for an aerial lift that would allow workers to demolish the building from the top down;
- q. Failing to plan, plot, design and supervise the construction work properly;

- r. Failing to adequately inspect the project for dangerous and hazardous conditions;
- s. Failing to keep the adjacent properties safe from the risk of collapse;
- t. Failing to provide adequate and proper shoring;
- u. Failing to use any shoring;
- v. Failing to request, implement, and/or enforce a shoring plan, a demolition plan, and/or an engineering plan;
- w. Failing to inspect sufficiently the construction site and allowing, inter alia, workers to work in or around an area that was inadequately braced and structurally unstable;
- x. Violating applicable OSHA regulations, including but not limited to 1926.850; 1926.854; and the General Duty Clause;
- y. Violation applicable ANSI standards, including but not limited to ANSI A10.6-2006; 6.14
- z. Failing to provide special precautions which would have protected customers and employees from the particular and unreasonable risks of harm which Defendants recognized;
- aa. Failing to provide adequate materials and equipment to ensure proper shoring and structural stability of the building;
- bb. Failing to train and supervise their employees properly;
- cc. Failing to hire competent employees, safety inspectors, contractors and subcontractors;
- dd. Breaching their duties under the Restatement of the Law of Torts (Second), including §343, 413, 414, 416, 427 and 429;
- ee. Failing to adequately warn The Salvation Army of the peculiar and/or unsafe conditions and/or special dangers existing with the subject project;
- ff. Failing to furnish and perform construction materials and services in conformity with the standard of practice prevailing in the construction industry at the time those materials and services were furnished and performed;

- gg. Violating and failing to comply with federal and state statutes, local ordinances and all other rules or regulations applicable, or in effect, pertaining to the performance of demolition work;
- hh. Failing to adopt, enact, employ and enforce proper and adequate safety programs, precautions, procedures, measures and plans;
- ii. Performing and furnishing construction services in an inadequate, unsafe and negligent manner;
- jj. Promulgating and/or adopting insufficient plans for the work in or around the structurally instability;
- kk. Exposing the customers and employees of the Salvation Army to unreasonable danger, by using inadequate tools, materials and equipment and not informing the customers and employees of the Salvation Army of the dangers and hazards of the structurally instability;
- ll. Failing to cease and/or postpone construction work until proper and necessary precautions could be taken to safeguard the customers and employees of the Salvation Army;
- mm. Failing to engage and employ appropriate numbers of workers at the site;
- nn. Failing to recommend, provide and enforce frequent inspections of the work area;
- oo. Failing to adopt and/or enforce a site specific safety plan, demolition plan, engineering plan, and/or shoring plan;
- pp. Failing to perform a Safety Task Analysis or Job Hazard Analysis;
- qq. Failing to require and enforce a requirement that workers sign off on site-specific safety rules;
- rr. Failing to ensure that all subcontractors performed all work in accordance with OSHA regulations;
- ss. Failing to have the subject area tested for stability or safety prior to allowing the subject ironwork work to begin;

- tt. Failing to eliminate the hazards or warn plaintiff about such hazards when Defendant expected or should have expected that Plaintiff would not discover or realize the danger of structural instability;
- uu. Failing to address safety considerations by contract;
- vv. Failing to ensure demolition work was not performed in or around areas that required shoring or areas of structural instability;
- ww. Improperly using an excavator for demolition;
- xx. Negligence per se; and
- yy. Failing to properly sequence the work and to take measures to ensure that business activity at the Salvation Army Thrift Store ceased and desisted.

240. The conduct of Basciano, as described above, demonstrated a reckless disregard for the safety and health of the customers and employees the Salvation Army and for the residents of Philadelphia, including Plaintiff's decedent.

241. By conducting himself in the negligent, reckless, and outrageous manner set forth above, the acts and/or omissions of Basciano was a substantial factor, a factual cause and/or increased the risk of harm to Mary Lea Simpson.

242. As a direct and proximate result of Basciano's negligence, recklessness and/or outrageous conduct, Mary Lea Simpson was killed and suffered substantial damages under Pennsylvania law, including without limitation, severe physical pain and suffering, discomfort, disfigurement, embarrassment, humiliation, mental anguish, severe emotional distress, loss of earnings and earning capacity, substantial past and future medical expenses as well as a loss of life and life's pleasures.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such

damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

COUNT SEVEN
PLAINTIFF v. THOMAS SIMMONDS and FRANK CRESCI
NEGLIGENCE, RECKLESSNESS, and OUTRAGEOUS CONDUCT

243. Plaintiff hereby incorporates by reference all of the averments and allegations contained in the foregoing paragraphs as though the same were set forth herein.

244. Defendants Simmonds and Cresci were involved in the e-mail communications that discussed the dangerous conditions of 2136, 2138, and 2140 Market Street prior to the collapse.

245. Defendants Simmonds and Cresci had direct knowledge of the threat the demolition project posed to life and limb of all persons in the Salvation Army thrift store.

246. Through the e-mails with the City and the Salvation Army discussed more fully above, Defendants Simmonds and Cresci have admitted that they were aware that the threat to life and limb of all persons in the Salvation Army was imminent, and that the risk of uncontrolled collapse existed.

247. Defendants Simmonds and Cresci had a responsibility to ensure that the demolition occurred in a safe fashion and had a responsibility to take corrective measures when the realized dangers existed.

248. The death of Plaintiff's decedent was caused by the negligence, carelessness, gross negligence, recklessness and outrageous conduct of Defendants Simmonds and Cresci, acting by and through its agents, servants, workers and/or employees, both generally and in the following particular respects:

- a. Failing to ensure that an engineering survey was performed;

- b. Failing to retain competent employees, contractors, and/or subcontractors;
- c. Failing to ensure that proper lateral bracing was in place to prevent collapse;
- d. Failing to ensure that safe demolition practices were employed on site;
- e. Failing to properly examine bids to ensure that safety precautions were provided for;
- f. Choosing the lowest bidder despite knowing that this job could not safely be performed for the bid price;
- g. Allowing the demolition to take place without an adequate and safe agreement in place with the Salvation Army to allow the work to safely proceed;
- h. Falsifying and/or improperly modifying permitting documents;
- i. Allowing heavy machinery to be used in close proximity to an un-braced wall;
- j. Failing to demolish the building by hand;
- k. Failing to demolish the building from the top down;
- l. Allowing an excavator to be used to claw out the lateral support of the building;
- m. Failing to correct the safety hazard of an un-braced wall looming above an occupied thrift store;
- n. Observing dangerous demolition practices and allowing them to continue;
- o. Preventing workers from safely demolishing the building by not giving them the resources they need for safe demolition;
- p. Refusing to pay for an aerial lift that would allow workers to demolish the building from the top down;
- q. Failing to plan, plot, design and supervise the construction work properly;
- r. Failing to adequately inspect the project for dangerous and hazardous conditions;

- s. Failing to keep the adjacent properties safe from the risk of collapse;
- t. Failing to provide adequate and proper shoring;
- u. Failing to use any shoring;
- v. Failing to request, implement, and/or enforce a shoring plan, a demolition plan, and/or an engineering plan;
- w. Failing to inspect sufficiently the construction site and allowing, inter alia, workers to work in or around an area that was inadequately braced and structurally unstable;
- x. Violating applicable OSHA regulations, including but not limited to 1926.850; 1926.854; and the General Duty Clause;
- y. Violation applicable ANSI standards, including but not limited to ANSI A10.6-2006; 6.14
- z. Failing to provide special precautions which would have protected customers and employees from the particular and unreasonable risks of harm which Defendants recognized;
- aa. Failing to provide adequate materials and equipment to ensure proper shoring and structural stability of the building;
- bb. Failing to train and supervise their employees properly;
- cc. Failing to hire competent employees, safety inspectors, contractors and subcontractors;
- dd. Breaching their duties under the Restatement of the Law of Torts (Second), including §343, 413, 414, 416, 427 and 429;
- ee. Failing to adequately warn The Salvation Army of the peculiar and/or unsafe conditions and/or special dangers existing upon the subject project;
- ff. Failing to furnish and perform construction materials and services in conformity with the standard of practice prevailing in the construction industry at the time those materials and services were furnished and performed;

- gg. Violating and failing to comply with federal and state statutes, local ordinances and all other rules or regulations applicable, or in effect, pertaining to the performance of demolition work;
- hh. Failing to adopt, enact, employ and enforce proper and adequate safety programs, precautions, procedures, measures and plans;
- ii. Performing and furnishing construction services in an inadequate, unsafe and negligent manner;
- jj. Promulgating and/or adopting insufficient plans for the work in or around the structurally instability;
- kk. Exposing the customers and employees of the Salvation Army to unreasonable danger, by using inadequate tools, materials and equipment and not informing the customers and employees of the Salvation Army of the dangers and hazards of the structurally instability;
- ll. Failing to cease and/or postpone construction work until proper and necessary precautions could be taken to safeguard the customers and employees of the Salvation Army;
- mm. Failing to engage and employ appropriate numbers of workers at the site;
- nn. Failing to recommend, provide and enforce frequent inspections of the work area;
- oo. Failing to adopt and/or enforce a site specific safety plan, demolition plan, engineering plan, and/or shoring plan;
- pp. Failing to perform a Safety Task Analysis or Job Hazard Analysis;
- qq. Failing to require and enforce a requirement that workers sign off on site-specific safety rules;
- rr. Failing to ensure that all subcontractors performed all work in accordance with OSHA regulations;
- ss. Failing to have the subject area tested for stability or safety prior to allowing the subject ironwork work to begin;

- tt. Failing to eliminate the hazards or warn plaintiff about such hazards when Defendant expected or should have expected that Plaintiff would not discover or realize the danger of structural instability;
- uu. Failing to address safety considerations by contract;
- vv. Failing to ensure demolition work was not performed in or around areas that required shoring or areas of structural instability;
- ww. Improperly using an excavator for demolition;
- xx. Negligence per se; and
- yy. Failing to properly sequence the work and to take measures to ensure that business activity at the Salvation Army Thrift Store ceased and desisted.

249. The conduct of Simmonds and Cresci, as described above, demonstrated a reckless disregard for the safety and health of the customers and employees the Salvation Army and for the residents of Philadelphia, including Plaintiff's decedent.

250. By conducting himself in the negligent, reckless, and outrageous manner set forth above, the acts and/or omissions of Simmonds and Cresci was a substantial factor, a factual cause and/or increased the risk of harm to Mary Lea Simpson.

251. As a direct and proximate result of Simmonds and Cresci's negligence, recklessness and/or outrageous conduct, Mary Lea Simpson was killed and suffered substantial damages under Pennsylvania law, including without limitation, severe physical pain and suffering, discomfort, disfigurement, embarrassment, humiliation, mental anguish, severe emotional distress, loss of earnings and earning capacity, substantial past and future medical expenses as well as a loss of life and life's pleasures now.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such

damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

COUNT EIGHT
PLAINTIFF v. CAMPBELL CONSTRUCTION and GRIFFIN T. CAMPBELL
NEGLIGENCE

252. Plaintiff hereby incorporates by reference all of the averments and allegations contained in the foregoing paragraphs as though the same were set forth herein.

253. Defendant, Griffin Campbell, was the owner and agent of the demolition contractor, Campbell Construction, retained to perform the demolition of property located at 2136-38 Market Street, which collapsed onto the Salvation Army.

254. Defendants Campbell Construction and Griffin T. Campbell (hereinafter as “the Campbell Defendants”), maintained a constant presence on site overseeing and approving the means and methods of demolition.

255. The Campbell Defendants were aware that there was an occupied building adjacent to this demolition project but failed to take necessary steps to protect those persons in the adjacent building.

256. At all relevant times, the Campbell Defendants undertook the supervision of the project which was being performed, and in connection therewith, established plans, recommendations, designs, procedures and specifications for the performance of said work.

257. The Campbell Defendants having undertaken the inspection and supervision of the work, owed a duty to those persons affected by the work, including the employees and customers at the Salvation Army, to provide a reasonably safe environment, free from unreasonable hazards, such as a collapsing building

258. The Campbell Defendants were responsible for adopting, promulgating and enforcing proper, adequate, necessary and appropriate standards, guidelines and procedures to ensure the demolition project was safe for all those in its vicinity.

259. The injuries sustained by the Plaintiffs and Plaintiff's decedent were caused by the negligence of The Campbell Defendants, acting by and through their agents, servants, workers and/or employees, both generally and in the following particular respects:

- a. Failing to ensure that an engineering survey was performed;
- b. Failing to retain competent employees, contractors, and/or subcontractors;
- c. Failing to ensure that proper lateral bracing was in place to prevent collapse;
- d. Failing to ensure that safe demolition practices were employed on site;
- e. Failing to properly examine bids to ensure that safety precautions were provided for;
- f. Placing an unreasonably low bid which did not account for necessary safety precautions;
- g. Allowing the demolition to take place without an adequate agreement in place with the Salvation Army to allow the work to safely proceed;
- h. Falsifying permitting documents;
- i. Allowing heavy machinery to be used in close proximity to an un-braced wall;
- j. Failing to demolish the building by hand;
- k. Failing to demolish the building from the top down;
- l. Allowing an excavator to be used to claw out the lateral support of the building;
- m. Failing to correct the safety hazard of an un-braced wall looming above an occupied thrift store;
- n. Observing dangerous demolition practices and allowing them to continue;

- o. Preventing workers from safely demolishing the building by not giving them the resources they need for safe demolition;
- p. Refusing to pay for an aerial lift that would allow workers to demolish the building from the top down;
- q. Failing to plan, plot, design and supervise the construction work properly;
- r. Failing to adequately inspect the project for dangerous and hazardous conditions;
- s. Failing to keep the adjacent properties safe from the risk of collapse;
- t. Failing to provide adequate and proper shoring;
- u. Failing to use any shoring;
- v. Failing to request, implement, and/or enforce a shoring plan, a demolition plan, and/or an engineering plan;
- w. Failing to inspect sufficiently the construction site and allowing, inter alia, workers to work in or around an area that was inadequately braced and structurally unstable;
- x. Violating applicable OSHA regulations, including but not limited to 1926.850; 1926.854; and the General Duty Clause;
- y. Violation applicable ANSI standards, including but not limited to ANSI A10.6-2006; 6.14
- z. Failing to provide special precautions which would have protected customers and employees from the particular and unreasonable risks of harm which defendant recognized;
- aa. Failing to provide adequate materials and equipment to ensure proper shoring and structural stability of the building;
- bb. Failing to train and supervise their employees properly;
- cc. Failing to hire competent employees, safety inspectors, contractors and subcontractors;
- dd. Breaching their duties under the Restatement of the Law of Torts (Second), including §343, 413, 414, 416, 427 and 429;

- ee. Failing to adequately warn The Salvation Army of the peculiar and/or unsafe conditions and/or special dangers existing upon the subject project;
- ff. Failing to furnish and perform construction materials and services in conformity with the standard of practice prevailing in the construction industry at the time those materials and services were furnished and performed;
- gg. Violating and failing to comply with federal and state statutes, local ordinances and all other rules or regulations applicable, or in effect, pertaining to the performance of demolition work;
- hh. Failing to adopt, enact, employ and enforce proper and adequate safety programs, precautions, procedures, measures and plans;
- ii. Performing and furnishing construction services in an inadequate, unsafe and negligent manner;
- jj. Promulgating and/or adopting insufficient plans for the work in or around the structurally instability;
- kk. Exposing the customers and employees of the Salvation Army to unreasonable danger, by using inadequate tools, materials and equipment and not informing the customers and employees of the Salvation Army of the dangers and hazards of the structurally instability;
- ll. Failing to cease and/or postpone construction work until proper and necessary precautions could be taken to safeguard the customers and employees of the Salvation Army;
- mm. Failing to engage and employ appropriate numbers of workers at the site;
- nn. Failing to recommend, provide and enforce frequent inspections of the work area;
- oo. Failing to adopt and/or enforce a site specific safety plan, demolition plan, engineering plan, and/or shoring plan;
- pp. Failing to perform a Safety Task Analysis or Job Hazard Analysis;

- qq. Failing to require and enforce a requirement that workers sign off on site-specific safety rules;
- rr. Failing to ensure that all subcontractors performed all work in accordance with OSHA regulations;
- ss. Failing to have the subject area tested for stability or safety prior to allowing the subject ironwork work to begin;
- tt. Failing to eliminate the hazards or warn plaintiff about such hazards when Defendant expected or should have expected that Plaintiff would not discover or realize the danger of structural instability;
- uu. Failing to address safety considerations by contract;
- vv. Failing to ensure demolition work was not performed in or around areas that required shoring or areas of structural instability;
- ww. Improperly using an excavator for demolition;
- xx. Negligence per se; and
- yy. Failing to properly sequence the work.

260. The conduct of the Campbell Defendants, as described above, demonstrated a disregard for the safety and health of the customers and employees the Salvation Army and for the residents of Philadelphia, including Plaintiff's decedent.

261. By conducting themselves in the manner set forth above, the acts and/or omissions of the Campbell Defendants were a substantial factor, a factual cause and/or increased the risk of harm to Mary Lea Simpson.

262. As a direct and proximate result of the Campbell Defendants' negligence, Mary Lea Simpson was killed and suffered substantial damages under Pennsylvania law, including without limitation, severe physical pain and suffering, discomfort, disfigurement, embarrassment, humiliation, mental anguish, severe emotional distress, loss of earnings and earning capacity, substantial past and future medical expenses as well as a loss of life and life's pleasures.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

COUNT NINE
PLAINTIFF v. S&R CONTRACTING and BENSCHOP
NEGLIGENCE

263. Plaintiff hereby incorporates by reference all of the averments and allegations contained in the foregoing paragraphs as though the same were set forth herein.

264. Defendants Benschop and S&R Contracting were the demolition/excavation contractor, retained to perform the demolition and excavation on the property located at 2136-38 Market Street, which collapsed onto the Salvation Army.

265. Defendant Benschop is an employee and/or agent of S&R Contracting.

266. Defendant, Sean Benschop, operated the excavator on the day in question.

267. The deaths and injuries sustained by the Plaintiff and Plaintiff's decedent were caused by the negligence and carelessness of S&R Contracting, acting by and through his agent, servant, worker and/or employee, Benschop both generally and in the following particular respects:

- a. Failing to competently operate equipment, including the excavator;
- b. Operating the excavator in close proximity to an un-braced wall;
- c. Using the excavator to perform demolition;
- d. Removing the lateral support for the building walls;
- e. Violating manufacturer warnings;
- f. Failing to ensure that an engineering survey was performed;

- g. Failing to retain competent employees, contractors, and/or subcontractors;
- h. Failing to ensure that proper lateral bracing was in place to prevent collapse;
- i. Failing to ensure that safe demolition practices were employed on site;
- j. Allowing the demolition to take place without an adequate agreement in place with the Salvation Army to allow the work to safely proceed;
- k. Proceeding with demolition despite knowing that the safer alternative of hand-demolition had been rejected by the owner;
- l. Falsifying permitting documents;
- m. Allowing heavy machinery to be used in close proximity to an un-braced wall;
- n. Failing to demolish the building by hand;
- o. Failing to demolish the building from the top down;
- p. Using an excavator to claw out the lateral support of the building;
- q. Failing to correct the safety hazard of an un-braced wall looming above an occupied thrift store;
- r. Observing dangerous demolition practices and allowing them to continue;
- s. Preventing workers from safely demolishing the building by not giving them the resources they need for safe demolition;
- t. Failing to use an aerial lift that would allow workers to demolish the building from the top down;
- u. Failing to plan, plot, design and supervise the construction work properly;
- v. Failing to adequately inspect the project for dangerous and hazardous conditions;
- w. Failing to keep the adjacent properties safe from the risk of collapse;
- x. Failing to provide adequate and proper shoring;
- y. Failing to use any shoring;

- z. Failing to request, implement, and/or enforce a shoring plan, a demolition plan, and/or an engineering plan;
- aa. Failing to inspect sufficiently the construction site and allowing, inter alia, workers to work in or around an area that was inadequately braced and structurally unstable;
- bb. Violating applicable OSHA regulations, including but not limited to 1926.850; 1926.854; and the General Duty Clause;
- cc. Violation applicable ANSI standards, including but not limited to ANSI A10.6-2006; 6.14
- dd. Failing to provide special precautions which would have protected customers and employees from the particular and unreasonable risks of harm which defendant recognized;
- ee. Failing to provide adequate materials and equipment to ensure proper shoring and structural stability of the building;
- ff. Failing to train and supervise their employees properly;
- gg. Failing to hire competent employees, safety inspectors, contractors and subcontractors;
- hh. Breaching their duties under the Restatement of the Law of Torts (Second), including §343, 413, 414, 416, 427 and 429;
- ii. Failing to adequately warn The Salvation Army of the peculiar and/or unsafe conditions and/or special dangers existing with the subject project;
- jj. Failing to furnish and perform construction materials and services in conformity with the standard of practice prevailing in the construction industry at the time those materials and services were furnished and performed;
- kk. Violating and failing to comply with federal and state statutes, local ordinances and all other rules or regulations applicable, or in effect, pertaining to the performance of demolition work;
- ll. Failing to adopt, enact, employ and enforce proper and adequate safety programs, precautions, procedures, measures and plans;

- mm. Performing and furnishing construction services in an inadequate, unsafe and negligent manner;
- nn. Promulgating and/or adopting insufficient plans for the work in or around the structural instability;
- oo. Exposing the customers and employees of the Salvation Army to unreasonable danger, by using inadequate tools, materials and equipment and not informing the customers and employees of the Salvation Army of the dangers and hazards of the structural instability;
- pp. Failing to cease and/or postpone construction work until proper and necessary precautions could be taken to safeguard the customers and employees of the Salvation Army;
- qq. Failing to engage and employ appropriate numbers of workers at the site;
- rr. Failing to recommend, provide and enforce frequent inspections of the work area;
- ss. Failing to adopt and/or enforce a site specific safety plan, demolition plan, engineering plan, and/or shoring plan;
- tt. Failing to perform a Safety Task Analysis or Job Hazard Analysis;
- uu. Failing to require and enforce a requirement that workers sign off on site-specific safety rules;
- vv. Failing to ensure that all subcontractors performed all work in accordance with OSHA regulations;
- ww. Failing to have the subject area tested for stability or safety prior to allowing the subject ironwork work to begin;
- xx. Failing to eliminate the hazards or warn Plaintiff about such hazards when Defendants expected or should have expected that Plaintiff would not discover or realize the danger of structural instability;
- yy. Failing to address safety considerations by contract;
- zz. Failing to ensure demolition work was not performed in or around areas that required shoring or areas of structural instability;
- aaa. Negligence per se; and

bbb. Failing to properly sequence the work.

268. The conduct of S&R Contracting and Benschop, as described above, demonstrated a disregard for the safety and health of the customers and employees the Salvation Army and for the residents of Philadelphia, including Plaintiff's decedent.

269. By conducting themselves in the manner set forth above, the acts and/or omissions of S&R Contracting and Benschop were a substantial factor, a factual cause and/or increased the risk of harm to Mary Lea Simpson.

270. As a direct and proximate result of the S&R Contracting and Benschop's negligence, Mary Lea Simpson was killed and suffered substantial damages under Pennsylvania law, including without limitation, severe physical pain and suffering, discomfort, disfigurement, embarrassment, humiliation, mental anguish, severe emotional distress, loss of earnings and earning capacity, substantial past and future medical expenses as well as a loss of life and life's pleasures.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

COUNT TEN
PLAINTIFF v. PLATO STUDIO and MARINAKOS
PROFESSIONAL NEGLIGENCE

271. Plaintiff hereby incorporates by reference all of the averments and allegations contained in the foregoing paragraphs as though the same were set forth herein.

272. Defendants Plato Studio and Marinakos performed design, architectural, engineering, and/or construction services on the construction project at issue, located at 2136-2138 Market Street, including serving as an expediter for demolition permits.

273. Defendants Plato Studio and Marinakos had a duty to all lawful business invitees on the premises and in the neighboring Salvation Army thrift store, to render architectural, design, or engineering services consistent with the standards of care in the engineering, design and architectural industry.

274. Defendant Marinakos is the employee and/or agent of Plato Studio, and Marinakos' acts and/or omissions are attributable to Plato Studio.

275. Defendant, Plato, prepared an engineering survey for the Salvation Army building at the request of the STB Defendants and/or Basciano.

276. The care, skill and/or knowledge exercised by Marinakos on this project fell below and deviated from the professional standards in the engineering industry.

277. The deaths and injuries sustained by the Plaintiffs and Plaintiffs' decedents were caused by the negligence, carelessness, gross negligence, recklessness and outrageous conduct of Defendant Plato Studio, acting by and through its agent, servant, worker and/or employee, Marinakos, both generally and in the following particular respects:

- a. Failing to perform an engineering/demolition survey;
- b. Failing to preplan the work;
- c. Rushing the permitting process as an "expediter" without taking time to ensure that proper safety protocols were in place;
- d. Allowing demolition to proceed despite knowledge that the wall adjoining the Salvation Army was un-braced and likely to fall;
- e. Failing to properly calculate the stability needed to prevent collapse;

- f. Failing to properly calculate the necessary lateral bracing to prevent collapse;
- g. Failing to ensure that an engineering survey was performed;
- h. Failing to retain competent employees, contractors, and/or subcontractors;
- i. Failing to ensure that proper lateral bracing was in place to prevent collapse;
- j. Failing to ensure that safe demolition practices were employed on site;
- k. Failing to properly examine bids to ensure that safety precautions were provided for;
- l. Permitting the lowest bidder to be chosen despite knowing that this job could not safely be performed for the bid price;
- m. Allowing the demolition to take place without an adequate agreement in place with the Salvation Army to allow the work to safely proceed;
- n. Falsifying permitting documents;
- o. Allowing heavy machinery to be used in close proximity to an un-braced wall;
- p. Failing to demolish the building by hand;
- q. Failing to demolish the building from the top down;
- r. Allowing an excavator to be used to claw out the lateral support of the building;
- s. Failing to correct the safety hazard of an un-braced wall looming above an occupied thrift store;
- t. Observing dangerous demolition practices and allowing them to continue;
- u. Preventing workers from safely demolishing the building by not giving them the resources they need for safe demolition;
- v. Refusing to pay for an aerial lift that would allow workers to demolish the building from the top down;
- w. Failing to plan, plot, design and supervise the construction work properly;

- x. Failing to adequately inspect the project for dangerous and hazardous conditions;
- y. Failing to keep the adjacent properties safe from the risk of collapse;
- z. Failing to provide adequate and proper shoring;
- aa. Failing to use any shoring;
- bb. Failing to request, implement, and/or enforce a shoring plan, a demolition plan, and/or an engineering plan;
- cc. Failing to inspect sufficiently the construction site and allowing, inter alia, workers to work in or around an area that was inadequately braced and structurally unstable;
- dd. Violating applicable OSHA regulations, including but not limited to 1926.850; 1926.854; and the General Duty Clause;
- ee. Violation applicable ANSI standards, including but not limited to ANSI A10.6-2006; 6.14
- ff. Failing to provide special precautions which would have protected customers and employees from the particular and unreasonable risks of harm which defendant recognized;
- gg. Failing to provide adequate materials and equipment to ensure proper shoring and structural stability of the building;
- hh. Failing to train and supervise their employees properly;
- ii. Failing to hire competent employees, safety inspectors, contractors and subcontractors;
- jj. Breaching their duties under the Restatement of the Law of Torts (Second), including §343, 413, 414, 416, 427 and 429;
- kk. Failing to adequately warn The Salvation Army of the peculiar and/or unsafe conditions and/or special dangers existing upon the subject project;
- ll. Violating and failing to comply with federal and state statutes, local ordinances and all other rules or regulations applicable, or in effect, pertaining to the performance of demolition work;

- mm. Failing to adopt, enact, employ and enforce proper and adequate safety programs, precautions, procedures, measures and plans;
- nn. Performing and furnishing construction services in an inadequate, unsafe and negligent manner;
- oo. Promulgating and/or adopting insufficient plans for the work in or around the structurally instability;
- pp. Exposing the customers and employees of the Salvation Army to unreasonable danger, by using inadequate tools, materials and equipment and not informing the customers and employees of the Salvation Army of the dangers and hazards of the structurally instability;
- qq. Failing to cease and/or postpone construction work until proper and necessary precautions could be taken to safeguard the customers and employees of the Salvation Army;
- rr. Failing to engage and employ appropriate numbers of workers at the site;
- ss. Failing to recommend, provide and enforce frequent inspections of the work area;
- tt. Failing to adopt and/or enforce a site specific safety plan, demolition plan, engineering plan, and/or shoring plan;
- uu. Failing to perform a Safety Task Analysis or Job Hazard Analysis;
- vv. Failing to require and enforce a requirement that workers sign off on site-specific safety rules;
- ww. Failing to ensure that all subcontractors performed all work in accordance with OSHA regulations;
- xx. Failing to have the subject area tested for stability or safety prior to allowing the subject ironwork work to begin;
- yy. Failing to eliminate the hazards or warn Plaintiff about such hazards when Defendant expected or should have expected that Plaintiff would not discover or realize the danger of structural instability;
- zz. Failing to address safety considerations by contract;

- aaa. Failing to ensure demolition work was not performed in or around areas that required shoring or areas of structural instability;
- bbb. Improperly using an excavator for demolition;
- ccc. Negligence per se; and
- ddd. Failing to properly sequence the work.

278. The conduct of Plato Studio and Marinakos, as described above, demonstrated a reckless disregard for the safety and health of the customers and employees the Salvation Army and for the residents of Philadelphia, including Plaintiff's decedent.

279. By conducting themselves in the negligent, reckless and outrageous manner set forth above, the acts and/or omissions of Plato Studio and Marinakos were a substantial factor, a factual cause and/or increased the risk of harm to Mary Lea Simpson.

280. As a direct and proximate result of Plato Studio and Marinakos' negligence, recklessness and/or outrageous conduct, Mary Lea Simpson was killed and suffered substantial damages under Pennsylvania law, including without limitation, severe physical pain and suffering, discomfort, disfigurement, embarrassment, humiliation, mental anguish, severe emotional distress, loss of earnings and earning capacity, substantial past and future medical expenses as well as a loss of life and life's pleasures now.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

FIRST CAUSE OF ACTION - SURVIVAL ACTION
PLAINTIFF v. ALL DEFENDANTS

281. All of the foregoing paragraphs are incorporated by reference as though fully set forth at length herein.

282. Plaintiff George B. Simpson is the duly-appointed Administrator of the Estate of Mary Lea Simpson by grant of Letters of Administration by the Register of Wills of the County of Delaware, Commonwealth of Pennsylvania, dated June 28, 2013.

283. Plaintiff brings this action on behalf of the Estate of Mary Lea Simpson.

284. Plaintiff claims damages for the aforesaid injuries suffered by Plaintiff's decedent specifically including but not limited to the physical pain, suffering, and mental distress undergone by plaintiff's decedent prior to her death, and for the loss of earnings and earning capacity suffered by plaintiff's decedent's Estate from the time of defendants' tortious acts and/or omissions to such time in the future as plaintiff's decedent probably would have lived had she not died as a result of the defendants' tortious acts and/or omissions as described hereinbefore.

285. Plaintiff brings this action by virtue of, *inter alia*, 42 Pa.C.S.A. § 8302 and claims all damages encompassed thereby.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

SECOND CAUSE OF ACTION - WRONGFUL DEATH
PLAINTIFF v. ALL DEFENDANTS

286. All of the foregoing paragraphs are incorporated by reference as though fully set forth at length herein.

287. Plaintiff George B. Simpson is the duly-appointed Administrator of the Estate of Mary Lea Simpson by grant of Letters of Administration by the Register of Wills of the County of Delaware, Commonwealth of Pennsylvania, dated June 28, 2013.

288. Plaintiff George B. Simpson brings this action for the benefit of those persons entitled by law to recover damages for the wrongful death of Plaintiff's decedent Mary Lea Simpson.

289. Plaintiff's decedent Mary Lea Simpson left surviving her only the following persons entitled to recover damages for her wrongful death and on whose behalf this action is brought: her father Dr. Zachary W. Simpson, her mother Starr Harris Simpson, and her brother George B. Simpson.

290. Plaintiff's decedent's father, Dr. Zachary W. Simpson, and mother, Starr Harris Simpson, reside at 630 Haydock Lane, Haverford, PA 19041.

291. Plaintiff's decedent, Mary Lea Simpson, did not bring any action during her lifetime for any act or omission leading to her death, nor has any action other than this instant Civil Action been commenced for any act or omission leading to Plaintiff's decedent's death.

292. As a result of the aforementioned tortious acts and/or omissions of each of the Defendants, Plaintiff's decedent's Wrongful Death beneficiaries have been required to spend money and incur obligations in an effort to treat and care for the aforementioned injuries to Plaintiff's decedent, have been deprived of the earnings and the value of the services of Plaintiff's decedent, have been deprived of the expected monetary contributions and the pecuniary value of

the services, society, comfort, guidance, and tutelage of Plaintiff's decedent during her life expectancy, and have suffered a profound emotional and psychological loss as a result of the death of Plaintiff's decedent.

293. Plaintiff claims damages for the monetary and pecuniary loss occasioned by the death of Plaintiff's decedent, as well as, for reimbursement of hospital expenses, nursing expenses, medical expenses, funeral expenses, burial expenses, and expenses of Estate administration.

294. Plaintiff claims damages for the pecuniary losses sustained as a result of the decedent's death including damages for the loss of the contributions, services, society and comfort decedent would have provided had she survived.

295. Plaintiff brings this action by virtue of, *inter alia*, 42 Pa.C.S.A. § 8301 and claims all damages encompassed thereby.

WHEREFORE, Plaintiff, George B. Simpson, demands judgment in his favor and against all Defendants, jointly and severally, for compensatory damages, delay damages, and punitive damages, interest and allowable costs of suit and brings this action to recover such damages in excess of the arbitration limits in effect in Philadelphia County, Pennsylvania at the time this cause of action was commenced.

Respectfully submitted,

**WAPNER, NEWMAN, WIGRIZER,
BRECHER & MILLER, P.C.**

BY: _____

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JASON S. WEISS
Attorneys for Plaintiff**