No. 126856

IN THE SUPREME COURT OF ILLINOIS

LARRY E. SCHULTZ,

Plaintiff-Appellant,

vs.

ST. CLAIR COUNTY, a Unit of Local Government in the State of Illinois; ST. CLAIR COUNTY CENCOM 9-1-1, a Public Safety Agency and Answering Point Within the State of Illinois, EMERGENCY TELEPHONE SYSTEM BOARD OF ST. CLAIR COUNTY; and JOHN DOE/JANE DOE,

Defendants-Appellees.

Appeal from the Appellate Court of Illinois, Fifth Judicial District, No: 5-19-0256, there was heard on appeal from the Circuit Court of St. Clair County, Illinois, No. 18-L-61,The Honorable Heinz M. Rudolf, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLANT

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A. Whether this Court should follow the precedence set by its prior decisions construing the limited immunity provisions in public safety statutes in derogation of absolute immunity under the Tort Immunity Act when a public safety answering point organized pursuant to the Emergency Telephone Safety Act refuses to dispatch police in response to a call for help.

B. Whether this Court's decision in DeSmet v County of Rock Island required

the Appellate Court to affirm the trial court's dismissal of Plaintiff's case under blanket immunity afforded by §4-102 of the Tort Immunity Act because Plaintiff requested that a public safety answering point dispatcher send police to prevent his wife from driving her car.

C. Did the legislature intend that §15.1 of the Emergency Telephone System Act be a "catch-all" immunity provision, applicable only in those situations where no section of the Tort Immunity Act applies to the conduct at issue?

STATEMENT OF THE CASE

This case is brought before this Honorable Court for judicial determination of whether governmental entities responsible for an employee's willful and wanton refusal to dispatch police while answering a call for help at a public safety answering point can be liable for damages under Section 15.1 of the Emergency Telephone System Act, (hereinafter "The Act") in derogation of the absolute governmental tort immunity afforded by 745 ILCS 10/4-102 and 2-201 of the Tort Immunity Act. After a de novo review of the trial court's finding that Section 4-102 of the Tort Immunity Act provides absolute immunity for the acts (or lack thereof) alleged in Plaintiff's Complaint. The Fifth District Appellate Court for the State of Illinois interpreted Section 15.1 of the Act to apply limited immunity for willful and wanton conduct only where no broader immunity is provided elsewhere in Illinois law, designating it a "catch-all" if no broader immunities apply, and only in those situations where a technical failure associated with the system's infrastructure occurs, rather than human error or misconduct. It is Plaintiff's position on appeal that the Fifth District's ruling ignores the plain language of Section 15.1 and unreasonably and arbitrarily limits its application of limited immunity without basis in the history, stated purpose, and scope of the ETSA.

On October 22, 2017, Plaintiff made multiple calls to St. Clair County CENCOM 9-1-1 seeking a police dispatch to prevent his wife from driving her vehicle because he believed she had consumed alcohol that may impair her driving. The second time Plaintiff called, he asked the dispatcher to send the police in Mascoutah, Illinois to intercept his wife before she could exit Sax's, a well-known convenience store, and drive away. Plaintiff alleged that the CENCOM dispatcher who took the second call refused to send police to Sax's because Plaintiff could not provide an exact address for the store. The CENCOM

audio of Plaintiff's call recorded the dispatcher's repeated response to the call for help, "gotta have an address", as he talks over Plaintiff, who had described landmarks and streets near the convenience store where his wife's vehicle was parked. The CENCOM dispatcher refused to send police. Approximately thirty minutes after this second call to 9-1-1, Plaintiff's wife, Laurene was found deceased at a location in a nearby town where her car ran off the road and overturned. According to information contained in the accident report, Laurene drove for miles on highway 177 from Mascoutah into Shiloh township before her accident occurred.

On January 29, 2018, Plaintiff, Larry Schultz, acting as Administrator for the Estate of his deceased wife, Laurene Schultz, filed a five-count Complaint under the Illinois Wrongful Death Act and the Illinois Survival Act seeking damages from various governmental agencies in St. Clair County, Illinois. The Complaint names St. Clair County, St. Clair County CENCOM 9-1-1, the Emergency Telephone System Board of St. Clair County, and unknown defendants, identified as John/Jane Doe, under theories of both direct and vicarious liability for CENCOM'S refusal to dispatch police in response to two calls from Plaintiff seeking help to prevent his wife from driving her car while possibly inebriated.

By order of April 5, 2019, the Circuit Court of St. Clair County, Illinois dismissed Plaintiff's five-count Complaint in its entirety under 735 ILCS 5/2-619(a). The Court dismissed Counts I and II of Plaintiff's Complaint on the basis that CENCOM and the ETSB were not separate legal entities with the capacity to be sued. The court dismissed Plaintiff's entire Complaint with prejudice under 2-619(a)(9) because Plaintiff did not allege a "course of action" rather than mere inaction by the defendants, and because sections 4-102 and 2-201 of the Tort Immunity Act provides absolute immunity for such claims against dispatchers. In addition, the trial court found that Plaintiff's negligence was the sole proximate cause of

her death and required dismissal of the Complaint. Plaintiff appealed the decision of the trial court to the Appellate Court for the Fifth District on June 10, 2019. On December 9, 2020, the Appellate Court affirmed the trial court's dismissal of Plaintiff's complaint, with a dissent by Justice Wharton based upon the express language of §15.1 and a reluctance to conclude that the facts alleged by Plaintiff did not involve a failure of the 9-1-1 infrastructure.

It is Plaintiff's contention on appeal to this Honorable Court that, in light of the stated purpose of the ETSA and the legislature's recent amendment to Section 15.1, narrowing the immunity afforded for the "operation, "performance", and "provision" of 9-1-1 services, an outdated and unreasoned application of absolute governmental immunity to dismiss a complaint for CENCOM'S refusal to dispatch police would undermine the stated purpose of the Act- "to improve emergency communication procedures . . . .to quickly respond to any person calling. . .seeking police. . ." and should not be permitted to stand as the law of this State.

ISSUES PRESENTED FOR REVIEW

I. Whether the limited immunity provision contained in §15.1 of the Emergency Telephone System Act, rather than the absolute immunity afforded by §4-102 of the Tort Immunity Act, applies to a public agency and/or its employee who refuses to dispatch police in response to a 9-1-1 call for help.

A. Whether this Court should follow the precedence set by its prior decisions construing the limited immunity provisions in public safety statutes in derogation of absolute immunity under the Tort Immunity Act when a public safety answering point organized pursuant to the Emergency Telephone Safety Act refuses to dispatch police in response to a call for help.

B. Whether this Court's decision in *DeSmet v County of Rock* Island required the Appellate Court to affirm the trial court's dismissal of Plaintiff's case under blanket immunity afforded by §4-102 of the Tort Immunity Act because Plaintiff requested that a public safety answering point dispatcher send police to prevent his wife from driving her car.

C. Did the legislature intend that §15.1 of the Emergency Telephone System Act be a "catch-all" immunity provision, applicable only in those situations where no section of the Tort Immunity Act applies to the conduct at issue?

JURISDICTION

On April 5, 2019, the Circuit Court entered an Order dismissing Plaintiff's case in its entirety under 735 ILCS 5/-619 (a) for reasons specific to certain counts and allegations, and for purposes of this appeal, by application of absolute immunity under §4-102 of the Tort Immunity Act. Plaintiff's Motion to Reconsider its ruling was denied by the Circuit Court on June 19, 2019, and Plaintiff filed his Notice of appeal to the Appellate Court for the Fifth District under Supreme Court Rule 303 on June 19, 2019. On December 9, 2020, the Appellate Court filed its decision affirming the Circuit Court's dismissal of Plaintiff's Complaint. On January 13, 2021, Plaintiff then his Petition for Leave to Appeal within the time allowed under Supreme Court Rule 315. By Order of March 24, 2021, this Honorable Court granted Plaintiff's Petition for Leave to Appeal.

STATUTES INVOLVED

EMERGENCY TELEPHONE SYSTEM ACT, 750 ILCS 15/1. Public body; exemption from civil liability for developing or operating emergency telephone system.

(a) In no event shall a public agency, the Commission, the Statewide 9-1-1 Advisory Board, the Administrator, the Department of State Police, public safety agency, public safety answering point, emergency telephone system board, or unit of local government assuming the duties of an emergency telephone system board, or carrier, or its officers, employees, assigns, or agents be liable for any civil damages or criminal liability that directly or indirectly results from, or is caused by, any act or omission in the development, design, installation, operation, maintenance, performance, or provision of 9-1-1 service required by this Act, unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct.

(b) Exemption from civil liability for emergency instructions is as provided in the Good Samaritan Act, 745 ILCS 49/1 et. seq.

LOCAL GOVERNMENTAL AND GOVERNMENTAL EMPLOYEES TORT IMMUNITY ACT, 745 ILCS 10/4-102. Failure to provide adequate police protection.

Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals. This immunity is not waived by a contract for private security service, but cannot be transferred to any non-public entity or employee.

STATEMENT OF FACTS

Larry Schultz and his wife, Laurene Schultz, his wife, were residents of Mascoutah, St. Clair County, Illinois on October 22, 2017. C-7,8 A-21. At approximately 8 p.m. that evening, Plaintiff found his wife's automobile parked at a convenience store in Mascoutah and called St. Clair County CENCOM 9-1-1 services for police assistance to prevent his wife from driving away in her car. C-8. Police were dispatched at 8:05 p.m., but his wife had already driven away. A-20. Plaintiff next located his wife's unoccupied vehicle at Sax's Speedi-Check in Mascoutah at approximately 8:27 p.m. and again called 9-1-1 to request assistance from police to prevent his wife from driving away in her car a second time. A-25 (electronic recording of Plaintiff's call to CENCOM dispatch) Plaintiff told the dispatcher that his wife was at Sax's in Mascoutah. A-24. Plaintiff advised the dispatcher that Mascoutah police knew where Sax's was located, that it was near the high school and on State Street. A-25. The dispatcher initially told Plaintiff that the police are not going to go driving all over the place, continues to argue with Plaintiff about dispatching the police, then repeatedly advises Plaintiff that he must provide an exact address for Sax's convenience store before police will be dispatched. A-25. The dispatcher speaks over Plaintiff repeatedly with "gonna need an address", then tells Plaintiff to call back when he has an exact address. A-25. While Plaintiff was trying to talk the dispatcher into sending police, and then obtain an exact address for the convenience store where he was parked, his wife exited the store, got into her car and drove away. C-9. While the communications between Plaintiff and the CENCOM dispatcher played out and Plaintiff attempted to obtain an exact address and then call the dispatcher back, his wife exited the store, got into her vehicle, and drove away. C-8,9. Shortly after 9:00 p.m. Plaintiff's wife was found deceased from injuries sustained when her

car ran off the road on Keck Avenue in Shiloh, Illinois approximately thirty minutes after Plaintiff made his last 9-1-1 call to CENCOM. A-21.

On January 29, 2018, Plaintiff filed a five-count Complaint against St. Clair County, St. Clair County CENCOM, the Emergency Telephone System Board of St. Clair County, and John Doe/Jane Doe, as the yet unidentified dispatcher who refused to send police to assist Plaintiff at Sax's. A-3-14, C- 7-18. On April 13, 2018, Defendants filed a Motion to Dismiss Plaintiff's Complaint under both 735 ILCS 5/2-615 and 5/2-619. C-38-C-51. On April 5, 2019, the Court entered an Order dismissing Counts II and III of Plaintiff's Complaint against CENCOM and the Emergency Telephone System Board on the basis that neither was a legal entity with the capacity to be sued. A-15 The Court also dismissed the Complaint in its entirety under 2-619 (a)(9) based upon absolute immunity under 745 ILCS 10/4-102 (Tort Immunity Act) and, "for one or more..... ..reasons," based upon a finding that the negligence of the decedent was the sole proximate cause of her injuries and death. A-15 In its decision of December 9, 2020, the Fifth District Appellate Court affirmed the dismissal solely on the application of absolute governmental immunity under §4-102 of the Tort Immunity Act. A-26

STANDARD OF REVIEW

The Court's review of the propriety of the dismissal of a case under 735 ILCS 2-619 is de novo. *Van Meter v. Darien Park District*, 207 Ill. 2d 359 (2003).

The Court's review of a lower court's construction of a statute is also conducted de novo. *Wilkins v. Williams*, 2013 IL 114310 ¶13.

ARGUMENT

I. The Appellate Court's decision affirming the dismissal of Plaintiff's Complaint under 735 ILCS 5/2-619(a) should be reversed because the limited immunity provision contained in §15.1 of the Emergency Telephone System Act, rather than the absolute immunity afforded by §4-102 of the Tort Immunity Act, applies to a public agency and/or employee who refuses to dispatch police in response to a 9-1-1 call for help.

On July 1, 2017, the Illinois legislature enacted the following statement of purpose and intention as Section 1 of the Emergency Telephone System Act.

"It is the purpose of this Act to establish the number "9-1-1" as the primary emergency telephone number for use in this State and to encourage units of local government and combinations of such units to develop and improve emergency communication procedures and facilities in such a manner as to be able to quickly respond to any person calling the telephone number "9-1-1" seeking police, fire, medical, rescue, and other emergency services . . .The General Assembly finds and declares that the most critical aspect of the design of any system is the procedure established for handling a telephone request for emergency services." (emphasis added) 50 ILCS 750 ILCS 750/1 (eff. 7-1-17).

Less than four months after the Illinois General Assembly passed this legislation, Plaintiff was refused 9-1-1 police dispatch services by an employee of St. Clair County CENCOM that could have prevented his wife's death.

Article XIII, section 4, of the 1970 Illinois Constitution provides that "except as the General Assembly may provide by law, sovereign immunity in this State is abolished." Ill. Const. 1970, art. XIII, §4. This Court has interpreted this language to give the Illinois legislature the ultimate authority in determining whether local units of government are

immune from liability. *Harris v Thompson*, 2012 IL 112525, ¶ 16. 364 Ill. Dec. 455, 848 N.E. 2d 1030 (2012), quoting *DeSmet v Estate of Hays*, 219 Ill. 2d 491 at 506 (2006). Thus, governmental units and actors may be held liable in tort on the same basis as private persons unless immunized by legislative act. *Harris* at ¶16. When Illinois enacted the Local Governmental and Governmental Employees Tort Immunity Act ("Tort Immunity Act") in 1965, the legislature recognized that local governmental units could be held liable in tort, but carved out exceptions that immunized governmental units based upon their specific functions within the government. 745 ILCS 10/1-101, et. seq. (West 2016). One such section confers immunity upon police protection services:

"Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection services, or if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals." 745 ILCS 10/4-102 (West 2016). Since 1965 the General Assembly has never modified §4-102, but has enacted multiple "public safety" statutes, such as the Emergency Telephone System Act ("ETSA"), whose limited immunity provision in §15.1 is at issue in this appeal. Since the Tort Immunity Act was passed in 1965, public safety statutes have been construed by this Court to limit immunity for government units that would otherwise have absolute immunity under the Tort Immunity Act where allegations of willful and wanton conduct within the governmental unit conflict with the legislature's stated purpose for the act and such conduct is adequately alleged and may be proven. Plaintiff 's dismissed Complaint alleged that a dispatcher at a public safety answering point ("PSAP") organized by authority of the ETSA, acted with reckless disregard and utter indifference

when he refused to dispatch police to a known convenience store in Mascoutah, Illinois in response to Plaintiff's second call for help to prevent his possibly inebriated wife from entering her vehicle and driving away. Plaintiff sought damages for his wife's death from an auto accident that Plaintiff claims could have been prevented by sending police in response to his 9-1-1 call. It is Plaintiff's position on appeal that the Appellate Court's conclusion that the absolute immunity afforded governmental units under §4-102 of the Tort Immunity Act was incorrectly applied in this case to affirm dismissal of his Complaint where the factual allegations sufficiently allege utter indifference and reckless disregard by the acts and omissions of the 9-1-1 dispatcher. It is Plaintiff's position that the Appellate Court's decision should be reversed in conformity with this Court's prior decisions that construe specific public safety statutes enacted since the Tort Immunity Act to impose liability for proved wilful and wanton conduct in a government unit's provision of specific services that protect the general public.

A. This Court should apply the analysis it has used in prior cases involving conflicting statutory tort immunity provisions related to public safety issues to determine the purpose and intention of each statute and decide which statutory immunity provision will best serve that purpose and intention.

In *American National Bank v. the City of Chicago*, this Court addressed the issue of the scope of immunity provided by section 17(a) of the Emergency Medical Services Act ("EMS" Act). *American National Bank v. the City of Chicago*, 192 Ill. 2d 274 (2000). Plaintiff's decedent in that case suffered an asthma attack and called 911 to request help. Two paramedics responded to what they were told was a "heart attack" call. After dispatch confirmed that the paramedics were at the correct address, they were told by a neighbor that

a healthy young couple lived there, so the paramedics left the scene. An emergency call later that day to the same address found the decedent dead on the floor at that address. Plaintiff alleged willful and wanton conduct by the paramedics. The trial court dismissed Plaintiff's complaint under 735 ILCS 5/2-615 and the appellate court affirmed. Belatedly, defendants raised absolute immunity under 5-101 of the Tort Immunity Act, but the appellate court applied §17 of the EMS act to immunize the defendants. The appellate court also found that Plaintiff had not alleged a special duty or that defendants' conduct was willful and wanton. On appeal to the Illinois Supreme Court the Plaintiff sought relief only for the count alleging willful and wanton misconduct by the paramedics. This Court addressed defendants claim for absolute immunity under the Tort Immunity Act and determined that §5-101 immunized only those public entities that did not provide ambulances, while those that provided ambulances were covered by the provisions of the EMS Act instead. *American National Bank* at 281. In an attempt to narrow application of the limited immunity provision, American argued definitions contained within the act in support of its proposed interpretation. This Court refused to restrict its statutory interpretation to specialized meanings assigned to terms within the statute to determine the definition of "life support services". *Id.* at 283. The Court noted the various types of patient care listed in §17 of the Act at issue, including measures unrelated to actual care, such as communications, response time, and standards of operation. *Id.* The Court concluded that the broad scope of the Act required broad interpretation of the terms within its immunity provision, and construed "life support services" to include acts and omissions unrelated to providing actual life support treatment as subject to liability for wilful and wanton conduct. *Id.* In tandem with this reasoning, the Court rejected the application of absolute immunity afforded under §5-101 of

the Tort Immunity Act in favor of the limited immunity described in ¶17 of the EMS Act. Id. at 281. The decision in American Bank is instructive in terms of the analysis that should have been used by the Fifth District to decide what activities covered by the ETSA were subject to the limited immunity of §15.1. The American Bank decision shows the Appellate Court's narrow application of §15.1 to the "technical" aspects of the ETSA in the instant case to be flawed according to the plain language of that section which relates the immunity provision to all aspects of the system's implementation. This includes the "development, design, installation, operation, maintenance, performance, or provision of 9-1-1 services. . ." through which a PSAP, such as the defendant, CENCOM, controls the dispatch of a variety of public safety services performed by "police, fire, medical, rescue, and other emergency services.". The provision of these services requires an array of activities, some of which can be anticipated, and some of which are unimaginable. The control the emergency telephone system's PSAP exerts over delivery of these services that are so vital to communities in this State mandates a broad interpretation and application of the Act's immunity provision because of the impact these services can and do have on its citizens. In line with this Court's analysis and decision in American Bank, the Appellate Court should have interpreted §15.1 of the ETSA to cover not only conduct related to the technical aspects of delivering these services (although dispatching police could be considered a technical aspect and part of the infrastructure necessary to provide these services), but also the "performance" of persons who distribute so many crucial services under the auspices of authority conferred by the ETSA. When a PSAP dispatcher receives a frantic call seeking help, his dispatch call to police, fire, medical, rescue, or other safety unit is the first step toward fulfilling the stated legislative purpose of the ETSA: "to shorten the time required for a citizen to request and

receive emergency aid." Therefore, narrowing the application of the limited immunity afforded by §15.1 to the technical aspects of the PSAP system's operations that may exclude liability for the reckless performance of persons who determine whether the emergency aid arrives cannot be reconciled with the legislature's purpose for enacting the ETSA. The Appellate Court's narrow interpretation of the scope of §15.1 should be discarded by this Court.

This Court addressed another fact-driven conflict between the application of general immunity imposed under the Tort Immunity Act and the limited immunity provisions of the *EMS Act in Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 898 N.E. 2d 631 (2008). In *Abruzzo*, the Plaintiff sought damages for the wrongful death of her minor son, who was unresponsive when emergency personnel arrived after her first 9-1-1 call. 898 N.E. 2d at 634. Plaintiff alleged that the City, through its emergency personnel, acted wilfully and wantonly by failing to properly evaluate or assess her son, transport him to a hospital, or prepare a "run sheet" memorializing the first response. *Id.* at 634. A second call to 9-1-1 was made approximately nine hours later with the son in cardiac arrest upon arrival of the responders. Resuscitation was attempted, but the child died after being transported to a hospital. *Id.* at 634. Defendant attempted to dismiss Plaintiff's complaint under the absolute immunity provisions of 6-105/106 of the Tort Immunity Act, which barred liability for a local public entity's failure to evaluate, diagnose, or prescribe treatment. *Id.* at 634. The trial court dismissed Plaintiff's complaint with prejudice and the Appellate Court affirmed. Plaintiff then appealed to this Court on the basis that the Tort Immunity Act was inapplicable because the immunity provision of the EMS Act was more specific to the facts alleged and did not immunize the responders due to their willful and wanton conduct in failing to provide

treatment to her son. *Id.* at 635. This Court reversed the Appellate Court's decision and, as a precursor to its opinion, noted that 1) the governmental entity seeking immunity has the burden of establishing that it is applicable, and 2) the court deciding a section 2-619 motion to dismiss must interpret the pleadings and supporting materials in the light most favorable to the nonmoving party. *Id.* at 636. This Court then rejected the notion that the Tort Immunity Act and the EMS Act should be interpreted in pari materia where such an interpretation would not be reasonable, citing its decision in *Moore v Green*, in which the Court chose not to apply an in pari materia analysis and rejected the application of absolute immunity afforded police protective services under the Tort Immunity Act in favor of the limited immunity afforded police for acts of wilful and wanton misconduct under §305 of the Domestic Violence Act. *Id.* at 643, citing *Moore v. Green*, 219 Ill. 2d 470 at 487-488, 848 N.E. 2d 1015 (2006). The Court also referred to its previous decision in American National Bank for the proposition that the broad scope of the EMS Act supported a broad interpretation of its limited immunity provision that would include preparatory conduct integral to providing emergency treatment. *Abruzzo* at 644. The Court noted in its opinion that "The EMS Act continues to regulate expansively the delivery of emergency medical services in Illinois. The express intent of the Act is to: provide the State with systems for emergency medical services.... The Act's provisions are directed at accomplishing the broad purpose of planning, delivering, evaluating, and regulating emergency medical services." *Id.* at 645. In its comparison of the specific terms of the EMS Act, as opposed to the general language of the Tort Immunity Act, the Abruzzo opinion applies general principles of statutory interpretation to decide which immunity provision should apply, based upon the facts alleged. The Court concluded that specific statutory provisions should apply over

general provisions on the same subject, and the legislature's most recent provision on that subject should control. Concluding that the EMS Act contained a more recently enacted and specific immunity provision, in conjunction with an expressed purpose, scheme and structure to indicate the legislature's intention that its immunity provisions govern, the Court reversed dismissal of the plaintiff's complaint. *Abruzzo* at 644.

The Emergency Telephone System Act is similar to the EMSA in its expansive control of first responders throughout the State of Illinois. The immediately accessible 9-1-1 answering point that the system provides induces public expectation and reliance on a swift and effective response that will address a caller's needs. Offering rapid access to a massive range of public safety services, the Emergency Telephone System operates on many levels, to coordinate distribution of these services through the most basic, yet most crucial aspect of its operation–the initial contact between caller and dispatcher that will determine how, when, where, and by whom assistance will be provided to the 9-1-1 caller. The Appellate Court's interpretation of §15.1 of the ETSA that limits its immunity provision to the technical/infrastructure aspects of the ETS operation not only disregards this Court's guidance for resolving the impediment that potentially conflicting immunity provisions present in litigation, its opinion is analytically unsound in light of this Court's decisions in American National Bank, Abruzzo, and particularly Moore v Green, and produced an unjust result. *Moore v Green*, 219 Ill. 2d 470, 848 N.E. 2d 1015 (2006).

This Court decided Moore v Green in 2006 and has since relied on this case multiple times in its analyses of conflicts between immunity provisions in public safety statutes and the Tort Immunity Act. In Moore, the Court considered sections 4-102 and 4-107 of the Tort Immunity Act in relation to §305 of the Domestic Violence Act ("DVA") under the facts

presented below. 750 ILCS 60/305 (West 2002). This Court rejected an in pari materia analysis of the conflicting statutory immunity provisions at issue because both applied to Moore's allegations and could not be harmonized. *Moore* at 1025. The Appellate Court in the present case affirmed dismissal of Plaintiff's case under §4-102 of the Tort Immunity Act, without reference to or application of an analysis similar to this Court's in Moore. Specifically, by construing §15.1 of the ETSA and §4-102 of the Tort Immunity Act in pari materia to conclude that the two statutes could be harmonized because §15.1 applied only to aspects of the emergency telephone system, unrelated to the performance of the dispatcher, the blanket immunity of the Tort Immunity Act could apply, without contradiction, to all other aspects of the operation. This in pari materia analysis, although inappropriate under the Moore analysis, allowed the appellate court to sidestep an in depth analysis to determine legislative intent such as the one this Court used in Moore.

The pertinent facts in Moore v Green concern a domestic abuse victim who obtained an Order of Protection against her husband called 9-1-1 to request police assistance because her husband had entered her home. The victim advised the operator that her husband owned a gun. An emergency dispatcher sent police to the victim's home, where witnesses saw the police arrive and wait briefly in their car, then leave without assisting her. Within minutes after the officers left, the victim's husband shot and killed her. *Moore* at 1018. Defendant officers and their employer, the City of Chicago, claimed absolute immunity under sections 4-102, for failure to provide police protection, and 4-107, for failure to make an arrest; The plaintiff claimed that the limited immunity provisions in §305 of the DVA should apply to allow claims for willful and wanton conduct to proceed against the defendants. *Id.* Certified questions in the trial and appellate courts as to the proper immunity provision to apply to the

case were answered by both courts in favor of applying the limited immunity in §305 of the Domestic Violence Act. *Id.* at 1018-1019. A significant part of this Court's opinion in Moore contains a prototype for the type of extensive analysis required for ascertaining legislative intent ("the cardinal rule" in statutory construction) This type of analysis is glaringly absent from the Appellate Court's opinion affirming dismissal of Plaintiff's case under §4-102 of the Tort Immunity Act.

In Moore, the Defendants relied on sections 4-102 and 4-107 of the Tort Immunity Act for the proposition that those sections of the Act provided absolute immunity for failing to provide police protection, to prevent or solve crimes, or to identify and apprehend criminals, and for failing to make an arrest, barred Moore's claims against the defendants. The Court determined that the limited immunity provided in §305 of the DVA, which created liability for law enforcement's wilful and wanton omission or commission of an act while rendering emergency assistance or otherwise enforcing the Act also applied to Moore's claims. *Id.* At 848 N.E. 2d 1020. The Court identified unambiguous statutory language to be the best indicator of legislative intent for the purpose of construing the conflicting statutes. *Id.* On this subject, the Court opined that unambiguous language must be applied as written without other aids of construction, and words should be afforded their plain, ordinary, popularly understood meaning. *Id.* at 2021, citing *People ex. rel. Sherman v. Cryns*, 203 Ill. 2d 264, 270 (2003). The Court also declared legislative intent to prevail over of rules of construction. *Id.* at 2021. A consideration of the entire Act, its nature, its object, and the consequences that would result from construing it a certain way can determine legislative intent. *Id.* at 2021. The Court applied two presumptions to determine legislative intent for conflicting statutes: where the same subject is being considered, a specific statutory provision

prevails over a general one and the more recent enactment should control. *Id.* at 1021. After applying these presumptions to the statutes at issue, the Court declared that the legislature's intention could be determined from the plain language of the statute, which it described as " a comprehensive statutory scheme for reform of the legal system's historically inadequate response to domestic violence". *Moore* at 1026. The Court also concluded that the partial immunity afforded in§305 of the DVA for the police's failure to assist the decedent in Moore was a direct expression of the legislature's intention of protecting victims of domestic violence. *Id.* The Court observed that the DVA detailed the responsibilities of law enforcement officers and was designed to encourage active intervention on the part of law enforcement officials in intra-family abuse situations. *Moore* at 1026. In response to the defendants' argument that §305 would not apply because the police failed to render assistance altogether or to enforce the Domestic Violence Act, the Court pointed out that §305 applies to both acts and omissions in rendering emergency assistance and rejected their argument. *Id.* at 1027. Although not referenced as a basis for the Appellate Court's decision to affirm the trial court's dismissal of Plaintiff's complaint in the instant case, it should be noted that defendants' argument of "no assistance equals no actionable conduct" is similar to the argument that defendants in the instant case made at the trial court level–a dispatcher's failure to act could not have been a course of conduct that would create liability for wilful and wanton misconduct-- which was accepted by the trial court as an additional basis to dismiss Plaintiff's complaint. As this Court's opinion in Moore illustrates, this ruling as a basis to dismiss Plaintiff's complaint at the trial court level was clearly in error under the "acts and omissions" language contained in §15.1 of the ETSA,

The Illinois Emergency Telephone System Act ("ETSA") is a public safety statute

that has evolved since 1977 to meet increased population, and thus, increased demand for emergency assistance. Emergency Telephone System Act, 50 ILVD §75/1, et. seq. This Court's opinion in Moore offered a guide by which the Appellate Court deciding the instant case could have properly determined the General Assembly's intent and purpose of the Emergency Telephone System Act, §15.1. Instead, the Appellate Court fashioned its analysis not on the stated purpose and plain language in the ETSA, but from what was apparently its foregone conclusion that ¶4-102 should apply to defeat Plaintiff's claim-- around which it fashioned an illogical collaboration of disjointed portions of the statue to support its conclusion. There are no ambiguous terms in §15.1 and the plain language of the statute applies limited immunity to the "performance" of the PSAP's employees, which the present Plaintiff claims was wilful and wanton for a refusal to dispatch under the existing circumstances. The Appellate Court's conclusion that absolute immunity applies to defeat Plaintiff's claim under §15.1 because the dispatcher's role was not part of the technical operation or infrastructure of the PSAP simply makes no sense in the context of the material changes in §15.1 that legislature chose to include in its 2016 amendment to the statute that increased the scope of actors and conduct by which liability for willful and wanton may arise. The Appellate Court's "look over here" approach to reconcile unreconcilable immunity statutes renders a substantial portion of the ETSA, particularly its stated purpose, superfluous and meaningless, which is exactly what this Court warned against when it analyzed the Tort Immunity Act in *DeSmet. DeSmet ex rel. v. County of Rock Island*, 219 Ill. 2d 497, 848 N.E. 2d 1030 at 1039 (2006). It simply makes no sense that a legislature intent on fashioning a comprehensive act to protect the public by giving a call center the power to dispatch legions of public safety workers would focus its one immunity provision on the technical aspects of

the system's operation. A comparison of the language originally contained in §15.1, to the language the language the legislature chose to use in 2016, confirms that the General Assembly intended to create liability for the 9-1-1 dispatcher who refuses to dispatch police to assist in the intervention of a potentially inebriated driver, in reckless disregard and indifference to the consequences for the caller or the public in general, which are the operative facts in the case now before the Court. In plain language, the legislature broadens the potentially liable persons to include "officers, employees, agents, and assigns" who act or fail to act in a grossly negligent, reckless, or malicious manner in the performance or provision of 9-1-1 services. The inclusion of specific categories of persons whose roles within the system may or may not involve the technical aspects of delivering service to callers, but who may be liable for wilful and wanton performance or provision of those services speaks volumes in terms of the legislature's intention that the limited immunity of §15.1 be applied broadly in keeping with the ever expanding scope of the Act and its services. In addition, Appellate Court's mistaken conclusion that the legislature intended the limited immunity to apply only to infrastructure and technical aspects of the 9-1-1 system fails to take into account the following: 1) The legislature could and likely would have put language in its 2016 amendment to §15.1 stating that the limited immunity afforded by that section applied only to the technical functions or infrastructure for the operation, and 2) The word "performance or provision" of 9-1-1 services refers back to officers, employees, assigns, or agents, in general, and is not limited to persons involved in the technical aspects of 9-1-1 services, and 3) The first phrase in §15.1 -"In no event"- is followed by the modifier "unless", meaning that all of the government units, persons, and positions described in between may be liable in tort for wilful and wanton acts or omissions.

B. The Appellate Court mistakenly interpreted the Illinois Supreme Court's decision in DeSmet v County of Rock Island to require application of the blanket immunity afforded by §4-102 of the Tort Immunity Act under the facts of the present case.

In 1967, approximately two years after Illinois passed the Tort Immunity Act, the concept of a universal emergency phone number emerged out of the President's Commission on Law Enforcement and Administration of Justice, in combination with input from the FCC and other governmental agencies, out of recognition of a need for a universal number to assist persons in emergency situations. AT&T then began development of what would be a sophisticated emergency communication system accessible by dialing 9-1-1. By the end of the 20th century, 9-1-1 services covered 96% of the geographical United States. (National Emergency Number Association, 9-1-1 Origin & History, 2020). When Illinois enacted the Emergency Telephone System Act in 1977, the State still subscribed to the public duty doctrine. This common-law rule provided that local governmental entities owed no duty to individual members of the general public to provide adequate government services, such as police and fire protection. *Coleman v East Joliet Fire Protection District*, 2016 IL 117952, 46 N. E. 3d 741 at 750 (Ill. 2016). Courts developed exceptions to the public duty rule, such as the "special duty exception" that applied in limited cases where a special duty of care arose out of facts specific to a particular individual. *Id.* At 751. However, in Coleman v East Joliet Fire Protection District, this Court abandoned the public duty rule for three reasons stated therein: 1) muddled jurisprudence, 2) application of the rule is inconsistent with legislative changes granting limited immunity for willful and wanton misconduct, and 3) the legislature primarily determines public policy, making the public duty rule obsolete. *Id.* at 756. Of particular importance in this appeal is the Court's refusal to apply the public duty

rule to preclude recovery under circumstances of willful and wanton conduct because to do so would be in contravention of a clear legislative decision to allow recovery. *Id.* at 767.

In its opinion affirming dismissal of Plaintiff's Complaint based upon the absolute immunity conferred by the Tort Immunity Act, the Fifth District mistakenly relied upon this Court's decision in *DeSmet v. County of Rock Island*, 219 Ill. 2d 497 (2006). Unlike the case before the Court, DeSmet did not involve an alleged failure of 9-1-1 services created under the ETSA, but failed police responses that resulted after contact between the caller and various branches of municipal government that could provide police and emergency services. In DeSmet, the plaintiff did not allege violations under the Emergency Telephone System Act and its immunity provisions under §15.1, as it existed in 2006, into consideration. Section 15.1 had been enacted in 1996, and as of 2006, when DeSmet was decided, stated the following:

" No public agency, public safety agency, emergency telephone system board, or unit of local government assuming the duties of an emergency telephone system board, nor any officer, agent or employee of any public agency, public safety agency, emergency telephone system board, or unit of local government assuming the duties of an emergency telephone system board, shall be liable for any civil damages as a result of any act or omission, except willful or wanton misconduct, in connection with developing, adopting, operating or implementing any plan or system required by this Act." 50 ILCS 750/15.1 (from ch. 34, par. 45.1, 1996).

The Fifth District's reliance on DeSmet for the proposition that §4-102 immunity was properly applied by the trial court is misplaced, primarily because it ignores distinct legislative changes to ¶ 15.1 of the ETSA that broadened the scope of potential liability for

willful and wanton conduct to specific categories of persons working in the performance and provision of 9-1-1 services. The present case was filed in 2018, after the Illinois legislature chose to add potential liability for any "officer, employee, assigns, or agents" of public safety answering points for willful and wanton acts or omissions. The 2016 amendment to §15.1 that limits government immunity notably contains no language that would indicate that the legislature intended an exception for acts or omissions committed while dispatching police in response to a 9-1-1 call. While the legislature chose to itemize additional, specific categories of ETS workers and agents who could be liable for additional, specific aspects of their jobs, it is significant that the legislature gave no indication that it intended that the absolute immunity afforded by §4-102 for police protective services (as of 1965) should override the carefully crafted limited immunity contained in §15.1 when the public seeks police assistance via a 9-1-1 dispatch, as follows:

"In no event shall a public agency, the Commission, the Statewide 9-1-1 Advisory Board, the Administrator, the Department of State Police, public safety agency, public safety answering point, emergency telephone system board, or unit of local government assuming the duties of an emergency telephone system board, or carrier, or its officers, employees, assigns, or agents be liable for any civil damages or criminal liability that directly or indirectly results from, or is caused by, any act or omission in the development, design, installation, operation, maintenance, performance, or provision of 9-1-1 services required by this Act, unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct." 50 ILCS 750/15.1 (eff. 1-1-16).

The Fifth District relied on the First District Appellate Court's decision in *Carolan v City of Chicago* in support of its position that DeSmet requires application of absolute

immunity under §4-102 where police dispatch is involved. *Carolan v City of Chicago*, 2018 IL. App (1st) 170205, 121 N.E. 23d 918. Although the Fifth District conceded in its decision that Carolan was filed before §15.1 of the ETSA was amended in 2016, and purported to have conducted an "examination" of the Emergency Telephone System Act, its "examination" failed to follow this Court's directives, as set forth in DeSmet, for construing a statute. As stated in *DeSmet*, "A court should construe a statute, if possible, so that no term is rendered superfluous or meaningless." *DeSmet v. County of Rock Island*, 219 Ill. 2d 497 (2006), citing *People v Maggette*, 195 Ill. 2d 336, at 350 (2001). "In interpreting an immunity provision, our primary goal is to ascertain and give effect to the intention of the legislature. *DeSmet* at 1039. "Where an enactment is clear and unambiguous, we are not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express." *Id.* At 1039. When this Court abolished the "public duty rule" in Coleman, it acknowledged that statutory immunity for local governmental entities was part of a comprehensive scheme for balancing the private and public interests at stake in assessing municipal tort liability, and that "scrupulous" application of the immunity statutes was necessary to maintain that balance. *Coleman v East Joliet Fire Protection District*, 2016 IL 117952.

In a less than two-page "examination" of the ETSA, the Appellate Court cherry picked a few references to the technical aspects of the system, but ignored the 2016 changes to the language in §15.1 that expanded the types of PSAP personnel and their duties that were made subject to liability for wilful and wanton conduct. Relying upon a reference to the word "technical" in Section 10 of the ETSA, the Appellate Court concluded that the purpose of the ETSA is to govern the "technical aspects" of providing emergency services

via 9-1-1. It is curious that the Appellate Court chose to re-fashion the purpose of the ETSA on the page of its opinion following an actual quote of the legislative statement of purpose contained in §1 of the Act: "to encourage units of local government and combinations of such units to develop and improve emergency communication procedures and facilities in such a manner as to be able to quickly respond to any person calling the telephone number "9-1-1" seeking police, fire, medical, rescue, and other emergency services. 50 ILCS 750/1 (West 2016). The statute explicitly identifies "improve communication procedures" and "to be able to quickly respond" as integral to its purpose, and, contrary to the conclusion drawn by the Appellate Court, neither explicitly nor implicitly isolates technical operations as its purpose. Based upon the plain language in the statement of purpose, a more reasoned conclusion would have related the stated purpose to the performance of the 9-1-1 dispatchers.

C. No reasonable analysis of §15.1 of the Emergency Telephone System Act will support the Appellate Court's conclusion that the Illinois legislature intended for §15.1 of the Emergency Telephone Safety Act to be a "catch-all" immunity provision, applicable only in those situations where no section of the Tort Immunity Act applies to the conduct at issue.

The Appellate Court's conclusion that the use of the phrase "In no event" to precede the detailed immunity provisions set forth in §15.1 of the ETSA indicates that the provision is intended to apply only if no broader immunity is provided elsewhere in Illinois is not a reasoned interpretation of legislative intent. The portion of the statute in question states, in pertinent part, as follows:

"In no event shall a . . .public safety answering point, emergency telephone system, board, or unit of local government assuming the duties of an emergency telephone system

board, . . .or its officers, employees, assigns, or agents be liable for any civil damages . . .that directly or indirectly results from, or is caused by, any act or omission in the development, design, installation, operation, maintenance, performance, or provision of 9-1-1 service required by this Act, unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct." 50 IlCS 750/15.1(a) (West 2016). (emphasis added)

Not only did the Appellate Court improperly isolate the first portion the phrase from its qualifier,"unless" in construing what is otherwise unambiguous language, the Court's conclusion begs the question of why the legislature chose to amend §15.1with expanded details that expand the opportunity to create liability for wilful and wanton act, only to have it act a "catch-all" if no other provision in the Tort Immunity Acts applies to limit liability. It would seem that the legislature chose to exercise an act in futility if this interpretation were accurate.

CONCLUSION

As Judge Wharton pointed out in the dissent to the Appellate Court's opinion, that Court's analysis of the conflict between the immunity provisions in §4-102 of the Tort Immunity Act and §15.1 of the ETSA should have turned on the unambiguous language added to §15.1 in 2016 that included the words "performance" and "provision" as those words relate to the dispatcher's alleged willful and wanton conduct in the instant Plaintiff's Complaint. Judge Wharton's proposed interpretation of the statute comports with the Supreme Court's directive in Moore: to ascribe plain, ordinary, popular, and understood meaning to statutory language. A faulty resolution of the conflict between the two immunity statutes in question occurred because the Appellate Court focused its attention on affirming the trial court's decision without performing the basic analysis of statutory construction necessary to determine legislative intent. In doing so, the Appellate Court lost sight of the stated purpose of the Emergency Telephone System Act and how the amended immunity provision should be interpreted to complement that purpose. A reasoned application of the presumptions for statutory construction this Court provided in the Moore decision- more recent and more specific immunity provisions are intended to apply–would likely have led the Appellate Court to a more accurate interpretation of the legislature's apparent goal of broadening the protections the ETSA provides through its vast disbursement of public safe services to the public that, since 2016, also seeks to protect the citizens of this State from reckless, indifferent, or malicious acts or omissions of the 9-1-1 system's own personnel in performance of their assigned duties. To accomplish a level of protection for the public that takes into consideration the vast scope and importance of the functions performed by the emergency telephone system, and in recognition of the increased opportunity for harm that

will result if the integrity of the system is lost to reckless or indifferent delivery of those services, it was imperative that the legislature eliminate the harsh and unjust application of absolute tort immunity that shielded 9-1-1 personnel whose recklessly, indifferent, or malicious actions or omissions while performing their jobs, may result in disastrous consequences or, as in this case, the loss of life. Plaintiff, Larry Schultz, respectfully requests that the Court reverse the decision of the Appellate Court and remand this case to Circuit Court of St. Clair County, Illinois, for further proceedings consistent with its decision.

Respectfully submitted,

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APPENDIX

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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

LARRY E. SCHULTZ, SPECIAL ADMINISTRATOR OF THE ESTATE OF LAURENE T. SCHULTZ,

DECEASED,

Plaintiff,

vs.

ST. CLAIR COUNTY, a unit of local government in the State of Illinois, operating as a public agency,

and

ST. CLAIR COUNTY CENCOM 9-1-1, a public safety agency and answering point within the State of Illinois,

and

EMERGENCY TELEPHONE SYSTEM BOARD OF ST. CLAIR COUNTY

and

JOHN DOE/JANE DOE,

DEFENDANTS.

Case No: 18-L-61

COMPLAINT

Count I–Defendant, St. Clair County

Now comes the Plaintiff, Larry E. Schultz, , by and through his attorneys, The Law Office of Rhonda D. Fiss, P.C., and for Count I of his Complaint against the Defendant, St. Clair County, Illinois, alleges as follows:

1. At all times mentioned herein the Plaintiff, Larry Schultz, was a resident of Mascoutah, St

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Clair County, Illinois and is the duly appointed Special Administrator in Case # 17-P-883, by order of 12/29/17, for the purpose of proceeding in this cause of action under the Illinois Wrongful Death Statute, 740 ILCS 180/1 et. seq..

2. At all times mentioned herein, the Defendant, St. Clair County, was and remains a unit of local government within the State of Illinois that acts as a public agency for the purpose of and with the authority to provide police, medical and/or other emergency services for persons within said county.

3. At all times relevant herein, Defendant, St. Clair County, authorized and provided emergency services, including police and medical services, to residents of said county through it agent, Defendant, St. Clair County CENCOM 9-1-1.

4. That at all times mentioned herein, St. Clair County CENCOM 9-1-1 was and is a Public safety agency, as defined in 50 ILCS 750/1, et. seq., with authority to act as a public safety answering point operating under common management with St. Clair County, that received 9-1-1 calls and event notifications and processed those calls and events according to a specified operational policy.

5. That at all times mentioned herein, Defendant, St. Clair County, through its agent, CENCOM 9-1-1, employed persons as telecommunicators, who answered 9-1-1 calls coming into CENCOM from residents of St. Clair County, Illinois.

6. That at all times mentioned herein, Defendant, CENCOM 9-1-1 provided emergency services to residents of St. Clair County by relaying information from a telephone caller that is taken by its telecommunicator (also known as "dispatcher") and communicated to an appropriate public safety agency or other provider of emergency services.

7. That at all times mentioned herein, St. Clair County, acting through its public safety agency, CENCOM 9-1-1, and its dispatchers employed therein, had a duty to relay accurate information to providers of emergency services and to dispatch said emergency services in a timely manner to assist the county's residents in need of said services.

8. That in direct violation of duties set forth herein and 50 ILCS 750.15.1(a), St. Clair County, through its employee at CENCOM 9-1-1, hereinafter referred to as John Doe/Jane Doe, committed the following acts or omissions, all in reckless disregard and indifference for the safety of the decedent, Laurene Tracy Schultz:

   a. Dispatched Mascoutah police to Handi-Mart rather than All-Mart in Mascoutah, Illinois after taking a 9-1-1 call from decedent's husband, Larry Schultz, on October 22, 2017, who reported that the decedent was under the influence of alcohol and had temporarily parked her vehicle at Allmart in Mascoutah, Illinois; and requested officer assistance to prevent his wife from driving away in her car;

   b. Refused to dispatch the police to Sax's Speedi Check in Mascoutah, Illinois, after a second 9-1-1 call from decedent's husband, Larry Schultz on October 22, 2017,

requesting police assistance to prevent his wife from driving her vehicle now parked as Sax's and that the decedent was going to hurt herself or others if she continued driving;

c. Failed and refused to contact Mascoutah police after two phone calls from decedent's husband pleading that police be sent to intercept his wife during two occasions where she had left her vehicle and could have been intercepted and prevented from driving the vehicle any further.

9. That at all times described above, the Defendant, St. Clair County, through its CENCOM employee, knew that accurate and timely information had to be given to Mascoutah police and knew that its willful and wanton refusal to contact police or send police to intercept the decedent at a known location in Mascoutah, in reckless disregard for decedent's safety and that of the general public, would likely result in harm to the general public, including the decedent.

10. As a direct and proximate result of the foregoing willful and wanton failure and refusal of the Defendant, St. Clair County, through its agency, CENCOM 9-1-1 and its employees and/or representative to act reasonably and with regard to the safety and welfare of residents of Mascoutah, St. Clair County, Illinois, Laurene Tracy Schultz drove her vehicle off of the highway and was killed.

11. That as of the date of her death on October 22, 2017, said decedent was and is survived by her spouse and three adult children, each of which may have sustained actual pecuniary losses and injuries due to the said wrongful death of the decedent, including, but not limited to: funeral expenses, loss of financial support, loss of goods and services, hedonic damages, and have been deprived of her society, companionship, advice and aid.

WHEREFORE, Plaintiff, Larry Schultz, prays that judgment be entered in favor of Plaintiff and against all Defendants, including St. Clair County, for compensatory and other damages to which he is entitled, and for his costs of suit.

BY: _____

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Count II–CENCOM 9-1-1

Now comes the Plaintiff, Larry E. Schultz, , by and through his attorneys, The Law Office of Rhonda D. Fiss, P.C., and for Count II of his Complaint against the Defendant, St. Clair County CEMCOM 9-1-1, hereinafter "CENCOM", alleges as follows:

1. At all times mentioned herein the Plaintiff, Larry Schultz, was a resident of Mascoutah, St Clair County, Illinois and is the duly appointed Special Administrator in Case # 17-P-883, by order of 12/29/17, for the purpose of proceeding in this cause of action under the Illinois Wrongful Death Statute, 740 ILCS 180/1 et. seq..

2. At all times mentioned herein, the Defendant, St. Clair County, was and remains a unit of local government within the State of Illinois that acts as a public agency for the purpose of and with the authority to provide police, medical and/or other emergency services for persons within said county.

3. At all times relevant herein, Defendant, St. Clair County, authorized and provided emergency services, including police and medical services, to residents of said county through it agent, Defendant, St. Clair County CENCOM 9-1-1.

4. That at all times mentioned herein, St. Clair County CENCOM 9-1-1 was and is a Public safety agency, as defined in 50 ILCS 750/1, et. seq., with authority to act as a public safety answering point operating under common management with St. Clair County, that received 9-1-1 calls and event notifications and processed those calls and events according to a specified operational policy.

5. That at all times mentioned herein, Defendant, St. Clair County, through its agent, CENCOM 9-1-1, employed persons as telecommunicators, who answered 9-1-1 calls coming into CENCOM from residents of St. Clair County, Illinois.

6. That at all times mentioned herein, Defendant, CENCOM 9-1-1 provided emergency services to residents of St. Clair County by relaying information from a telephone caller that is taken by its telecommunicator (also known as "dispatcher") and communicated to an appropriate public safety agency or other provider of emergency services.

7. That at all times mentioned herein, CENCOM 9-1-1, and its dispatchers employed therein, had a duty to relay accurate information to providers of emergency services and to dispatch said emergency services in a timely manner to assist the county's residents in need of said services.

8. That in direct violation of duties set forth herein and 50 ILCS 750.15.1(a), St. Clair County, through its employee with CENCOM, and said employee hereinafter referred to as John Doe/Jane Doe, committed the following acts or omissions, all in reckless disregard and indifference for the safety of the decedent, Laurene Tracy Schultz:

   a. Dispatched Mascoutah police to Handi-Mart rather than All-Mart in Mascoutah,

Illinois after taking a 9-1-1 call from decedent's husband, Larry Schultz, on October 22, 2017, who reported that the decedent was under the influence of alcohol and had temporarily parked her vehicle at Allmart in Mascoutah, Illinois; and requested officer assistance to prevent his wife from driving away in her car;

b. Refused to dispatch the police to Sax's Speedi Check in Mascoutah, Illinois, after a second 9-1-1 call from decedent's husband, Larry Schultz on October 22, 2017, requesting police assistance to prevent his wife from driving her vehicle parked as Sax's after Schultz informed CENCOM that the decedent was going to hurt herself or others if she continued driving;

c. Failed and refused to contact Mascoutah police after two phone calls from decedent's husband pleading that police be sent to intercept his wife during two occasions where she had left her vehicle and could have been intercepted and prevented from driving the vehicle any further.

d. Manned the dispatch line with improperly trained and/or unqualified employees of CENCOM who performed their job with utter indifference to the safety and welfare of the citizens of St. Clair County, including the decedent.

e. Recklessly abandoned its own protocol and purpose by refusing to contact and/or dispatch Mascoutah Police Department to a known location within Mascoutah–Sax's–to intercept the decedent before she could drive away from said location;

f. Acted with utter indifference for the safety of citizens of St. Clair County, Illinois, including the decedent, by failing to properly supervise telecommunicators while knowing that a failure or refusal to properly transmit information to emergency providers would likely result in harm or even death to members of the general public, including the decedent.

9. That at all times described above, Defendant, CENCOM, through its agents, representative, and employee(s), knew that it should have reported Schultz's information to Mascoutah police and knew that its willful and wanton refusal to contact police or send police to intercept the decedent at a known location in Mascoutah, in reckless disregard for decedent's safety and that of the general public, would likely result in harm to the general public, including the decedent.

10. As a direct and proximate result of the foregoing willful and wanton failure and refusal of CENCOM 9-1-1 and its employees and/or representative to act reasonably and with regard to the safety and welfare of residents of Mascoutah, St. Clair County, Illinois, Laurene Tracy Schultz drove her vehicle away from Sax's then off of the highway and was killed when her vehicle crashed.

11. That as of the date of her death on October 22, 2017, said decedent was and is survived by her spouse and three adult children, each of which may have sustained actual pecuniary

losses and injuries due to the said wrongful death of the decedent, including, but not limited to: funeral expenses, loss of financial support, loss of goods and services, hedonic damages, and have been deprived of her society, companionship, advice and aid.

WHEREFORE, Plaintiff, Larry Schultz, prays that judgment be entered in favor of Plaintiff and against all Defendants, including CENCOM 9-1-1, for compensatory and other damages to which he is entitled, and for his costs of suit.

BY: _____

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Count III–EMERGENCY TELEPHONE SYSTEM BOARD OF ST. CLAIR COUNTY

Now comes the Plaintiff, Larry E. Schultz, , by and through his attorneys, The Law Office of Rhonda D. Fiss, P.C., and for Count III of his Complaint against the Emergency Telephone System Board of St. Clair County, Illinois, alleges as follows:

1. At all times mentioned herein the Plaintiff, Larry Schultz, was a resident of Mascoutah, St Clair County, Illinois and is the duly appointed Special Administrator in Case # 17-P-883, by order of 12/29/17, for the purpose of proceeding in this cause of action under the Illinois Wrongful Death Statute, 740 ILCS 180/1 et. seq..

2. At all times mentioned herein, the Defendant, St. Clair County, was and remains a unit of local government within the State of Illinois that acts as a public agency for the purpose of and with the authority to provide police, medical and/or other emergency services for persons within said county; That said St. Clair County established the Emergency Telephone System Board of St. Clair County, to create, manage, and oversee various emergency services, including police and medical service, through a central dispatch center, CENCOM 9-1-1.

3. At all times relevant herein, Defendant, St. Clair County, authorized and provided emergency services, including police and medical services, to residents of said county through it agent, Defendant, St. Clair County CENCOM 9-1-1.

4. That at all times mentioned herein, St. Clair County CENCOM 9-1-1 was and is a Public safety agency, as defined in 50 ILCS 750/1, et. seq., with authority to act as a public safety

answering point operating under common management with St. Clair County, that received 9-1-1 calls and event notifications and processed those calls and events according to a specified operational policy.

5. That at all times mentioned herein, Defendant, St. Clair County, through its agent, CENCOM 9-1-1, employed persons as telecommunicators, who answered 9-1-1 calls coming into CENCOM from residents of St. Clair County, Illinois.

6. That at all times mentioned herein, Defendant, CENCOM 9-1-1 provided emergency services to residents of St. Clair County by relaying information from a telephone caller that is taken by its telecommunicator (also known as "dispatcher") and communicated to an appropriate public safety agency or other provider of emergency services.

7. That at all times mentioned herein, The St. Clair County Emergency Telephone System Board, had a duty to oversee and manage CENCOM 9-1-1 in a reasonable manner that included selecting and employing and managing qualified and competent employees to relay accurate information to providers of emergency services and to dispatch said emergency services in a timely manner to assist the county's residents in need of said services.

8. That in direct violation of duties set forth herein and 50 ILCS 750.15.1(a), the St. Clair County Emergency Telephone System Board, committed the following acts or omissions, all in reckless disregard and indifference for the safety of the decedent, Laurene Tracy Schultz:

   a. Failed to implement, oversee, and manage CENCOM's selection of telecommunicators so that qualified and competent employees were responsible for transmitting information to emergency service providers, including the Mascoutah Police Department, when it knew that failure or refusal to transmit such information would result in harm and/or death to members of the general public, including decedent;

   b. Failed to monitor the implementation of purpose, policies, and protocol of the emergency telecommunications system to protect members of the general public, including the decedent, from CENCOM'S failure or refusal to properly train and/or control the activities of its telecommunicators.

9. That at all times described above, Defendant, the Emergency Telephone System Board of St. Clair County, willfully and wantonly violated its duty to monitor and supervise CENCOM, as set forth above, all in reckless disregard for decedent's safety and that of the general public.

10. As a direct and proximate result of the foregoing willful and wanton failure and refusal of the Emergency Telephone System Board of St. Clair County to reasonably monitor and supervise CENCOM with regard to its selection, supervision, and management of its employees therein, CENCOM failed and refused to transmit emergency information to the

Mascoutah Police Department while the decedent's vehicle was parked at Sax's, and as a result Laurene Tracy Schultz drove her vehicle away from Sax's then off of the highway and was killed when her vehicle crashed.

11. That as of the date of her death on October 22, 2017, said decedent was and is survived by her spouse and three adult children, each of which may have sustained actual pecuniary losses and injuries due to the said wrongful death of the decedent, including, but not limited to: funeral expenses, loss of financial support, loss of goods and services, hedonic damages, and have been deprived of her society, companionship, advice and aid.

WHEREFORE, Plaintiff, Larry Schultz, prays that judgment be entered in favor of Plaintiff and against all Defendants, including the Emergency Telephone System Board of St. Clair County, for compensatory and other damages to which he is entitled, and for his costs of suit.

BY: _____

Rhonda D. Fiss #6191043
THE LAW OFFICE OF RHONDA D. FISS, P.C.
23 Public Square, Suite 230
Belleville, Illinois 62220
Tel - 618.233.8590
Fax - 618.233.8713
jdd@fisslawoffice.com

Count IV–JOHN DOE/JANE DOE

Now comes the Plaintiff, Larry E. Schultz, , by and through his attorneys, The Law Office of Rhonda D. Fiss, P.C., and for Count IV of his Complaint against the Defendants, John Doe/Jane Doe, alleges as follows:

1. At all times mentioned herein the Plaintiff, Larry Schultz, was a resident of Mascoutah, St Clair County, Illinois and is the duly appointed Special Administrator in Case # 17-P-883, by order of 12/29/17, for the purpose of proceeding in this cause of action under the Illinois Wrongful Death Statute, 740 ILCS 180/1 et. seq..

2. At all times mentioned herein, the Defendant, St. Clair County, was and remains a unit of local government within the State of Illinois that acts as a public agency for the purpose of and with the authority to provide police, medical and/or other emergency services for persons within said county.

3. At all times relevant herein, Defendant, St. Clair County, authorized and provided emergency services, including police and medical services, to residents of said county through it agent, Defendant, St. Clair County CENCOM 9-1-1.

4. That at all times mentioned herein, St. Clair County CENCOM 9-1-1 was and is a Public safety agency, as defined in 50 ILCS 750/1, et. seq., with authority to act as a public safety answering point operating under common management with St. Clair County, that received 9-1-1 calls and event notifications and processed those calls and events according to a specified operational policy.

5. That at all times mentioned herein, Defendant, St. Clair County, through its agent, CENCOM 9-1-1, employed persons as telecommunicators, who answered 9-1-1 calls coming into CENCOM from residents of St. Clair County, Illinois; At all times mentioned herein Defendants, John Doe/Jane Doe, were employed by CENCOM/St. Clair County, Illinois, as telecommunicators whose job required them to transmit information from callers to emergency service providers to aid, protect, and assist members of the general public, including the decedent.

6. That at all times mentioned herein, Defendant, CENCOM 9-1-1 provided emergency services to residents of St. Clair County by relaying information from a telephone caller that is taken by its telecommunicator (also known as "dispatcher") and communicated to an appropriate public safety agency or other provider of emergency services.

7. That at all times mentioned herein, CENCOM 9-1-1, and its dispatchers employed therein, Defendants John Doe/Jane Doe, had a duty to relay accurate information to providers of emergency services and to dispatch said emergency services in a timely manner to protect and assist the county's residents in need of said services.

8. That in direct violation of duties set forth herein and 50 ILCS 750.15.1(a), St. Clair County, through its employee with CENCOM, John Doe/Jane Doe, committed the following acts or omissions, all in reckless disregard and indifference for the safety of the decedent, Laurene Tracy Schultz:

   a. Dispatched Mascoutah police to Handi-Mart rather than All-Mart in Mascoutah, Illinois after taking a 9-1-1 call from decedent's husband, Larry Schultz, on October 22, 2017, who reported that the decedent was under the influence of alcohol and had temporarily parked her vehicle at Allmart in Mascoutah, Illinois; and requested officer assistance to prevent his wife from driving away in her car;

   b. Refused to dispatch the police to Sax's Speedi Check in Mascoutah, Illinois, after a second 9-1-1 call from decedent's husband, Larry Schultz on October 22, 2017, requesting police assistance to prevent his wife from driving her vehicle parked as Sax's after Schultz informed CENCOM that the decedent was going to hurt herself or others if she continued driving;

   c. Failed and refused to contact Mascoutah police after two phone calls from decedent's husband pleading that police be sent to intercept his wife during two occasions where she had left her vehicle and could have been intercepted and prevented from driving the vehicle any further.

d. Manned the dispatch line with improperly trained and/or unqualified employees of CENCOM who performed their job with utter indifference to the safety and welfare of the citizens of St. Clair County, including the decedent.

e. Recklessly abandoned its own protocol and purpose by refusing to contact and/or dispatch Mascoutah Police Department to a known location within Mascoutah–Sax's–to intercept the decedent before she could drive away from said location;

f. Acted with utter indifference for the safety of citizens of St. Clair County, Illinois, including the decedent, by failing to properly supervise telecommunicators while knowing that a failure or refusal to properly transmit information to emergency providers would likely result in harm or even death to members of the general public, including the decedent.

9. That at all times described above, Defendant, CENCOM, through its agents, representative, and employee(s), John Doe/Jane Doe, knew that it should have reported Schultz's information to Mascoutah police and knew that its willful and wanton refusal to contact police or send police to intercept the decedent at a known location in Mascoutah, in reckless disregard for decedent's safety and that of the general public, would likely result in harm to the general public, including the decedent.

10. As a direct and proximate result of the foregoing willful and wanton failure and refusal of CENCOM 9-1-1 and its employees and/or representatives, John Doe/Jane Doe, to act reasonably and with regard to the safety and welfare of residents of Mascoutah, St. Clair County, Illinois, Laurene Tracy Schultz drove her vehicle away from Sax's then off of the highway and was killed when her vehicle crashed.

11. That as of the date of her death on October 22, 2017, said decedent was and is survived by her spouse and three adult children, each of which may have sustained actual pecuniary losses and injuries due to the said wrongful death of the decedent, including, but not limited to: funeral expenses, loss of financial support, loss of goods and services, hedonic damages, and have been deprived of her society, companionship, advice and aid.

WHEREFORE, Plaintiff, Larry Schultz, prays that judgment be entered in favor of Plaintiff and against all Defendants, including John Doe/Jane Doe, for compensatory and other damages to which he is entitled, and for his costs of suit.

BY: _____

Rhonda D. Fiss #6191043
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Count V–Defendant, St. Clair County (Survival Action)

Now comes the Plaintiff, Larry E. Schultz, , by and through his attorneys, The Law Office of Rhonda D. Fiss, P.C., and for Count V of his Complaint against the Defendant, St. Clair County, Illinois, alleges as follows:

1. At all times mentioned herein the Plaintiff, Larry Schultz, was a resident of Mascoutah, St Clair County, Illinois and is the duly appointed Special Administrator in Case # 17-P-883, by order of 12/29/17, for the purpose of proceeding in this cause of action under the Illinois Wrongful Death Statute, 740 ILCS 180/1 et. seq..

2. At all times mentioned herein, the Defendant, St. Clair County, was and remains a unit of local government within the State of Illinois that acts as a public agency for the purpose of and with the authority to provide police, medical and/or other emergency services for persons within said county.

3. At all times relevant herein, Defendant, St. Clair County, authorized and provided emergency services, including police and medical services, to residents of said county through it agent, Defendant, St. Clair County CENCOM 9-1-1.

4. That at all times mentioned herein, St. Clair County CENCOM 9-1-1 was and is a Public safety agency, as defined in 50 ILCS 750/1, et. seq., with authority to act as a public safety answering point operating under common management with St. Clair County, that received 9-1-1 calls and event notifications and processed those calls and events according to a specified operational policy.

5. That at all times mentioned herein, Defendant, St. Clair County, through its agent, CENCOM 9-1-1, employed persons as telecommunicators, who answered 9-1-1 calls coming into CENCOM from residents of St. Clair County, Illinois.

6. That at all times mentioned herein, Defendant, CENCOM 9-1-1 provided emergency services to residents of St. Clair County by relaying information from a telephone caller that is taken by its telecommunicator (also known as "dispatcher") and communicated to an appropriate public safety agency or other provider of emergency services.

7. That at all times mentioned herein, St. Clair County, acting through its public safety agency, CENCOM 9-1-1, and its dispatchers employed therein, had a duty to relay accurate information to providers of emergency services and to dispatch said emergency services in a timely manner to assist the county's residents in need of said services.

8. That in direct violation of duties set forth herein and 50 ILCS 750.15.1(a), St. Clair County, through its employee at CENCOM 9-1-1, hereinafter referred to as John Doe/Jane Doe, committed the following acts or omissions, all in reckless disregard and indifference for the safety of the decedent, Laurene Tracy Schultz:

   a. Dispatched Mascoutah police to Handi-Mart rather than All-Mart in Mascoutah,

Illinois after taking a 9-1-1 call from decedent's husband, Larry Schultz, on October 22, 2017, who reported that the decedent was under the influence of alcohol and had temporarily parked her vehicle at Allmart in Mascoutah, Illinois; and requested officer assistance to prevent his wife from driving away in her car;

b. Refused to dispatch the police to Sax's Speedi Check in Mascoutah, Illinois, after a second 9-1-1 call from decedent's husband, Larry Schultz on October 22, 2017, requesting police assistance to prevent his wife from driving her vehicle now parked as Sax's and that the decedent was going to hurt herself or others if she continued driving;

c. Failed and refused to contact Mascoutah police after two phone calls from decedent's husband pleading that police be sent to intercept his wife during two occasions where she had left her vehicle and could have been intercepted and prevented from driving the vehicle any further.

9. That at all times described above, the Defendant, St. Clair County, through its CENCOM employee, knew that accurate and timely information had to be given to Mascoutah police and knew that its willful and wanton refusal to contact police or send police to intercept the decedent at a known location in Mascoutah, in reckless disregard for decedent's safety and that of the general public, would likely result in harm to the general public, including the decedent.

10. As a direct and proximate result of the foregoing willful and wanton failure and refusal of the Defendant, St. Clair County, through its agency, CENCOM 9-1-1 and its employees and/or representative to act reasonably and with regard to the safety and welfare of residents of Mascoutah, St. Clair County, Illinois, Laurene Tracy Schultz drove her vehicle off of the highway and was killed.

11. That upon information and belief, the decedent suffered physical pain and anguish of an extreme and serious nature, which injuries and damage survive the death of the decedent pursuant to 755 5/27-6, commonly known as the Illinois Survival Act.

WHEREFORE, Plaintiff, Larry Schultz, prays that judgment be entered in favor of Plaintiff and against all Defendants, including St. Clair County, for compensatory and other damages to which he is entitled, and for his costs of suit.

BY: _____

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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

LARRY E. SCHULTZ, as Special Administrator of the **ESTATE OF LAURENE T. SCHULTZ, DECEASED,**

Plaintiff,

vs.

ST. CLAIR COUNTY, ST. CLAIR COUNTY CENCOM 9-1-1, EMERGENCY TELEPHONE BOARD OF ST. CLAIR COUNTY and **JOHN DOE/JANE DOE,**

Defendants.

No. 18-L-61

FILED
ST. CLAIR COUNTY
APR 05 2019
CIRCUIT CLERK
50

ORDER

This matter comes before the Court on the Motion to Dismiss filed by Defendants, St. Clair County, St. Clair County CENCOM 9-1-1 (CENCOM) and Emergency Telephone Board of St. Clair County (ETSB), pursuant to Section 2-619(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)), filed on April 13, 2018. A Section 2-619 involuntary dismissal motion raises affirmative matters that defeat a claim. 735 ILCS 5/2-619(a). "An affirmative defense is one that gives color to the claim of an opposing party and then asserts new matter by which the apparent right is defeated." *Unzicker v. Kraft Food Ingredients Corp.*, 325 Ill. App.3d 587, 592 (4th Dist. 2001). If a Defendant can show there are no genuine issues of material fact on an affirmative matter that defeats a Plaintiff's claim, a Defendant can raise it via an involuntary dismissal motion. As part of this Section 619 motion, Defendants also move for an involuntary dismissal on the grounds that the claims are barred by "other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9).

A Section 619 motion can not be used to contradict a well-pleaded allegation in the Complaint, but conclusory allegations can be attacked using Section 2-619. *Buckner v. O'Brien*, 287 Ill. App. 3d 173 (1st Dist. 1997). Unlike summary judgment(see Section 2-1005(d)), a Section 2-619 motion "must go to an entire claim or demand." *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469,485 (1994). This Court is aware a Section 2-619 motion hearing can have two stages. The first stage resembles a summary judgment hearing. The second stage (which this Court respectfully does not believe is reached) resembles a trial. In the first stage, the Court considered: (i) the pleading attacked, (ii) any supporting or opposing affidavits, and (iii) other materials of the type considered on summary judgment motions. 735 ILCS 5/2-619(a). The Court is to ask whether the Defendants have shown their entitlement to judgment-i.e., do the supporting materials, construed in the light most favorable to the Plaintiff, establish the affirmative matter

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on which the Defendants rely? *Turner v. 1212 S. Michigan P'ship*, 355 Ill. App. 3d 885,892 (1st Dist. 2005). If not, then the Court must deny the motion. If the Defendants meet this initial burden, the Court then asks whether the Plaintiff has shown that the Defendants are not entitled to judgment-i.e., do the opposing materials "den[y] the facts alleged or establis[h] facts obviating the grounds of defect." 735 ILCS 5/2-619(c); *Turner*, 355 Ill App 3d at 892.If not, the Court then must grant the motion. Argument took place on March 12, 2019. The Court afforded the parties then 21 days to submit proposed orders. The Court, being fully advised in the premises, finds as follows:

Initially, Defendants' Motion to Dismiss contends that CENCOM is not a separate legal entity with the capacity to be sued. In response, Plaintiff claims that CENCOM is a "public agency" under section 2 of the Illinois Emergency Telephone System Act (ETSA) (50 ILCS 750/2). Actually, CENCOM is considered a "public safety answering point" or "PSAP", defined only as "a set of call-takers authorized by a governing body and operating under common management that receive 9-1-1 calls and asynchronous event notifications for a defined geographic area and processes those calls and events according to a specified operational policy" under Section 2 of the ETSA. 50 ILCS 750/2. Nevertheless, Plaintiff does not cite any legal authority providing that CENCOM has the ability to sue or be sued. Indeed, CENCOM remains a division of the County, which is a "body politic and corporate" that "may sue and be sued, plead and may be impleaded, defend and be defended against in any court having jurisdiction of the subject-matter." 55 ILCS 5/5-1001.

Likewise, Defendants' Motion to Dismiss argues ETSB is not a separate legal entity with the capacity to be sued. In response, Plaintiff claims that the Illinois Appellate Court has recognized to the contrary in *Chiczewski By and Through Chiczewski v. Emergency Telephone System Bd. of Du Page County,* 295 Ill.App.3d 605, 692 N.E.2d 691 (2nd Dist. 1997); however, that issue was never addressed in that case. Rather, as the Illinois Attorney General has opined, "[a] county emergency telephone system board...may not sue or be sued." Ill. Att'y Gen. Op. No. I-07-047. Legally, ETSB is simply "an emergency telephone system board appointed by the corporate authorities of any county or municipality that provides for the management and operation of a 9-1-1 system." 50 ILCS 750/2. And that corporate authority remains St. Clair County, which is a "body politic and corporate" that "may sue and be sued, plead and may be impleaded, defend and be defended against in any court having jurisdiction of the subject-matter." 55 ILCS 5/5-1001. Accordingly, for the foregoing reasons, Counts II and III of Plaintiff's Complaint are hereby dismissed with prejudice pursuant to Section 2-619(a)(2) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(2)).

Next, Defendants maintain the entire Complaint should be dismissed with prejudice per Section 2-619(a)(9) of the Illinois Code of Civil Procedure because Defendants are immune from civil liability under Section 15.1 of the Illinois Emergency Telephone System Act (50 ILCS 750/15.1). Indeed, Plaintiff relies only on allegations of Defendants' inaction, without sufficiently alleging sufficient facts establishing a "course of action" and/or utter indifference or conscious disregard for safety (see *Floyd v. Rockford Park District*, 355 Ill.App.3d 695, 701-704, 823 N.E.2d 1004, 1010-1012 (2nd Dist. 2005)). And, in response to the Motion to Dismiss, Plaintiff claims only that Defendants "refused to do anything." However, under Illinois law,

willful and wanton conduct requires a "course of action", indicating more than mere inaction. *Winfrey v. Chicago Park District*, 274 Ill.App.3d 939, 945, 654 N.E.2d 508, 513 (1st Dist. 1995).

Furthermore, Defendants' Motion to Dismiss asserts immunity from civil liability under Section 4-102 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/4-102). In response, Plaintiff contends that the qualified immunity provided by Section 15.1 of the ETSA somehow prevents the application of the absolute immunity provided by Section 4-102 of the Tort Immunity Act. Yet, not only has the Illinois Appellate Court already rejected that very argument (see *Galuszynski v. City of Chicago*, 131 Ill. App. 3d 505, 509, 475 N.E.2d 960, 963 (1st Dist. 1985)), but our Illinois Supreme Court has dismissed with prejudice strikingly similar claims against dispatchers based upon the absolute immunity under Section 4-102 of the Illinois Tort Immunity Act (*DeSmet ex rel. Estate of Hays v. County of Rock Island*, 219 Ill.2d 497, 848 N.E.2d 1030 (2006); see also *Platacis v. Village of Streamwood.*, 224 Ill. App. 3d 336, 586 N.E.2d 564 (1st Dist. 1991) (section 4-102 immunizes local government from liability for failing to prevent death of intoxicated passenger)). Therefore, Defendants are afforded absolute immunity under Section 4-102 of the Tort Immunity Act.

Similarly, Defendants' Motion to Dismiss argues that Defendants are immune from civil liability under Section 2-201 of the Tort Immunity Act (745 ILCS 10/2-201). Again, Plaintiff only responds that the qualified immunity provided by Section 15.1 of the ETSA somehow prevents the application of the absolute immunity provided by Section 2-201 of the Tort Immunity Act, an argument that lacks legal basis as set forth above.

Lastly, Defendants maintain that Plaintiff's Complaint is subject to involuntary dismissal pursuant to Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)) because the conduct of Plaintiff's decedent was the sole proximate cause of her alleged injuries and death. Plaintiff's Response acknowledges that Plaintiff's decedent was driving while "intoxicated" and "inebriated", but fails to address the applicable caselaw holding that a driver's state of intoxication can be the sole proximate cause of an accident, even where other intervening causes are alleged.

The Illinois Appellate Court has concluded that a local government's failure to prevent an automobile crash cannot be deemed "a contributing negligent factor to any liability which would arise from later acts". *Veach v. Cross*, 178 Ill. App. 3d 102, 532 N.E.2d 1069 (4th Dist. 1988). The law remains that Plaintiff's allegation that his decedent was intoxicated at the time of the accident is an admission of a violation of a statute designed to protect human life or property that is *prima facie* evidence of her own negligence. *Kalata v. Anheuser Busch Companies, Inc.*, 144 Ill.2d 425 (1991). Accordingly, because such negligence on the part of Plaintiff's decedent is the sole proximate cause of her alleged injuries and death, Plaintiff's Complaint should be entirely dismissed with prejudice under Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCSA 5/2-619(a)(9)).

Accordingly, for one or more of the foregoing reasons, Plaintiff's Complaint is hereby dismissed with prejudice in entirety pursuant to Section 2-619(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)).

Respectfully, it is ordered that Defendants' Motion to Dismiss is hereby granted. Plaintiff's Complaint is entirely dismissed with prejudice.

So Ordered.

DATED: 4/5/19

ENTER: _____

Hon. Heinz M. Rudolf
Circuit Judge

126856

CERTIFICATION OF DEATH RECORD

ST CLAIR COUNTY
BELLEVILLE, ILLINOIS
MEDICAL EXAMINER/CORONER CERTIFICATE OF DEATH

STATE FILE NUMBER 2017 0084298 | MEDICAL EXAMINER'S CASE NUMBER 2017-1850 | DATE ISSUED 11/7/2017

DECEDENT'S LEGAL NAME: LAURENE TRACY SCHULTZ			SEX: FEMALE	DATE OF DEATH: OCTOBER 22, 2017
COUNTY OF DEATH: ST CLAIR	AGE AT LAST BIRTHDAY: 46 YEARS		DATE OF BIRTH: MAY 17, 1971	
CITY OR TOWN: MASCOUTAH	HOSPITAL OR OTHER INSTITUTION NAME: 4321 MASCOUTAH AVENUE			
PLACE OF DEATH: 4321 MASCOUTAH AVENUE				
BIRTHPLACE: STOUGHTON, MA	SOCIAL SECURITY NUMBER: 028-62-7064	STATUS AT TIME OF DEATH: MARRIED	SURVIVING SPOUSE/CIVIL UNION PARTNER'S MAIDEN NAME: LARRY SCHULTZ	EVER IN U.S. ARMED FORCES? NO
RESIDENCE: 104 VANBUREN	APT. NO.	CITY OR TOWN: MASCOUTAH		INSIDE CITY LIMITS? YES
COUNTY: ST CLAIR	STATE: IL	ZIP CODE: 62258	FATHER/CO-PARENT'S NAME PRIOR TO FIRST MARRIAGE/CIVIL UNION: DANIEL FRANCIS DONAHUE	MOTHER/CO-PARENT'S NAME PRIOR TO FIRST MARRIAGE/CIVIL UNION: ELIZABETH MAE SMITH
INFORMANT'S NAME: LARRY SCHULTZ	RELATIONSHIP: HUSBAND	MAILING ADDRESS: 104 VANBUREN, MASCOUTAH, IL 62258		
METHOD OF DISPOSITION: CREMATION	PLACE OF DISPOSITION: CREMATION SERVICES OF METRO EAST, LLC	LOCATION - CITY OR TOWN AND STATE: O FALLON, IL	DATE OF DISPOSITION: OCTOBER 30, 2017	
FUNERAL HOME: SCHILDKNECHT FUNERAL HOME, 301 S LINCOLN AVE, O FALLON, IL 62269				
FUNERAL DIRECTOR'S NAME: CHRISTINE ANN BRENNAN			FUNERAL DIRECTOR'S ILLINOIS LICENSE NUMBER: 034016826	
LOCAL REGISTRAR'S NAME: THOMAS HOLBROOK			DATE FILED WITH LOCAL REGISTRAR: NOVEMBER 3, 2017	

CAUSE OF DEATH — PART I. BLUNT FORCE TRAUMA

IMMEDIATE CAUSE (Final disease or condition resulting in death)	a.	APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH: SUDDEN
Due to (or as a consequence of):	b.	
Due to (or as a consequence of):	c.	
Due to (or as a consequence of):		

PART II. Enter other *significant conditions contributing to death* but not resulting in the underlying cause given in PART I.

WAS AN AUTOPSY PERFORMED? NO

WERE AUTOPSY FINDINGS USED TO COMPLETE CAUSE OF DEATH? N/A

FEMALE PREGNANCY STATUS: UNKNOWN

MANNER OF DEATH: ACCIDENT

DATE OF INJURY: OCTOBER 22, 2017	TIME OF INJURY: 10:00 PM	PLACE OF INJURY: 4321 MASCOUTAH AVNEUE	INJURY AT WORK? NO
LOCATION OF INJURY: 4321 MASCOUTAH AVENUE, MASCOUTAH, IL 62258			
DESCRIBE HOW INJURY OCCURRED: SINGLE CAR AUTO ACCIDENT			IF TRANSPORTATION INJURY, SPECIFY: DRIVER / OPERATOR

ATTEND THE DECEASED?	DATE LAST SEEN ALIVE	WAS MEDICAL EXAMINER OR CORONER CONTACTED?	DATE PRONOUNCED: OCTOBER 22, 2017	TIME OF DEATH: 10:00 PM
CERTIFIER: MEDICAL EXAMINER/CORONER			DATE CERTIFIED: NOVEMBER 03, 2017	
NAME, ADDRESS AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH: CALVIN DYE, 10 PUBLIC SQUARE, BELLEVILLE, IL, 62220			PHYSICIAN'S LICENSE NUMBER	

This is to certify that this is a true and correct copy from the official death record filed with the Illinois Department of Public Health.

Thomas Holbrook
St. Clair County Clerk

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Mascoutah Police Department

3 W Main Street, Mascoutah, IL 62258

Offense / Incident Report

Report Date	Type of Incident	Complaint No.	Case Status
10/22/2017 2005	**INFORMATION**	**17-2270**	**CLOSED**

On 10-22-17 at approximately 2005 hours CENCOM advised of a possible intoxicated driver on the parking lot of the Handee Mart, 40 North 6th Street. CENCOM advised the vehicle would be a red in color Honda occupied by a white female.

When I arrived I was not able to locate the red Honda. I inquired with both patrons, and store employee, but no-one had seen an intoxicated subject on the property prior to my arrival. Sgt. Lambert and I attempted to locate the vehicle in town after learning the above information with negative results.

Case closed

Anthony Weck
Mascoutah Police Department

Reporting Officer	5847 Anthony Weck	Approving Officer (Cover Pages Only)	5849 Sgt Jared Lambert

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REDACTED COPY

ILLINOIS TRAFFIC CRASH REPORT

Sheet 1 of 1 Sheets

TC002

X000947772

DRAC	PEDV	TRFD	TRFC	WEAT	DRVA	VIS	VEHD	LGHT	COLL	MANV	PPA	PPL
9 U 1 U		12	4	2	8 U 1 U	1 U 1 U	1 U 1 U	4	5	1 U 1 U		

INVESTIGATING AGENCY: ISP

DAMAGE TO ANY ONE PERSON'S VEHICLE / PROPERTY: ☐ $500 OR LESS ☐ $501 - $1,500 ☒ OVER $1,500

TYPE OF REPORT: ☒ ON SCENE ☐ NOT ON SCENE (DESK REPORT) ☐ AMENDED

☐ A No Injury / Drive Away ☒ B Injury and / or Tow Due To Crash

AGENCY CRASH REPORT NO.: YR 2017 11-17-02619

TRFW: 1

ADDRESS NO.:

HIGHWAY or STREET NAME: IL-177 WB

☐ City ☒ Township: SHILOH VALLEY TW

INTERSECTION RELATED: ☐ Y ☒ N

PRIVATE PROPERTY: ☐ Y ☒ N

HIT & RUN: ☐ Y ☒ N

DATE OF CRASH: 10/22/2017 (mo / day / yr)

TIME: ☐ AM ☒ PM 09:14

LARS CODE:

VEHT: 1 U 1

☒ 913 AT INTERSECTION WITH (CIRCLE) FT / MI (CIRCLE) N E S W KECK ROAD (NAME OF INTERSECTION OR ROAD FEATURE)

COUNTY: ST. CLAIR

DOORING WITH PEDALCYCLIST? ☐ Y ☒ N

NUMBER MOTOR VEHICLES INVLD: 1

LARS CODE:

U

UNIT 1

NAME: ☒ DRIVER ☐ PARKED ☐ DRIVERLESS ☐ PED ☐ PEDAL ☐ EQUES ☐ NMV ☐ NCV

SCHULTZ, LAURENE T (LAST, FIRST, MI)

DATE OF BIRTH: mo / day / yr

STREET ADDRESS:

CITY: STATE: ZIP:

TELEPHONE:

DRIVER LICENSE NO.:

TAKEN TO: ST. ELIZABETH'S HOSPITAL, BELLEVILL

EMS AGENCY: SAWYER FUNERAL HOME

SEX	SAFT	AIR
F	3	4

INJURY	EJECT
K	2

STATE	CLASS
IL	D

MAKE: HYUNDAI MODEL: ELANTRA YEAR: 2004

PLATE NO. STATE: IL YEAR: 2017

VIN: KMHDN46D14U844899

VEHICLE OWNER (LAST, FIRST M.I.): SCHULTZ, LAURENE T

OWNER ADDRESS (STREET, CITY, STATE, ZIP):

INSURANCE CO.: AMERICAN FAMILY MUTUAL INSURANCE

TELEPHONE:

POLICY NO.: 410097044877

CIRCLE NUMBER(S) FOR DAMAGED AREA(S): 00 - NONE; 10 - UNDER CARRIAGE; (1) TOTAL (ALL AREAS); 12 - OTHER; 99 - UNKNOWN

POINT OF FIRST CONTACT: 99

FRONT / REAR

	Y	N
TOWED DUE TO CRASH	☒	☐
FIRE	☐	☒
CELLPHONE	☐	☒
EXCEED SPEED LIMIT	☐	☒
COM VEH *	☐	☒

NO. LANES: 2

ALGN: 1

RSUR: 2

VEHU: 2 U 1

U

UNIT

NAME: ☐ DRIVER ☐ PARKED ☐ DRIVERLESS ☐ PED ☐ PEDAL ☐ EQUES ☐ NMV ☐ NCV

(LAST, FIRST, MI)

DATE OF BIRTH: mo / day / yr

STREET ADDRESS:

CITY: STATE: ZIP:

TELEPHONE:

DRIVER LICENSE NO.:

TAKEN TO:

EMS AGENCY:

SEX	SAFT	AIR

INJURY	EJECT

STATE	CLASS

MAKE: MODEL: YEAR:

PLATE NO. STATE: YEAR:

VIN:

VEHICLE OWNER (LAST, FIRST M.I.):

OWNER ADDRESS (STREET, CITY, STATE, ZIP):

INSURANCE CO.:

TELEPHONE:

POLICY NO.:

CIRCLE NUMBER(S) FOR DAMAGED AREA(S): 00 - NONE; 10 - UNDER CARRIAGE; 11 - TOTAL (ALL AREAS); 12 - OTHER; 99 - UNKNOWN

POINT OF FIRST CONTACT:

FRONT / REAR

	Y	N
TOWED DUE TO CRASH	☐	☐
FIRE	☐	☐
CELLPHONE	☐	☐
EXCEED SPEED LIMIT	☐	☐
COM VEH *	☐	☐

RDEF: 1

BAC: 96 U 1

U

(UNIT)	(SEAT)	(DOB)	(SEX)	(SAFT)	(AIR)	(INJ)	(EJCT)	PASSENGERS & WITNESSES ONLY (NAME) / (ADDR) / (TEL)	(HOSP)	(EMS)

#OCCS: 1 U 1

U

DIRP: 7 U 1

U

UNIT 1

	(EVNO)	(MOST)	(EVNT)	(LOC)
1		☐	1	3
2		☒	2	3
3		☐		

UNIT

1		☐		
2		☐		
3		☐		

DAMAGED PROPERTY OWNER NAME:

DAMAGED PROPERTY:

PROPERTY OWNER ADDRESS: CITY: STATE: ZIP:

ARREST NAME: SECTION: CITATION NO.:

ARREST NAME: SECTION: CITATION NO.:

OFFICER ID.: 6488 OFFICER NAME: J RENNER BEAT/DIST.: 11 SUPERVISOR ID.: C TOLBERT, 4954

CONTRIBUTORY CAUSE(S): PRIMARY: 20 SECONDARY: 11

POSTED SPEED LIMIT: 55

DATE POLICE NOTIFIED: 10/22/2017 (mo / day / yr)

TIME NOTIFIED: ☐ AM ☒ PM 09:14

COURT DATE: (mo / day / yr)

COURT TIME: ☐ AM ☐ PM

DID CRASH OCCUR IN A WORK ZONE? ☐ Y ☒ N

IF YES CHECK ONE BELOW:

☐ CONSTRUCTION ☐ MAINTENANCE ☐ UTILITY ☐ UNKNOWN WORK ZONE TYPE

WORKERS PRESENT? ☐ Y ☒ N

SR 1050 JANUARY 2013

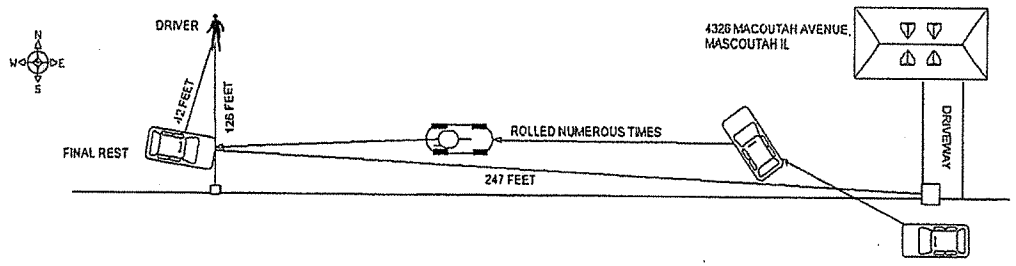
126856

Printed by authority of the State of Illinois

A-2-1

SUBMITTED - 13174458 - Rhonda Fiss - 5/11/2021 11:16 AM

A **Diagram** and **Narrative** are required on all **Type B** crashes, even if units have been moved prior to the officer's arrival.



IL-177 WB WEST OF KECK ROAD

NARRATIVE (Refer to vehicle by Unit No.)

UNIT 1 WAS TRAVELING ON IL-177 WESTBOUND JUST WEST OF KECK ROAD. UNIT 1 RAN OFF-ROADWAY TO THE RIGHT. UNIT 1 OVERTURNED NUMEROUS TIMES BEFORE COMING TO FINAL REST OFF-ROADWAY TO THE RIGHT IN THE DITCH. THE DRIVER OF UNIT 1 WAS TOTALLY EJECTED FROM THE VEHICLE AND LANDED JUST NORTH OF THE VEHICLE IN THE FIELD. THE CORONER ARRIVED ON SCENE AND PRONOUNCED THE FEMALE DRIVER DEAD AT 10:00 PM. SAWYER FUNERAL HOME TRANSPORTED THE BODY TO ST. ELIZABETH HOSPITAL IN BELLEVILLE. THE VEHICLE WAS TOWED FROM THE SCENE BY DAN'S TOWING OUT OF MASCOUTAH. THE DRIVER'S HUSBAND ARRIVED ON SCENE AND POSITIVELY IDENTIFIED THE BODY.

LOCAL USE ONLY

U 1 Color MAROON, BURGU	U Color
U 1 Towed by / to Dan's Towing, Mascoutah / Dan's Towing, M	U Towed by / to

COMMERCIAL MOTOR VEHICLE (CMV)

IF MORE THAN ONE CMV IS INVOLVED, USE SR 1050A ADDITIONAL UNITS FORMS.

A CMV is defined as any motor vehicle used to transport passengers or property and:
1. Has a weight rating of more than 10,000 pounds (example: truck or truck/trailer combination); or
2. Is used or designed to transport more than 15 passengers, including the driver (example: shuttle or charter bus); or
3. Is designed to carry 15 or fewer passengers and operated by a contract carrier transporting employees in the course of their employment (example: employee transporter - usually a van-type vehicle or passenger car); or
4. Is used or designated to transport between 9 and 15 passengers, including the driver, for direct compensation (example: large van used for specific purpose); or
5. Is any vehicle used to transport any hazardous material (HAZMAT) that requires placarding (example: placards will be displayed on the vehicle).

CARRIER NAME

ADDRESS

CITY/STATE/ZIP

USDOT NO. ILCC NO.

Source of above info. ☐ Side of Truck ☐ Papers ☐ Driver ☐ Log Book

Gross Vehicle Weight Rating (GVWR)

Were HAZMAT placards displayed on the vehicle? ☐ Y ☐ N

If yes, name on placard

4-digit UN no. 1-digit Hazard Class no.

Did HAZMAT spill from the vehicle (do not consider fuel from the vehicle's own tank)? ☐ Y ☐ N ☐ UNK

Did HAZMAT Regulations violation contribute to the crash? ☐ Y ☐ N ☐ UNK

Did Motor Carrier Safety Regulations (MCS) violation contribute to the crash? ☐ Y ☐ N ☐ UNK

Was a Driver/Vehicle Examination Report form completed?

HAZMAT ☐ Y ☐ N ☐ UNK Out of Service? ☐ Y ☐ N

MCS ☐ Y ☐ N ☐ UNK Out of Service? ☐ Y ☐ N

Form No.

IDOT PERMIT NO. WIDE LOAD? ☐ Y ☐ N

TRAILER WIDTH(S):	0-96"	97-102"	> 102"
TRAILER 1	☐	☐	☐
TRAILER 2	☐	☐	☐

TRAILER LENGTH(S): 1 ft TRAILER 2 ft

TOTAL VEHICLE LENGTH ft NO. OF AXLES

SELECT CODES FROM BACK COVER OF CRASH BOOKLET:

VEHICLE CONFIGURATION

CARGO BODY TYPE LOAD TYPE

126856

A-22

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

IN THE MATTER OF THE ESTATE OF:)
)
LAURENE TRACY SCHULTZ, deceased)

No. 17-P-883

ORDER APPOINTING SPECIAL ADMINISTRATOR

THIS CAUSE coming for hearing on Petition for Special Administrator, pursuant to 740 ILCS 180/2.1, all parties present with their attorneys and the Court having been advised in this matter and reviewing this matter;

THE COURT FINDS AS FOLLOWS:

1. The decedent, Laurene Tracy Schultz, died on October 22, 2017, as a result of an automobile accident.
2. That no petition for letters of office for his estate has been filed.
3. That the only asset of the deceased's estate is a cause of action arising under the Illinois Wrongful Death Statute, 740 ILCS 180/1 *et seq.*
4. The names and post-office addresses of the deceased's heirs or legatees are:
   a. Larry Schultz, 104 Van Buren, Mascoutah, IL 62258
   b. Joshua Miller, 2702 Co. Highway 61, Guin, Alabama 35563
   c. Jeremy Miller, 1370 Educhesne Dr., Florissant, MO 63031
   d. Justin Miller, 69 Arapaho Court, Belleville, IL 62220
5. The notice of hearing on this Petition was provided to said heirs or legatees pursuant to 740 ILCS 180/2.1.
6. That a Special Administrator must be appointed for the deceased for the purpose of prosecuting the cause of action arising under the Illinois Wrongful Death Statute, 740 ILCS 180/1 *et seq.*
7. That Petitioner, Larry Eugene Schultz is qualified, willing and able to act as Special Administrator of the Estate of Laurene Tracy Schultz, deceased.

IT IS THEREFORE ORDERED that LARRY EUGENE SCHULTZ is hereby appointed as Special Administrator for the Estate of LAURENE TRACY SCHULTZ, deceased, for the purpose of prosecuting the cause of action arising under the Illinois Wrongful Death Statute, 740

ILCS 80/1 *et seq.*

ENTERED this 28th day of Dec, 2017.

JUDGE

LAW OFFICE OF RHONDA D. FISS, P.C.

ATTORNEYS AT LAW
23 PUBLIC SQUARE
SUITE 230
BELLEVILLE, ILLINOIS 62220
TELEPHONE - (618) 233-8590 • (618) 233-8713 - FACSIMILE

March 2, 2020

The Honorable John J. Flood
Clerk of the Appellate Court
Fifth District of Illinois
14th & Main St., P.O. Box 867
Mt. Vernon, IL. 62864-0018

Re: Schultz v. St. Clair County, Illinois, *et al*
St. Clair County No. 18-L-61
Appellate No. 5-19-0256

Dear Mr. Flood:

Enclosed please a copy of the following in the above-named case:

1. Five (5) paper copies of Appellant's brief;
2. Hard copy recording Appendix #25.

Sincerely,

Rhonda D. Fiss

RDF/jd
Enclosure(s)

cc: Garrett Hoerner

A-25

2020 IL App (5th) 190256

NO. 5-19-0256

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

LARRY E. SCHULTZ, Special Administrator of the Estate of Laurene T. Schultz, Deceased, Plaintiff-Appellant, v. ST. CLAIR COUNTY, a Unit of Local Government in the State of Illinois; ST. CLAIR COUNTY CENCOM 9-1-1, a Public Safety Agency and Answering Point Within the State of Illinois; EMERGENCY TELEPHONE SYSTEM BOARD OF ST. CLAIR COUNTY; and JOHN DOE/JANE DOE, Defendants (St. Clair County, a Unit of Local Government in the State of Illinois; St. Clair County CENCOM 9-1-1, a Public Safety Agency and Answering Point Within the State of Illinois; and Emergency Telephone System Board of St. Clair County, Defendants-Appellees).	)	Appeal from the Circuit Court of St. Clair County. No. 18-L-61 Honorable Heinz M. Rudolf, Judge, Presiding.

JUSTICE MOORE delivered the judgment of the court, with opinion.
Presiding Justice Boie concurred in the judgment and opinion.
Justice Wharton dissented, with opinion.

OPINION

¶ 1 The plaintiff, Larry E. Schultz, as special administrator of the estate of Laurene T. Schultz, deceased, appeals the April 5, 2019, order of the circuit court of St. Clair County. In this order, the circuit court dismissed, pursuant to section 2-619 of the Code of Civil Procedure

A-26

(Code) (735 ILCS 5/2-619 (West 2018)), his complaint against the defendants, St. Clair County (County), a unit of local government in the State of Illinois; St. Clair County CENCOM 9-1-1 (CENCOM), a public safety agency and answering point within the State of Illinois; Emergency Telephone System Board of St. Clair County (ETSB); and John Doe/Jane Doe (Doe).[1] For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 On January 29, 2018, the plaintiff filed a complaint in the circuit court of St. Clair County, alleging a cause of action against the defendants, pursuant to the Wrongful Death Act (740 ILCS 180/1 *et seq.* (West 2016)), based on events leading to his wife's death on October 22, 2017. Count I alleges that the County authorized and provided emergency telephone services to residents through its agent, CENCOM. According to count I, the County, through Doe, its dispatch employee, acted "in reckless disregard and indifference for the safety of the decedent" in the following ways: (1) dispatched Mascoutah police to Handi-Mart, rather than All-Mart, after taking a 9-1-1 call from the plaintiff, who reported that the decedent was under the influence of alcohol, had temporarily parked her vehicle at All-Mart, and requested police assistance to prevent her from driving away in her car; (2) refused to dispatch the police to Sax's Speedi Check in Mascoutah after a second 9-1-1 call from the plaintiff, requesting police assistance to prevent the decedent from driving her vehicle, which was then parked at Sax's; and (3) failed and refused to contact Mascoutah police after two calls from the plaintiff pleading that police be sent to intercept the decedent.

¶ 4 According to count I of the complaint, the County, through Doe, knew that accurate and timely information had to be given to Mascoutah police and knew that "its willful and wanton

[1]Jane Doe/John Doe were unrepresented in the circuit court proceedings and are unrepresented in this appeal. We refer to the appellees as defendants for the sake of simplicity.

refusal to contact police or send police to intercept the decedent at a known location in Mascoutah, in reckless disregard for [the] decedent's safety and that of the general public, would likely result in harm to the general public, including the decedent." Count I further alleges that, as a direct and proximate result of the foregoing "willful and wanton refusal" of the County, through its agency, CENCOM, and its employee, Doe, the decedent drove her vehicle off the highway and was killed.

¶ 5 Count II of the complaint contains the same allegations as count I but is directed toward CENCOM, which the complaint alleges is a "public safety agency" as defined by section 2 of the Emergency Telephone System Act (50 ILCS 750/2 (West 2016)). Count III of the complaint is directed toward ETSB, which the complaint alleges had a duty to oversee and manage CENCOM in a reasonable manner. According to count III, ETSB acted in "reckless disregard and indifference for the safety of" the decedent and "willfully and wantonly" violated its duty when it failed to implement, oversee, and manage CENCOM's selection of employees, policies, and protocol in a reasonable manner. Count IV of the complaint mirrors counts I and II, but is directed toward Doe, the unnamed dispatcher. Count V of the complaint alleges a cause of action pursuant to the Survival Act (755 ILCS 5/27-6 (West 2016)) against the County.

¶ 6 On April 13, 2018, the defendants filed a combined motion to dismiss the complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2018)). As for its motion pursuant to section 2-615 of the Code (*id.* § 2-615), the defendants argued that the complaint contained insufficient and conclusory allegations of willful and wanton misconduct. Pursuant to section 2-619(a)(2) of the Code (*id.* § 2-619(a)(2)), the defendants argued that counts II and III of the complaint should be dismissed because neither CENCOM nor ETSB are separate legal entities from the County, and thus do not have the capacity to be sued.

¶ 7 The remainder of the defendants' motion to dismiss was brought pursuant to section 2-619(a)(9) of the Code and directed toward the entirety of the complaint. Therein, the defendants argued, *inter alia*, that they are immune from liability pursuant to section 4-102 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/4-102 (West 2016)). After full briefing in the circuit court, a hearing was held on the defendants' motion to dismiss on March 12, 2019. The circuit court took the motion under advisement, and on April 5, 2019, entered an order granting the motion. On May 2, 2019, the plaintiff filed a motion to reconsider, which the circuit court denied on June 19, 2019. Thereafter, the plaintiff filed a timely notice of appeal.

¶ 8 II. ANALYSIS

¶ 9 The circuit court granted the motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2018)), as well as section 2-619(a)(9) of the Code (*id.* § 2-619(a)(9)). Our standard of review is *de novo* under either section 2-615 or section 2-619 of the Code. *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 29. In addition, we may affirm the circuit court's dismissal on any proper basis found in the record. *Id.* ¶ 47. With these principles in mind, we begin with an analysis of that portion of the motion that was brought pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2018)), and specifically, the issue of the defendants' immunity from suit, because we conclude it is dispositive of this appeal.

> " 'The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation. [Citation.] When ruling on a section 2-619 motion, the court must construe the pleadings and supporting documents in the light most favorable to the nonmoving party. [Citation.] The reviewing court must consider whether the existence of a genuine issue of material fact should have precluded the dismissal or,

absent an issue of material fact, whether a dismissal was proper as a matter of law. [Citation.]' " *CNA International, Inc.*, 2012 IL App (1st) 112174, ¶ 31 (quoting *Zerjal v. Daech & Bauer Construction, Inc.*, 405 Ill. App. 3d 907, 910-11 (2010)).

¶ 10 Our analysis of the propriety of the circuit court's dismissal of the plaintiff's complaint pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2018)) turns on the application of section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102 (West 2016)) and section 15.1 of the Emergency Telephone System Act (50 ILCS 750/15.1 (West 2016)) to the facts as alleged in the plaintiff's complaint. The application of, and interplay between, these two statutory sections is crucial to determining the propriety of the dismissal of the plaintiff's complaint pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2018)). This is because, while section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102 (West 2016)) is a "blanket immunity" with no exception for "willful and wanton conduct" (*DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 515 (2006)), section 15.1(a) of the Emergency Telephone System Act provides that "[i]n no event" shall there be liability unless conduct "constitutes gross negligence, recklessness, or intentional misconduct." 50 ILCS 750/15.1(a) (West 2016). Thus, if section 4-102 of the Tort Immunity Act applies to the conduct alleged in the complaint, dismissal under section 2-619(a)(9) of the Code was proper. In contrast, if the standard for liability set forth in section 15.1 of the Emergency Telephone System Act applies, a question would remain as to whether the conduct alleged in the complaint "constitutes gross negligence, recklessness, or intentional misconduct."

¶ 11 Section 4-102 of the Tort Immunity Act provides:

"Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection

service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals." 745 ILCS 10/4-102 (West 2016).

¶ 12 The complaint alleges that the plaintiff called 9-1-1 on two occasions to request police assistance to intercept the decedent as she was driving under the influence of alcohol and had temporarily parked her car at two separate locations. Our supreme court in *DeSmet* held that section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102 (West 2002)) is implicated where dispatch services are called upon to dispatch police in response to a request for such services and the police do not respond. *DeSmet*, 219 Ill. 2d at 513-14. The *DeSmet* court made clear that section 4-102 of the Tort Immunity Act is "comprehensive in the breadth of its reach, addressing situations where no police protection is provided to the general public and those in which inadequate protection is provided." *Id.* at 515.

¶ 13 Pursuant to our supreme court's holding in *DeSmet*, section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102 (West 2016)) applies to immunize the defendants from liability under the facts as alleged in the complaint. The plaintiff argues, however, that section 15.1 of the Emergency Telephone System Act (50 ILCS 750/15.1 (West 2016)) should control because it applies specifically to the provision of 9-1-1 services. Our colleagues in the first district considered this issue in *Carolan v. City of Chicago*, 2018 IL App (1st) 170205, ¶ 27, holding that where a 9-1-1 call requests police intervention, it involves a police protection service for the purposes of section 4-102 of the Tort Immunity Act, "which is not supplanted by section 15.1 of the Emergency Telephone System Act." We recognize that the analysis in *Carolan* considered a prior version of section 15.1 of the Emergency Telephone System Act, which was amended effective January 1, 2016. However, for the following reasons, we too hold that the "blanket

immunity" found in section 4-102 of the Tort Immunity Act applies where a 9-1-1 call requests police intervention and liability is premised on the failure of a dispatcher to dispatch police in a timely fashion.

¶ 14 We begin with an examination of the Emergency Telephone System Act (50 ILCS 750/0.01 *et seq.* (West 2016)). The purpose of the statute is stated in section 1 as follows:

> "It is the purpose of this Act to establish the number '9-1-1' as the primary emergency telephone number for use in this State and to encourage units of local government and combinations of such units to develop and improve emergency communication procedures and facilities in such a manner as to be able to quickly respond to any person calling the telephone number '9-1-1' seeking police, fire, medical, rescue, and other emergency services." *Id.* § 1.

¶ 15 The Emergency Telephone System Act directs that all agencies providing emergency services be within the jurisdiction of a 9-1-1 system and that by July 1, 2020, every 9-1-1 system in Illinois shall provide Next Generation 9-1-1 service.[2] *Id.* § 3(b). Section 6 of the statute requires that all systems be designed to meet the specific requirements of each community and public agency served by the system. *Id.* § 6. In addition, section 6 requires that every system have the capability to utilize the direct dispatch method, relay method, transfer method, or referral method in emergency calls. *Id.* Section 6.1 of the Emergency Telephone System Act requires the use of telecommunications technology for hearing-impaired and speech-impaired individuals. *Id.* § 6.1. Section 10 provides for the establishment of "uniform technical and operational standards for all 9-1-1 systems in Illinois." *Id.* § 10.

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[2]Next Generation 9-1-1 refers to an upgrade from an analog 9-1-1 system to a digital or Internet Protocol-based 911 system. *Next Generation 911*, 911.gov, https://www.911.gov/issue_nextgeneration911.html (last visited Dec. 2, 2020) [https://perma.cc/D4GC-4WB6].

¶ 16 Thus, an overview of the Emergency Telephone System Act reveals that its purpose is to govern the technical aspects of providing emergency services statewide via a 9-1-1 system. "The primary goal of statutory construction is to ascertain and give effect to the intent of the legislature." *In re Detention of Powell*, 217 Ill. 2d 123, 135 (2005). As such, it has been said that the purpose of section 15.1 of the Emergency Telephone System Act (50 ILCS 750/15.1 (West 2016)) "is to provide limited tort immunity for the agencies responsible for creating and running the emergency telephone system in Illinois." *Chiczewski v. Emergency Telephone System Board of Du Page County*, 295 Ill. App. 3d 605, 608 (1997). This interpretation is consistent with the language of 15.1, which focuses on the technical aspects of providing 9-1-1 services, as follows:

> "In no event shall a *** public safety answering point, emergency telephone system board, or unit of local government assuming the duties of an emergency telephone system board, *** or its officers, employees, assigns, or agents be liable for any civil damages *** that directly or indirectly results from, or is caused by, any act or omission in the development, design, installation, operation, maintenance, performance, or provision of 9-1-1 service required by this Act, unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct." 50 ILCS 750/15.1(a) (West 2016).

¶ 17 Based on the foregoing, this court is not convinced that section 15.1 of the Emergency Telephone System Act was designed to apply to situations in which a plaintiff alleges that a dispatcher failed or refused to dispatch emergency services in response to a call via the 9-1-1 system. Rather, because the Emergency Telephone System Act is designed to ensure the infrastructure is in place to provide 9-1-1 services to all of Illinois, it is reasonable to interpret section 15.1 of the statute to provide an immunity for failures within that infrastructure and technology itself. However, assuming that the legislature intended that an immunity be provided

for misconduct on the part of dispatchers, we agree with the defendants that the provision was not designed to supersede the immunities set forth in the Tort Immunity Act. See 745 ILCS 10/1-101 *et seq.* (West 2016).

¶ 18 "A court must construe statutes relating to the same subject matter with reference to one another so as to give effect to the provisions of each, if reasonable." *Harris v. Thompson*, 2012 IL 112525, ¶ 25 (citing *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 391-92 (1998)). 9-1-1 dispatch services could potentially implicate or coincide with police activities as are addressed in article IV of the Tort Immunity Act (745 ILCS 10/4-101 *et seq.* (West 2016)), fire protection and rescue activities as are addressed in article V of the Tort Immunity Act (745 ILCS 10/5-101 *et seq.* (West 2016)), or medical, hospital, and public health activities as are addressed in article VI of the Tort Immunity Act (745 ILCS 10/6-101 *et seq.* (West 2016)). There are various provisions throughout each of these articles that provide an array of immunities ranging from "blanket immunities" to immunity absent willful and wanton conduct.

¶ 19 The legislature's use of "in no event" to precede the immunity set forth in section 15.1 when it changed the language to include "the provision of 9-1-1 service" indicates that it is designed to apply if no broader immunity is provided elsewhere in Illinois law. This is a reasonable interpretation of that section that gives effect to section 15.1, as well as to all the potentially implicated provisions of the Tort Immunity Act. See *Harris*, 2012 IL 112525, ¶ 25 (citing *Henrich*, 186 Ill. 2d at 391-92). Accordingly, we find that, assuming that section 15.1 of the Emergency Telephone System Act (50 ILCS 750/15.1 (West 2016)) is implicated in a case that is based on the conduct of 9-1-1 operators or dispatchers, it is intended to be a "catch-all" immunity provision to be applied if no section of the Tort Immunity Act applies to the conduct at issue. Based on the foregoing, section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102

(West 2016)) applies to the conduct at issue and was properly applied by the circuit court to dismiss the plaintiff's complaint pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2018)).

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the April 5, 2019, order of the circuit court of St. Clair County that dismissed the plaintiff's complaint.

¶ 22 Affirmed.

¶ 23 JUSTICE WHARTON, dissenting:

¶ 24 I disagree with the conclusion reached by the majority for two principle reasons. First, I believe the majority's interpretation of section 15.1 of the Emergency Telephone System Act overlooks express language in the statute, making its limited tort immunity applicable to the "performance[ ] or provision of 9-1-1 service." See 50 ILCS 750/15.1(a) (West 2016). Second, unlike the majority, I am reluctant to conclude, based on the pleadings, that the failure to dispatch that occurred in this case was not the result of a "failure within the infrastructure and technology" of the system itself. For these reasons, I respectfully dissent.

¶ 25 The best evidence of legislative intent is the express language of the statute itself. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 421 (2002). If statutory language is clear and unambiguous, there is no need to look beyond that language and "resort to other tools of statutory construction." *Id.* at 421-22. Here, the express language of section 15.1 provides that its limited immunity applies to liability that results from "any act or omission in the development, design, installation, operation, maintenance, *performance, or provision of 9-1-1 service* required by [the Emergency Telephone System] Act." (Emphasis added.) 50 ILCS

750/15.1(a) (West 2016). Thus, by its express terms, the statute applies to the performance or provision of 9-1-1 services involved in this case.

¶ 26 Although we need not look beyond this clear and unambiguous statutory language, I believe that a consideration of the purpose and policy behind the Emergency Telephone System Act supports my conclusion that section 15.1 is applicable. As the majority points out, the stated purpose of the Emergency Telephone System Act is "to encourage units of local government *** to develop and improve emergency communication *procedures* and facilities in such a manner as to be able to quickly respond to any person calling the telephone number '9-1-1' seeking *** emergency services." (Emphasis added.) *Id.* § 1. To this end, section 6 mandates that all 9-1-1 systems "be designed to meet the specific requirements of each community and public agency served by the system." *Id.* § 6. To satisfy this requirement, a system must not only meet the technological standards set out in the Emergency Telephone System Act, it must also include procedures designed to ensure that necessary services are dispatched when and where they are needed. Indeed, section 6 contains a declaration of legislative purpose that explicitly states, "The General Assembly finds and declares that the most critical aspect of the design of any system is the procedure established for handling a telephone request for emergency services." *Id.*

¶ 27 I recognize that this does not end the inquiry. The plaintiff called 9-1-1 on October 22, 2017, to request police services. The Tort Immunity Act provides blanket immunity from liability "for failure to provide adequate police protection or service." 745 ILCS 10/4-102 (West 2016). As the majority explains, the Illinois Supreme Court found that this blanket immunity provision applied in a case involving a telephone call requesting police assistance for an apparent motor vehicle accident. See *DeSmet*, 219 Ill. 2d at 515. This court is obliged to follow the

holdings of the Illinois Supreme Court. *Mekertichian v. Mercedes-Benz U.S.A., L.L.C.*, 347 Ill. App. 3d 828, 836 (2004). However, I do not believe *DeSmet* is controlling for two reasons.

¶ 28 First and foremost, the *DeSmet* court did not address the issue before us in this case. There, a motorist used her cell phone to report that she saw another vehicle run off the road and into a ditch. *DeSmet*, 219 Ill. 2d at 500-01. I note that the opinion does not specify whether the motorist dialed 9-1-1. See *id.* (stating only that she spoke to the clerk of the Village of Orion). In any event, no one responded to the scene, and the driver of the other vehicle was found deceased three days later. *Id.* at 502. The administrator of the decedent's estate filed a lawsuit naming numerous public officials and entities as defendants. *Id.* at 502-03. The trial court granted the defendants' motions to dismiss the complaint, finding the blanket immunity provision in section 4-102 of the tort immunity act to be applicable. *Id.* at 503.

¶ 29 On appeal to the supreme court, the plaintiff argued that section 4-102 did not apply in cases where a municipality "sends no assistance whatsoever in response to a request for help at an accident scene." *Id.* at 504. She argued that this " 'complete absences of *any* police service' " was not the same thing as a " 'failure to provide *adequate* police service.' " (Emphases in original.) *Id.* at 512. The supreme court rejected this argument—an argument focused on the language of section 4-102 itself—by explaining that section 4-102 "is comprehensive in the breadth of its reach, addressing situations where no police protection is provided *** and those in which inadequate protection is provided." *Id.* at 515.

¶ 30 The plaintiff in *DeSmet* also argued that the motorist's call for assistance did not necessarily trigger a police search; rather, the call was a request "to send rescue personnel, whose misconduct is not shielded by section 4-102." *Id.* at 504-05. The supreme court rejected this argument too, explaining that "an emergency medical response was not indicated" unless

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and until police determined that there was an accident requiring emergency medical services. *Id.* at 512. The question was whether section 4-102 applied, "rather than some other statutory provision of the Tort Immunity Act," presumably one governing immunity for emergency medical personnel. *Id.* Thus, the *DeSmet* court never considered whether section 15.1 of the Emergency Telephone System Act applied.

¶ 31 The second reason I do not believe *DeSmet* is controlling is that the court expressly recognized that the blanket immunity of section 4-102 might not apply in cases where other legislative enactments identify "a specially protected class of individuals to whom statutorily mandated duties are owed." *Id.* at 521. The Emergency Telephone System Act mandates several duties to the citizens living within a geographic area served by a 9-1-1 system. It is an alleged failure to perform these statutorily mandated duties that is at issue in this case.

¶ 32 I am also not convinced that the First District's decision in *Carolan* requires us to reach the result reached by the majority. I reach this conclusion for three reasons.

¶ 33 First, the *Carolan* court construed an earlier version of section 15.1. See *Carolan*, 2018 IL App (1st) 170205, ¶ 20. Although the version of the statute in effect when the events in that case occurred applied to liability arising from " 'operating or implementing any plan or system' " mandated by the Emergency Telephone System Act (see *id.* (quoting 50 ILCS 750/15.1 (West 2008))), it did not contain language making it applicable to the "performance[ ] or provision of 9-1-1 service," as the amended version applicable to this case does (see 50 ILCS 750/15.1(a) (West 2016); Pub. Act 99-6, § 2-10 (eff. Jan. 1, 2016) (amending 50 ILCS 750/15.1)). In finding the earlier version to be inapplicable, the *Carolan* court emphasized that the preamendment statutory language "did not expressly contemplate the provision of emergency services."

Carolan, 2018 IL App (1st) 170205, ¶ 21. That is not true of the amended version of the statute, which was in effect when the events at issue in this case took place.

¶ 34 Second, *Carolan* is factually distinguishable from the case before us, although I acknowledge that this distinction does not appear to have played a role in the First District's analysis. There, the delay in dispatching police to the scene of a robbery in progress appeared to have been the result of not having enough units available to respond, rather than a failure on the part of the 9-1-1 system or its dispatchers. See *id.* ¶ 7.

¶ 35 Third, this court is not obliged to follow the holdings of other districts of the Illinois Appellate Court. *Schramer v. Tiger Athletic Ass'n of Aurora*, 351 Ill. App. 3d 1016, 1020 (2004). I therefore believe that neither *DeSmet* nor *Carolan* require us to depart from the unambiguous statutory language making section 15.1's limited immunity provision applicable to the provision and performance of 9-1-1 service mandated by the Emergency Telephone System Act.

¶ 36 Moreover, I would find that dismissal was inappropriate in this case, even if I were to agree with the majority that the Emergency Telephone System Act governs only to "the technical aspects of providing 9-1-1 services" and that section 15.1 therefore applies only to cases involving "failures within that technology and infrastructure itself." I emphasize that when ruling on a motion to dismiss, a court must consider the pleadings and any supporting documentation in the light most favorable to the nonmoving party. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. Applying this standard, I believe it would be premature to determine at the pleading stage that the failure to dispatch police in this case resulted from "misconduct on the part of the dispatchers" and not from a failure within the infrastructure of the system itself.

¶ 37 In his complaint, the plaintiff alleged that Mascoutah police were dispatched to a Handi-Mart instead of an All-Mart. It is reasonable to assume that a 9-1-1 operator who is unfamiliar with the geographic area is more likely than a local operator to confuse similarly named establishments and to send police or other emergency responders to the wrong location as a result. It is also reasonable to assume that the legislature took this possibility into account when mandating that 9-1-1 systems "be designed to meet the specific requirements of each community" served. See 50 ILCS 750/6 (West 2016). Operators and dispatchers are the essential human nexus between distressed callers and the emergency assistance they are requesting. In order to effectively meet the individual needs of the communities served, a 9-1-1 system must provide these call-takers with immediate access to the information necessary to dispatch services to the correct location even if they are not familiar with the area. This may include technology that allows them to look up precise locations quickly or to relay calls to the appropriate authority automatically.

¶ 38 It is worth noting that, on appeal, the plaintiff also alleges that the 9-1-1 operator refused to dispatch police to the Sax's Speedi-Check in response to his second call unless he provided an exact street address for that establishment. While I recognize that the plaintiff cannot rely on this allegation to survive the defendants' motion to dismiss because he did not include it in his complaint, I believe dismissal was inappropriate for the reasons I have already discussed. I mention this new allegation only because it provides an even more dramatic illustration of the problem this case presents. Clearly, a 9-1-1 system cannot meet the needs of the communities it serves if its operators must rely on distressed callers to provide them with exact street addresses.

¶ 39 Finally, I believe that the errors that led to the lack of response that occurred in this case would have been highly improbable in a locally-based small town emergency response system

rather than the 9-1-1 system legislatively mandated by the Emergency Telephone System Act, a system that was intended to provide greater protection for the citizenry. The majority's interpretation of the relevant statutes leads to a result in which the plaintiff has no possible means of legal redress. I recognize that when a statute clearly and unambiguously leads to an unjust result, "the appeal must be to the General Assembly," and not to the courts. See *DeSmet*, 219 Ill. 2d at 510. Here, however, I do not believe the unjust result is required by a clear and unambiguous statute. For these reasons, I would reverse the trial court's order dismissing the plaintiff's case.

No. 5-19-0256

Cite as:	*Schultz v. St. Clair County*, 2020 IL App (5th) 190256
Decision Under Review:	Appeal from the Circuit Court of St. Clair County, No. 18-L-61; the Hon. Heinz M. Rudolf, Judge, presiding.
Attorneys for Appellant:	Rhonda D. Fiss, of Law Office of Rhonda D. Fiss, P.C., of Belleville, for appellant.
Attorneys for Appellee:	K. Andrew Hoerner, of Becker, Hoerner & Ysursa, P.C., of Belleville, for appellees.

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No. _____

IN THE SUPREME COURT OF ILLINOIS

LARRY E. SCHULTZ, Plaintiff-Petitioner, v. ST. CLAIR COUNTY, a Unit of Local Government in the State of Illinois; ST. CLAIR COUNTY CEN-COM 9-1-1, a Public Safety Agency and Answering Point Within the State of Illinois; EMERGENCY TELEPHONE SYSTEM BOARD OF ST. CLAIR COUNTY; and JOHN DOE/JANE DOE, Defendants-Respondents.	)	On Petition for Leave to Appeal from the Illinois Appellate Court, Fifth Judicial District, Case No: 5-19-0256 There on appeal from the Circuit Court of St. Clair County, Illinois, Case No: 18-L-61

LARRY E. SCHULTZ'S PETITION FOR LEAVE TO APPEAL

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Dated: January 13, 2021

Oral Argument Requested

E-FILED
1/13/2021 4:01 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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PRAYER FOR LEAVE TO APPEAL

COMES NOW Larry E. Schultz, underlying Plaintiff and Petitioner herein, and, pursuant to Illinois Supreme Court Rule 315, respectfully requests that this Honorable Court grant him leave to appeal the judgment of the Fifth District Appellate Court entered over dissent on December 9, 2021, in this case of first impression. If left in tact, the decision of the Appellate Court renders section 15.1 of the Emergency Telephone System Act meaningless and is inconsistent with this Court's prior analyses and decisions addressing absolute governmental immunity under the Tort Immunity Act. In his eloquent dissent, Justice Wharton explained how the plain language in section 15.1 limits the blanket immunity of the Tort Immunity Act by establishing a threshold for liability in the "performance, or provision" of 9-1-1 services. For all of the reasons set forth herein, the Petitioner prays that this Court grant permission for leave to appeal the decision of the Appellate Court.

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JUDGMENT BELOW

The Fifth District Appellate Court entered its judgment on December 9, 2020. No petition for re-hearing was filed.

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POINTS RELIED UPON IN SEEKING REVIEW

The Appellate Court's decision affirming the trial court's dismissal of Schultz' complaint based upon governmental tort immunity under 745 ILCS 10/ 4-102 wholly ignores the legislative purpose and language contained in the Emergency Telephone System Act and section 15.1 of the Act.

The Appellate Court's decision affirming the trial court's dismissal of Schultz' complaint based upon governmental tort immunity under 745 ILCS 10/ 4-102 is contrary to this Court's analysis, reasoning and decisions in cases where this Court considered whether statutes or amendments, such as section 15.1 of the Emergency Telephone System Act, which were enacted subsequent to the Tort Immunity Act, could and did dilute and/or modify the blanket immunity afforded by the Tort Immunity Act.

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STATEMENT OF FACTS

Larry Schultz and his wife, Laurene Schultz, were residents of Mascoutah, St. Clair County, Illinois on October 22, 2017. C-7,8. Around 8 p.m. that evening, Schultz found his wife's automobile parked at a convenience store in Mascoutah and called St. Clair County CENCOM 9-1-1 services to get police assistance to prevent his wife from driving away in her car. C-8. Police were dispatched at 8:05 p.m., but his wife had already driven away. A20 (Appendix in Plaintiff's brief). Schultz eventually located his wife's unoccupied vehicle at Sax's Speedi-Check in Mascoutah at approximately 8:27 p.m. and again called 9-1-1 to request assistance from police to prevent his wife from driving away in her car. (Disk containing electronic recording of Schultz's second call to CENCOM dispatch was submitted as A25 to supplement the Appendix of Plaintiff's brief) Schultz told the dispatcher that his wife was at Sax's in Mascoutah. A25 He advised the dispatcher that Mascoutah police knew where Sax's was located, that it was near the high school and on State Street. A25 The dispatcher initially tells Schultz that the police are not going to go driving all over the place, argues some more with Schultz, then repeatedly demands that Schultz provide an exact address for Sax's convenience store and call him back. A25 Although given enough information to direct police or virtually anyone to the store, the dispatcher taunts Plaintiff by repeating "gonna need an address" multiple times, then refuses to contact police or take any action whatsoever to intercept Schultz's wife and prevent her from driving. A25 While Schultz was trying to coax help from CENCOM and then trying obtain the exact address for Sax's, his wife exited the store, got into her car and drove away. C-9. Shortly after 9:00 p.m. Schultz's wife was found deceased from injuries sustained when her car ran off the road on Keck Avenue in Shiloh, Illinois, approximately thirty minutes

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after he made his last 9-1-1 call. A21-22 (Appendix in Plaintiff's brief).

On January 29, 2018, as duly appointed administrator of the Estate of Laurene T. Schultz, Schultz filed a five-count Complaint against St. Clair County, St. Clair County CENCOM, the Emergency Telephone System Board of St. Clair County, and John Doe/Jane Doe, as the yet unidentified dispatcher who refused to send police to assist Plaintiff at Sax's. A1-11, C- 7-18. On April 13, 2018, Defendants filed a Motion to Dismiss Plaintiff's Complaint under both 735 ILCS 5/2-615 and 5/2-619. C-38, C-51. On April 5, 2019, the Court entered an Order dismissing Plaintiff's Complaint in its entirety, with prejudice, pursuant to Section 2-619(a)(9). A15-18 (Appendix in Plaintiff's brief). On December 9, 2020, the Appellate Court, Fifth District, affirmed the trial court's dismissal of Schultz's complaint. A12-29.

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ARGUMENT

The Appellate Court affirmed the trial court's dismissal of Schultz' wrongful death complaint against various units of local government in St. Clair County, Illinois, based upon Section 4-102 of the Tort Immunity Act, (hereinafter TIA). Relying upon *DeSmet v County of Rock Island*, 219 Ill. 2d 497 (2006), the Court held that the Illinois legislature's exceptions to absolute immunity as specifically stated in Section 15.1 of the Emergency Telephone System Act (hereinafter ETSA) do not overcome the blanket immunity of Section 4-102 of the TIA because 1) police protective services are invoked and 2) the language of section 15.1 applied only to allegations that involve the technical aspect of providing emergency services, i.e. "infrastructure." (A-1) The Fifth District majority's analysis affirming dismissal of Schultz's complaint under section 4-102 of the TIA ignores significant factual distinctions from *DeSmet* that supports reversal of the Fifth District's decision: 1) There is no police involvement in the operative facts alleged; 2) Schultz has not sued the city or its police department, only the agencies and persons potentially responsible for the dispatcher's refusal to dispatch the police; and 3) the duties allegedly breached by defendants in this case are codified in the Emergency Telephone System Act. In addition, the Appellate Court's decision fails to mention this Court's "flashing yellow light" within the *DeSmet* analysis wherein this Court warned that section 4-102 of the TIA may not apply when other legislative enactments identify "a specially protected class of individuals to whom statutorily mandated duties are owed." *DeSmet* at 521. Section 15.1 of the ETSA fits within this Court's description of the legislative enactment that replaces the blanket immunity of section 4-102, and replaces it with immunity restricted by a plaintiff's ability to prove facts that meet the threshold of conduct or omission required by the very

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language of the statute . In this case, the Appellate Court's majority chose not to analyze the present case according to the unambiguous language contained in section 15.1 of the ETSA while ignoring this Court's dicta in *DeSmet* that invokes consideration of special protection statutes where blanket tort immunity is at issue. As a result, the majority's opinion in this case nullifies the protections section 15.1 affords persons such as Schultz, and immunizes the 9-1-1 dispatcher whose very job exists under the ETSA, who flatly refuses to send police assistance in an emergency-resulting in a death–for which there would be no legal redress. Schultz's complaint alleges that a St. Clair County 9-1-1 dispatcher acted with reckless and utter indifference when he refused, on two occasions, to send police to a known convenience store in the small town of Mascoutah to intercept Schultz' possibly inebriated wife before she could get into her car and drive it onto a public highway. After his second call and the dispatcher's second refusal, Schultz's wife exited the convenience store, drove miles on a public highway until the car ran off the roadway, and was killed. Review by this Court is necessary not only as further guidance in analyzing the effect of special protection statues upon the Tort Immunity Act, but more importantly, to recognize and give substance to the legislature's stated purpose of the ETSA. It is inconceivable that the legislature enacted section 15.1 with the intention that it be subjugated to blanket immunity under the TIA. The legislature enacted the amended provisions of section 15.1 of the ETSA in 2016 as 9-1-1 services expanded across this State for the purpose of protecting the citizens of Illinois where, as in the present case, a 9-1-1 dispatcher may refuse to engage police or offer any assistance after he/she is informed of a clear and present danger as it unfolds.

In the past this Court has provided analysis and direction that gives judicial authority to legislative enactments limiting blanket immunity where duties to protected individuals have been

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codified, such as in the Domestic Violence Act and the Emergency Medical Services Systems Act. The Appellate Court's majority opinion in the present case ignores the duties codified in the ETSA, and is not just contrary to public policy and the stated purpose of the Emergency Telephone System Act, it is cruel. The Appellate Court's misinterpretation of section 15.1 is neither what the legislature intended, nor compatible with this Court's prior analyses of the tension between blanket immunity and the special protection statutes of this State.

The Fifth District's analysis of section 15.1 side-steps the authority of the Illinois legislature's 2016 amendments to the ETSA when it misinterprets the otherwise clear and unambiguous language contained in section 15.1 of the statute, resulting in a twisted explanation that somehow refers only to a failure within the infrastructure and technology of the 9-1-1 system. The Appellate Court concluded that "The legislature's use of "in no event" to precede the immunity set forth in section 15.1. . . . ..indicates that it is designed to apply if no broader immunity is provided elsewhere in Illinois law." This statement ignores the remainder of that section, which places a condition on the blanket immunity: "in no event". . . . .. . ***unless*** *the act or omission constitutes gross negligence, recklessness, or intentional misconduct."* (Emphasis added). There is no ambiguity in the statutory language within section 15.1 that would allow the replacement of clear legislative mandate with murky, unwarranted interpretation. The appellate court's reasoning cannot withstand contextual scrutiny when considered in conjunction with the remainder of Section 15.1 which recognizes potential liability for acts or omissions within the services provided under the ETSA if factual allegations are sufficient to support claims of gross negligence/reckless indifference in the *"performance"* or *"provision"* of 9-1-1 services, as pointed out by Justice Wharton in his dissent. Contrary to the majority's opinion, there is no

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language within section 15.1 that reasonably leads to its conclusion that liability exists only within the context of infrastructure or technology, thereby leaving the public exposed, without redress, to reckless or intentional acts by dispatchers that will cost lives.

Respectfully, it is imperative in light of stated purpose of the ETSA and the safety it is intended to provide, that this Court determine whether the Fifth District's decision can stand in light of the 2016 amendment to section 15.1 of the ETSA. In *Moore v. Green, 219 Ill. 2d 470 (2006),* this Court held that the Illinois General Assembly intended that the limited immunities contained in section 305 of the Domestic Violence Act, rather than the blanket immunity of section 4-102, applied to claims that a municipality and two of its police officers were willful and wanton in failing to assist a domestic violence victim. This Court reasoned that the partial immunity afforded law enforcement in the Domestic Violence Act "is a direct expression of the legislative intent to reconcile the strongly worded purposes of the Act . . .." That same reasoning should be applied by this Court in the present case to reconcile the limited immunity provisions in 15.1 with the purpose of the Emergency Telephone System Act as stated by the Illinois legislature: "The General Assembly finds and declares that it is in the public interest to shorten the time required for a citizen to request and receive emergency aid. . . .It is the purpose of this Act to establish the number 9-1-1. . .and to encourage units of local government and combinations of such units to develop and improve emergency communication procedures and facilities in such a manner as to be able to quickly respond to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services." (50 ILCS 750/1, eff. 7/1/17).

Consistent with its decision in *Moore*, the Court held in *Abruzzo v City of Park Ridge* that

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the limited immunity provisions contained in the Emergency Medical Services Act, rather than the absolute immunity afforded by sections 6-105 and 6-106(a), applied to a plaintiff's claim that EMT's that dispatched to provide medical care left without providing medical services, resulting in the death of her son. *Abruzzo v City of Park Ridge*, 231 Ill. 2d 324 (2008). This Court opined that "When the language of a statute is clear and unambiguous, it must be applied without resort to other aids of construction." *Id. citing Murray v Chicago Youth Center*, 224 Ill. 2d 213, 235 (2007) The Court reasoned that when two statues that may apply appear to conflict an attempt to construe them in pari materia will be made, but legislative intent remains the foremost consideration. After considering the broad purposes of the EMS Act, this Court concluded that the EMS act was a comprehensive, omnibus source of rules governing the planning, delivery, evaluation, and regulation of emergency medical services in Illinois, and the defendant's narrow interpretation of the EMS Act's immunity provision would not lend to in pari materia interpretation. Given the expansive scope of the ETSA, the Court's reasoning in Abruzzo should be applied to the instant case: "When a general statutory provision and a more specific one relate to the same subject, we will presume that the legislature intended the more specific statute to govern. . .We will also presume that the legislature intended the more recent provision to control." *Abruzzo*, citing *Moore v. Green*, 219 Ill. 2d at 480 (2006). The Fifth District did not consider this Court's reasoning as set forth in *Moore* and *Abruzzo* when it analyzed section 15.1 of the ETSA, resulting in a precedent that is contrary to this Court's expressed intention to give meaning to legislative enactments whose purpose is to protect persons within the State of Illinois seeking emergency services.

Petitioner, Larry E. Schultz respectfully calls upon this Court to grant his Petition for

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Leave to Appeal, to consider the Illinois legislature's purpose, intention, and timing of its enactment of the amendment to section 15.1 of the Emergency Telephone System Act, in light of its decisions in *Moore* and *Abruzzo*, and reverse the decision of the Fifth District Appellate Court dismissing Petitioner's complaint.

/s/ Rhonda D. Fiss
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APPENDIX

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APPENDIX

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13 pages.

/s/ Rhonda D. Fiss
Rhonda D. Fiss #6191043

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CERTIFICATE OF SERVICE

The undersigned certifies that this document was submitted for filing to the Clerk's Office by electronic means on January 13, 2021, and that a copy of same was sent by electronic means to opposing counsel's email address provided below. Additional, three true and accurate copies of the above and foregoing were served on each party to this appeal represented by separate counsel by placing the copies in the U.S. Mail, postage prepaid, on this the 13th day of January, 2021, addressed as indicated:

Garrett Hoerner
Becker, Hoerner, Thompson & Ysursa, P.C.
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/s/ Rhonda D. Fiss
RHONDA D. FISS

Under the penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the above are true and correct.

/s/ Rhonda D. Fiss
RHONDA D. FISS

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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

LARRY E. SCHULTZ, SPECIAL ADMINISTRATOR OF THE ESTATE OF LAURENE T. SCHULTZ,

DECEASED,

Plaintiff,

vs.

ST. CLAIR COUNTY, a unit of local government in the State of Illinois, operating as a public agency,

and

ST. CLAIR COUNTY CENCOM 9-1-1, a public safety agency and answering point within the State of Illinois,

and

EMERGENCY TELEPHONE SYSTEM BOARD OF ST. CLAIR COUNTY

and

JOHN DOE/JANE DOE,

DEFENDANTS.

Case No: 18-L-61

COMPLAINT

Count I–Defendant, St. Clair County

Now comes the Plaintiff, Larry E. Schultz, , by and through his attorneys, The Law Office of Rhonda D. Fiss, P.C., and for Count I of his Complaint against the Defendant, St. Clair County, Illinois, alleges as follows:

1. At all times mentioned herein the Plaintiff, Larry Schultz, was a resident of Mascoutah, St

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Clair County, Illinois and is the duly appointed Special Administrator in Case # 17-P-883, by order of 12/29/17, for the purpose of proceeding in this cause of action under the Illinois Wrongful Death Statute, 740 ILCS 180/1 et. seq..

2. At all times mentioned herein, the Defendant, St. Clair County, was and remains a unit of local government within the State of Illinois that acts as a public agency for the purpose of and with the authority to provide police, medical and/or other emergency services for persons within said county.

3. At all times relevant herein, Defendant, St. Clair County, authorized and provided emergency services, including police and medical services, to residents of said county through it agent, Defendant, St. Clair County CENCOM 9-1-1.

4. That at all times mentioned herein, St. Clair County CENCOM 9-1-1 was and is a Public safety agency, as defined in 50 ILCS 750/1, et. seq., with authority to act as a public safety answering point operating under common management with St. Clair County, that received 9-1-1 calls and event notifications and processed those calls and events according to a specified operational policy.

5. That at all times mentioned herein, Defendant, St. Clair County, through its agent, CENCOM 9-1-1, employed persons as telecommunicators, who answered 9-1-1 calls coming into CENCOM from residents of St. Clair County, Illinois.

6. That at all times mentioned herein, Defendant, CENCOM 9-1-1 provided emergency services to residents of St. Clair County by relaying information from a telephone caller that is taken by its telecommunicator (also known as "dispatcher") and communicated to an appropriate public safety agency or other provider of emergency services.

7. That at all times mentioned herein, St. Clair County, acting through its public safety agency, CENCOM 9-1-1, and its dispatchers employed therein, had a duty to relay accurate information to providers of emergency services and to dispatch said emergency services in a timely manner to assist the county's residents in need of said services.

8. That in direct violation of duties set forth herein and 50 ILCS 750.15.1(a), St. Clair County, through its employee at CENCOM 9-1-1, hereinafter referred to as John Doe/Jane Doe, committed the following acts or omissions, all in reckless disregard and indifference for the safety of the decedent, Laurene Tracy Schultz:

   a. Dispatched Mascoutah police to Handi-Mart rather than All-Mart in Mascoutah, Illinois after taking a 9-1-1 call from decedent's husband, Larry Schultz, on October 22, 2017, who reported that the decedent was under the influence of alcohol and had temporarily parked her vehicle at Allmart in Mascoutah, Illinois; and requested officer assistance to prevent his wife from driving away in her car;

   b. Refused to dispatch the police to Sax's Speedi Check in Mascoutah, Illinois, after a second 9-1-1 call from decedent's husband, Larry Schultz on October 22, 2017,

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requesting police assistance to prevent his wife from driving her vehicle now parked as Sax's and that the decedent was going to hurt herself or others if she continued driving;

c. Failed and refused to contact Mascoutah police after two phone calls from decedent's husband pleading that police be sent to intercept his wife during two occasions where she had left her vehicle and could have been intercepted and prevented from driving the vehicle any further.

9. That at all times described above, the Defendant, St. Clair County, through its CENCOM employee, knew that accurate and timely information had to be given to Mascoutah police and knew that its willful and wanton refusal to contact police or send police to intercept the decedent at a known location in Mascoutah, in reckless disregard for decedent's safety and that of the general public, would likely result in harm to the general public, including the decedent.

10. As a direct and proximate result of the foregoing willful and wanton failure and refusal of the Defendant, St. Clair County, through its agency, CENCOM 9-1-1 and its employees and/or representative to act reasonably and with regard to the safety and welfare of residents of Mascoutah, St. Clair County, Illinois, Laurene Tracy Schultz drove her vehicle off of the highway and was killed.

11. That as of the date of her death on October 22, 2017, said decedent was and is survived by her spouse and three adult children, each of which may have sustained actual pecuniary losses and injuries due to the said wrongful death of the decedent, including, but not limited to: funeral expenses, loss of financial support, loss of goods and services, hedonic damages, and have been deprived of her society, companionship, advice and aid.

WHEREFORE, Plaintiff, Larry Schultz, prays that judgment be entered in favor of Plaintiff and against all Defendants, including St. Clair County, for compensatory and other damages to which he is entitled, and for his costs of suit.

BY: _____

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Count II–CENCOM 9-1-1

Now comes the Plaintiff, Larry E. Schultz, , by and through his attorneys, The Law Office of Rhonda D. Fiss, P.C., and for Count II of his Complaint against the Defendant, St. Clair County CEMCOM 9-1-1, hereinafter "CENCOM", alleges as follows:

1. At all times mentioned herein the Plaintiff, Larry Schultz, was a resident of Mascoutah, St Clair County, Illinois and is the duly appointed Special Administrator in Case # 17-P-883, by order of 12/29/17, for the purpose of proceeding in this cause of action under the Illinois Wrongful Death Statute, 740 ILCS 180/1 et. seq..

2. At all times mentioned herein, the Defendant, St. Clair County, was and remains a unit of local government within the State of Illinois that acts as a public agency for the purpose of and with the authority to provide police, medical and/or other emergency services for persons within said county.

3. At all times relevant herein, Defendant, St. Clair County, authorized and provided emergency services, including police and medical services, to residents of said county through it agent, Defendant, St. Clair County CENCOM 9-1-1.

4. That at all times mentioned herein, St. Clair County CENCOM 9-1-1 was and is a Public safety agency, as defined in 50 ILCS 750/1, et. seq., with authority to act as a public safety answering point operating under common management with St. Clair County, that received 9-1-1 calls and event notifications and processed those calls and events according to a specified operational policy.

5. That at all times mentioned herein, Defendant, St. Clair County, through its agent, CENCOM 9-1-1, employed persons as telecommunicators, who answered 9-1-1 calls coming into CENCOM from residents of St. Clair County, Illinois.

6. That at all times mentioned herein, Defendant, CENCOM 9-1-1 provided emergency services to residents of St. Clair County by relaying information from a telephone caller that is taken by its telecommunicator (also known as "dispatcher") and communicated to an appropriate public safety agency or other provider of emergency services.

7. That at all times mentioned herein, CENCOM 9-1-1, and its dispatchers employed therein, had a duty to relay accurate information to providers of emergency services and to dispatch said emergency services in a timely manner to assist the county's residents in need of said services.

8. That in direct violation of duties set forth herein and 50 ILCS 750.15.1(a), St. Clair County, through its employee with CENCOM, and said employee hereinafter referred to as John Doe/Jane Doe, committed the following acts or omissions, all in reckless disregard and indifference for the safety of the decedent, Laurene Tracy Schultz:

   a. Dispatched Mascoutah police to Handi-Mart rather than All-Mart in Mascoutah,

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Illinois after taking a 9-1-1 call from decedent's husband, Larry Schultz, on October 22, 2017, who reported that the decedent was under the influence of alcohol and had temporarily parked her vehicle at Allmart in Mascoutah, Illinois; and requested officer assistance to prevent his wife from driving away in her car;

b. Refused to dispatch the police to Sax's Speedi Check in Mascoutah, Illinois, after a second 9-1-1 call from decedent's husband, Larry Schultz on October 22, 2017, requesting police assistance to prevent his wife from driving her vehicle parked as Sax's after Schultz informed CENCOM that the decedent was going to hurt herself or others if she continued driving;

c. Failed and refused to contact Mascoutah police after two phone calls from decedent's husband pleading that police be sent to intercept his wife during two occasions where she had left her vehicle and could have been intercepted and prevented from driving the vehicle any further.

d. Manned the dispatch line with improperly trained and/or unqualified employees of CENCOM who performed their job with utter indifference to the safety and welfare of the citizens of St. Clair County, including the decedent.

e. Recklessly abandoned its own protocol and purpose by refusing to contact and/or dispatch Mascoutah Police Department to a known location within Mascoutah–Sax's–to intercept the decedent before she could drive away from said location;

f. Acted with utter indifference for the safety of citizens of St. Clair County, Illinois, including the decedent, by failing to properly supervise telecommunicators while knowing that a failure or refusal to properly transmit information to emergency providers would likely result in harm or even death to members of the general public, including the decedent.

9. That at all times described above, Defendant, CENCOM, through its agents, representative, and employee(s), knew that it should have reported Schultz's information to Mascoutah police and knew that its willful and wanton refusal to contact police or send police to intercept the decedent at a known location in Mascoutah, in reckless disregard for decedent's safety and that of the general public, would likely result in harm to the general public, including the decedent.

10. As a direct and proximate result of the foregoing willful and wanton failure and refusal of CENCOM 9-1-1 and its employees and/or representative to act reasonably and with regard to the safety and welfare of residents of Mascoutah, St. Clair County, Illinois, Laurene Tracy Schultz drove her vehicle away from Sax's then off of the highway and was killed when her vehicle crashed.

11. That as of the date of her death on October 22, 2017, said decedent was and is survived by her spouse and three adult children, each of which may have sustained actual pecuniary

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losses and injuries due to the said wrongful death of the decedent, including, but not limited to: funeral expenses, loss of financial support, loss of goods and services, hedonic damages, and have been deprived of her society, companionship, advice and aid.

WHEREFORE, Plaintiff, Larry Schultz, prays that judgment be entered in favor of Plaintiff and against all Defendants, including CENCOM 9-1-1, for compensatory and other damages to which he is entitled, and for his costs of suit.

BY: _____

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Count III–EMERGENCY TELEPHONE SYSTEM BOARD OF ST. CLAIR COUNTY

Now comes the Plaintiff, Larry E. Schultz, , by and through his attorneys, The Law Office of Rhonda D. Fiss, P.C., and for Count III of his Complaint against the Emergency Telephone System Board of St. Clair County, Illinois, alleges as follows:

1. At all times mentioned herein the Plaintiff, Larry Schultz, was a resident of Mascoutah, St Clair County, Illinois and is the duly appointed Special Administrator in Case # 17-P-883, by order of 12/29/17, for the purpose of proceeding in this cause of action under the Illinois Wrongful Death Statute, 740 ILCS 180/1 et. seq..

2. At all times mentioned herein, the Defendant, St. Clair County, was and remains a unit of local government within the State of Illinois that acts as a public agency for the purpose of and with the authority to provide police, medical and/or other emergency services for persons within said county; That said St. Clair County established the Emergency Telephone System Board of St. Clair County, to create, manage, and oversee various emergency services, including police and medical service, through a central dispatch center, CENCOM 9-1-1.

3. At all times relevant herein, Defendant, St. Clair County, authorized and provided emergency services, including police and medical services, to residents of said county through it agent, Defendant, St. Clair County CENCOM 9-1-1.

4. That at all times mentioned herein, St. Clair County CENCOM 9-1-1 was and is a Public safety agency, as defined in 50 ILCS 750/1, et. seq., with authority to act as a public safety

answering point operating under common management with St. Clair County, that received 9-1-1 calls and event notifications and processed those calls and events according to a specified operational policy.

5. That at all times mentioned herein, Defendant, St. Clair County, through its agent, CENCOM 9-1-1, employed persons as telecommunicators, who answered 9-1-1 calls coming into CENCOM from residents of St. Clair County, Illinois.

6. That at all times mentioned herein, Defendant, CENCOM 9-1-1 provided emergency services to residents of St. Clair County by relaying information from a telephone caller that is taken by its telecommunicator (also known as "dispatcher") and communicated to an appropriate public safety agency or other provider of emergency services.

7. That at all times mentioned herein, The St. Clair County Emergency Telephone System Board, had a duty to oversee and manage CENCOM 9-1-1 in a reasonable manner that included selecting and employing and managing qualified and competent employees to relay accurate information to providers of emergency services and to dispatch said emergency services in a timely manner to assist the county's residents in need of said services.

8. That in direct violation of duties set forth herein and 50 ILCS 750.15.1(a), the St. Clair County Emergency Telephone System Board, committed the following acts or omissions, all in reckless disregard and indifference for the safety of the decedent, Laurene Tracy Schultz:

   a. Failed to implement, oversee, and manage CENCOM's selection of telecommunicators so that qualified and competent employees were responsible for transmitting information to emergency service providers, including the Mascoutah Police Department, when it knew that failure or refusal to transmit such information would result in harm and/or death to members of the general public, including decedent;

   b. Failed to monitor the implementation of purpose, policies, and protocol of the emergency telecommunications system to protect members of the general public, including the decedent, from CENCOM'S failure or refusal to properly train and/or control the activities of its telecommunicators.

9. That at all times described above, Defendant, the Emergency Telephone System Board of St. Clair County, willfully and wantonly violated its duty to monitor and supervise CENCOM, as set forth above, all in reckless disregard for decedent's safety and that of the general public.

10. As a direct and proximate result of the foregoing willful and wanton failure and refusal of the Emergency Telephone System Board of St. Clair County to reasonably monitor and supervise CENCOM with regard to its selection, supervision, and management of its employees therein, CENCOM failed and refused to transmit emergency information to the

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Mascoutah Police Department while the decedent's vehicle was parked at Sax's, and as a result Laurene Tracy Schultz drove her vehicle away from Sax's then off of the highway and was killed when her vehicle crashed.

11. That as of the date of her death on October 22, 2017, said decedent was and is survived by her spouse and three adult children, each of which may have sustained actual pecuniary losses and injuries due to the said wrongful death of the decedent, including, but not limited to: funeral expenses, loss of financial support, loss of goods and services, hedonic damages, and have been deprived of her society, companionship, advice and aid.

WHEREFORE, Plaintiff, Larry Schultz, prays that judgment be entered in favor of Plaintiff and against all Defendants, including the Emergency Telephone System Board of St. Clair County, for compensatory and other damages to which he is entitled, and for his costs of suit.

BY: _____

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Count IV–JOHN DOE/JANE DOE

Now comes the Plaintiff, Larry E. Schultz, , by and through his attorneys, The Law Office of Rhonda D. Fiss, P.C., and for Count IV of his Complaint against the Defendants, John Doe/Jane Doe, alleges as follows:

1. At all times mentioned herein the Plaintiff, Larry Schultz, was a resident of Mascoutah, St Clair County, Illinois and is the duly appointed Special Administrator in Case # 17-P-883, by order of 12/29/17, for the purpose of proceeding in this cause of action under the Illinois Wrongful Death Statute, 740 ILCS 180/1 et. seq..

2. At all times mentioned herein, the Defendant, St. Clair County, was and remains a unit of local government within the State of Illinois that acts as a public agency for the purpose of and with the authority to provide police, medical and/or other emergency services for persons within said county.

3. At all times relevant herein, Defendant, St. Clair County, authorized and provided emergency services, including police and medical services, to residents of said county through it agent, Defendant, St. Clair County CENCOM 9-1-1.

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4. That at all times mentioned herein, St. Clair County CENCOM 9-1-1 was and is a Public safety agency, as defined in 50 ILCS 750/1, et. seq., with authority to act as a public safety answering point operating under common management with St. Clair County, that received 9-1-1 calls and event notifications and processed those calls and events according to a specified operational policy.

5. That at all times mentioned herein, Defendant, St. Clair County, through its agent, CENCOM 9-1-1, employed persons as telecommunicators, who answered 9-1-1 calls coming into CENCOM from residents of St. Clair County, Illinois; At all times mentioned herein Defendants, John Doe/Jane Doe, were employed by CENCOM/St. Clair County, Illinois, as telecommunicators whose job required them to transmit information from callers to emergency service providers to aid, protect, and assist members of the general public, including the decedent.

6. That at all times mentioned herein, Defendant, CENCOM 9-1-1 provided emergency services to residents of St. Clair County by relaying information from a telephone caller that is taken by its telecommunicator (also known as "dispatcher") and communicated to an appropriate public safety agency or other provider of emergency services.

7. That at all times mentioned herein, CENCOM 9-1-1, and its dispatchers employed therein, Defendants John Doe/Jane Doe, had a duty to relay accurate information to providers of emergency services and to dispatch said emergency services in a timely manner to protect and assist the county's residents in need of said services.

8. That in direct violation of duties set forth herein and 50 ILCS 750.15.1(a), St. Clair County, through its employee with CENCOM, John Doe/Jane Doe, committed the following acts or omissions, all in reckless disregard and indifference for the safety of the decedent, Laurene Tracy Schultz:

   a. Dispatched Mascoutah police to Handi-Mart rather than All-Mart in Mascoutah, Illinois after taking a 9-1-1 call from decedent's husband, Larry Schultz, on October 22, 2017, who reported that the decedent was under the influence of alcohol and had temporarily parked her vehicle at Allmart in Mascoutah, Illinois; and requested officer assistance to prevent his wife from driving away in her car;

   b. Refused to dispatch the police to Sax's Speedi Check in Mascoutah, Illinois, after a second 9-1-1 call from decedent's husband, Larry Schultz on October 22, 2017, requesting police assistance to prevent his wife from driving her vehicle parked as Sax's after Schultz informed CENCOM that the decedent was going to hurt herself or others if she continued driving;

   c. Failed and refused to contact Mascoutah police after two phone calls from decedent's husband pleading that police be sent to intercept his wife during two occasions where she had left her vehicle and could have been intercepted and prevented from driving the vehicle any further.

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d. Manned the dispatch line with improperly trained and/or unqualified employees of CENCOM who performed their job with utter indifference to the safety and welfare of the citizens of St. Clair County, including the decedent.

e. Recklessly abandoned its own protocol and purpose by refusing to contact and/or dispatch Mascoutah Police Department to a known location within Mascoutah–Sax's–to intercept the decedent before she could drive away from said location;

f. Acted with utter indifference for the safety of citizens of St. Clair County, Illinois, including the decedent, by failing to properly supervise telecommunicators while knowing that a failure or refusal to properly transmit information to emergency providers would likely result in harm or even death to members of the general public, including the decedent.

9. That at all times described above, Defendant, CENCOM, through its agents, representative, and employee(s), John Doe/Jane Doe, knew that it should have reported Schultz's information to Mascoutah police and knew that its willful and wanton refusal to contact police or send police to intercept the decedent at a known location in Mascoutah, in reckless disregard for decedent's safety and that of the general public, would likely result in harm to the general public, including the decedent.

10. As a direct and proximate result of the foregoing willful and wanton failure and refusal of CENCOM 9-1-1 and its employees and/or representatives, John Doe/Jane Doe, to act reasonably and with regard to the safety and welfare of residents of Mascoutah, St. Clair County, Illinois, Laurene Tracy Schultz drove her vehicle away from Sax's then off of the highway and was killed when her vehicle crashed.

11. That as of the date of her death on October 22, 2017, said decedent was and is survived by her spouse and three adult children, each of which may have sustained actual pecuniary losses and injuries due to the said wrongful death of the decedent, including, but not limited to: funeral expenses, loss of financial support, loss of goods and services, hedonic damages, and have been deprived of her society, companionship, advice and aid.

WHEREFORE, Plaintiff, Larry Schultz, prays that judgment be entered in favor of Plaintiff and against all Defendants, including John Doe/Jane Doe, for compensatory and other damages to which he is entitled, and for his costs of suit.

BY: _____

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Count V–Defendant, St. Clair County (Survival Action)

Now comes the Plaintiff, Larry E. Schultz, , by and through his attorneys, The Law Office of Rhonda D. Fiss, P.C., and for Count V of his Complaint against the Defendant, St. Clair County, Illinois, alleges as follows:

1. At all times mentioned herein the Plaintiff, Larry Schultz, was a resident of Mascoutah, St Clair County, Illinois and is the duly appointed Special Administrator in Case # 17-P-883, by order of 12/29/17, for the purpose of proceeding in this cause of action under the Illinois Wrongful Death Statute, 740 ILCS 180/1 et. seq..

2. At all times mentioned herein, the Defendant, St. Clair County, was and remains a unit of local government within the State of Illinois that acts as a public agency for the purpose of and with the authority to provide police, medical and/or other emergency services for persons within said county.

3. At all times relevant herein, Defendant, St. Clair County, authorized and provided emergency services, including police and medical services, to residents of said county through it agent, Defendant, St. Clair County CENCOM 9-1-1.

4. That at all times mentioned herein, St. Clair County CENCOM 9-1-1 was and is a Public safety agency, as defined in 50 ILCS 750/1, et. seq., with authority to act as a public safety answering point operating under common management with St. Clair County, that received 9-1-1 calls and event notifications and processed those calls and events according to a specified operational policy.

5. That at all times mentioned herein, Defendant, St. Clair County, through its agent, CENCOM 9-1-1, employed persons as telecommunicators, who answered 9-1-1 calls coming into CENCOM from residents of St. Clair County, Illinois.

6. That at all times mentioned herein, Defendant, CENCOM 9-1-1 provided emergency services to residents of St. Clair County by relaying information from a telephone caller that is taken by its telecommunicator (also known as "dispatcher") and communicated to an appropriate public safety agency or other provider of emergency services.

7. That at all times mentioned herein, St. Clair County, acting through its public safety agency, CENCOM 9-1-1, and its dispatchers employed therein, had a duty to relay accurate information to providers of emergency services and to dispatch said emergency services in a timely manner to assist the county's residents in need of said services.

8. That in direct violation of duties set forth herein and 50 ILCS 750.15.1(a), St. Clair County, through its employee at CENCOM 9-1-1, hereinafter referred to as John Doe/Jane Doe, committed the following acts or omissions, all in reckless disregard and indifference for the safety of the decedent, Laurene Tracy Schultz:

   a. Dispatched Mascoutah police to Handi-Mart rather than All-Mart in Mascoutah,

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Illinois after taking a 9-1-1 call from decedent's husband, Larry Schultz, on October 22, 2017, who reported that the decedent was under the influence of alcohol and had temporarily parked her vehicle at Allmart in Mascoutah, Illinois; and requested officer assistance to prevent his wife from driving away in her car;

b. Refused to dispatch the police to Sax's Speedi Check in Mascoutah, Illinois, after a second 9-1-1 call from decedent's husband, Larry Schultz on October 22, 2017, requesting police assistance to prevent his wife from driving her vehicle now parked as Sax's and that the decedent was going to hurt herself or others if she continued driving;

c. Failed and refused to contact Mascoutah police after two phone calls from decedent's husband pleading that police be sent to intercept his wife during two occasions where she had left her vehicle and could have been intercepted and prevented from driving the vehicle any further.

9. That at all times described above, the Defendant, St. Clair County, through its CENCOM employee, knew that accurate and timely information had to be given to Mascoutah police and knew that its willful and wanton refusal to contact police or send police to intercept the decedent at a known location in Mascoutah, in reckless disregard for decedent's safety and that of the general public, would likely result in harm to the general public, including the decedent.

10. As a direct and proximate result of the foregoing willful and wanton failure and refusal of the Defendant, St. Clair County, through its agency, CENCOM 9-1-1 and its employees and/or representative to act reasonably and with regard to the safety and welfare of residents of Mascoutah, St. Clair County, Illinois, Laurene Tracy Schultz drove her vehicle off of the highway and was killed.

11. That upon information and belief, the decedent suffered physical pain and anguish of an extreme and serious nature, which injuries and damage survive the death of the decedent pursuant to 755 5/27-6, commonly known as the Illinois Survival Act.

WHEREFORE, Plaintiff, Larry Schultz, prays that judgment be entered in favor of Plaintiff and against all Defendants, including St. Clair County, for compensatory and other damages to which he is entitled, and for his costs of suit.

BY: _____

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2020 IL App (5th) 190256

NO. 5-19-0256

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

LARRY E. SCHULTZ, Special Administrator of the Estate of Laurene T. Schultz, Deceased, Plaintiff-Appellant, v. ST. CLAIR COUNTY, a Unit of Local Government in the State of Illinois; ST. CLAIR COUNTY CEN-COM 9-1-1, a Public Safety Agency and Answering Point Within the State of Illinois; EMERGENCY TELEPHONE SYSTEM BOARD OF ST. CLAIR COUNTY; and JOHN DOE/JANE DOE, Defendants (St. Clair County, a Unit of Local Government in the State of Illinois; St. Clair County CENCOM 9-1-1, a Public Safety Agency and Answering Point Within the State of Illinois; and Emergency Telephone System Board of St. Clair County, Defendants-Appellees).	)	Appeal from the Circuit Court of St. Clair County. No. 18-L-61 Honorable Heinz M. Rudolf, Judge, Presiding.

JUSTICE MOORE delivered the judgment of the court, with opinion.
Presiding Justice Boie concurred in the judgment and opinion.
Justice Wharton dissented, with opinion.

OPINION

¶ 1 The plaintiff, Larry E. Schultz, as special administrator of the estate of Laurene T. Schultz, deceased, appeals the April 5, 2019, order of the circuit court of St. Clair County. In this order, the circuit court dismissed, pursuant to section 2-619 of the Code of Civil Procedure

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(Code) (735 ILCS 5/2-619 (West 2018)), his complaint against the defendants, St. Clair County (County), a unit of local government in the State of Illinois; St. Clair County CENCOM 9-1-1 (CENCOM), a public safety agency and answering point within the State of Illinois; Emergency Telephone System Board of St. Clair County (ETSB); and John Doe/Jane Doe (Doe).[1] For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 On January 29, 2018, the plaintiff filed a complaint in the circuit court of St. Clair County, alleging a cause of action against the defendants, pursuant to the Wrongful Death Act (740 ILCS 180/1 *et seq.* (West 2016)), based on events leading to his wife's death on October 22, 2017. Count I alleges that the County authorized and provided emergency telephone services to residents through its agent, CENCOM. According to count I, the County, through Doe, its dispatch employee, acted "in reckless disregard and indifference for the safety of the decedent" in the following ways: (1) dispatched Mascoutah police to Handi-Mart, rather than All-Mart, after taking a 9-1-1 call from the plaintiff, who reported that the decedent was under the influence of alcohol, had temporarily parked her vehicle at All-Mart, and requested police assistance to prevent her from driving away in her car; (2) refused to dispatch the police to Sax's Speedi Check in Mascoutah after a second 9-1-1 call from the plaintiff, requesting police assistance to prevent the decedent from driving her vehicle, which was then parked at Sax's; and (3) failed and refused to contact Mascoutah police after two calls from the plaintiff pleading that police be sent to intercept the decedent.

¶ 4 According to count I of the complaint, the County, through Doe, knew that accurate and timely information had to be given to Mascoutah police and knew that "its willful and wanton

[1]Jane Doe/John Doe were unrepresented in the circuit court proceedings and are unrepresented in this appeal. We refer to the appellees as defendants for the sake of simplicity.

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refusal to contact police or send police to intercept the decedent at a known location in Mascoutah, in reckless disregard for [the] decedent's safety and that of the general public, would likely result in harm to the general public, including the decedent." Count I further alleges that, as a direct and proximate result of the foregoing "willful and wanton refusal" of the County, through its agency, CENCOM, and its employee, Doe, the decedent drove her vehicle off the highway and was killed.

¶ 5 Count II of the complaint contains the same allegations as count I but is directed toward CENCOM, which the complaint alleges is a "public safety agency" as defined by section 2 of the Emergency Telephone System Act (50 ILCS 750/2 (West 2016)). Count III of the complaint is directed toward ETSB, which the complaint alleges had a duty to oversee and manage CENCOM in a reasonable manner. According to count III, ETSB acted in "reckless disregard and indifference for the safety of" the decedent and "willfully and wantonly" violated its duty when it failed to implement, oversee, and manage CENCOM's selection of employees, policies, and protocol in a reasonable manner. Count IV of the complaint mirrors counts I and II, but is directed toward Doe, the unnamed dispatcher. Count V of the complaint alleges a cause of action pursuant to the Survival Act (755 ILCS 5/27-6 (West 2016)) against the County.

¶ 6 On April 13, 2018, the defendants filed a combined motion to dismiss the complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2018)). As for its motion pursuant to section 2-615 of the Code (*id.* § 2-615), the defendants argued that the complaint contained insufficient and conclusory allegations of willful and wanton misconduct. Pursuant to section 2-619(a)(2) of the Code (*id.* § 2-619(a)(2)), the defendants argued that counts II and III of the complaint should be dismissed because neither CENCOM nor ETSB are separate legal entities from the County, and thus do not have the capacity to be sued.

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¶ 7 The remainder of the defendants' motion to dismiss was brought pursuant to section 2-619(a)(9) of the Code and directed toward the entirety of the complaint. Therein, the defendants argued, *inter alia*, that they are immune from liability pursuant to section 4-102 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/4-102 (West 2016)). After full briefing in the circuit court, a hearing was held on the defendants' motion to dismiss on March 12, 2019. The circuit court took the motion under advisement, and on April 5, 2019, entered an order granting the motion. On May 2, 2019, the plaintiff filed a motion to reconsider, which the circuit court denied on June 19, 2019. Thereafter, the plaintiff filed a timely notice of appeal.

¶ 8 II. ANALYSIS

¶ 9 The circuit court granted the motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2018)), as well as section 2-619(a)(9) of the Code (*id.* § 2-619(a)(9)). Our standard of review is *de novo* under either section 2-615 or section 2-619 of the Code. *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 29. In addition, we may affirm the circuit court's dismissal on any proper basis found in the record. *Id.* ¶ 47. With these principles in mind, we begin with an analysis of that portion of the motion that was brought pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2018)), and specifically, the issue of the defendants' immunity from suit, because we conclude it is dispositive of this appeal.

> " 'The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation. [Citation.] When ruling on a section 2-619 motion, the court must construe the pleadings and supporting documents in the light most favorable to the nonmoving party. [Citation.] The reviewing court must consider whether the existence of a genuine issue of material fact should have precluded the dismissal or,

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absent an issue of material fact, whether a dismissal was proper as a matter of law. [Citation.]' " *CNA International, Inc.*, 2012 IL App (1st) 112174, ¶ 31 (quoting *Zerjal v. Daech & Bauer Construction, Inc.*, 405 Ill. App. 3d 907, 910-11 (2010)).

¶ 10 Our analysis of the propriety of the circuit court's dismissal of the plaintiff's complaint pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2018)) turns on the application of section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102 (West 2016)) and section 15.1 of the Emergency Telephone System Act (50 ILCS 750/15.1 (West 2016)) to the facts as alleged in the plaintiff's complaint. The application of, and interplay between, these two statutory sections is crucial to determining the propriety of the dismissal of the plaintiff's complaint pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2018)). This is because, while section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102 (West 2016)) is a "blanket immunity" with no exception for "willful and wanton conduct" (*DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 515 (2006)), section 15.1(a) of the Emergency Telephone System Act provides that "[i]n no event" shall there be liability unless conduct "constitutes gross negligence, recklessness, or intentional misconduct." 50 ILCS 750/15.1(a) (West 2016). Thus, if section 4-102 of the Tort Immunity Act applies to the conduct alleged in the complaint, dismissal under section 2-619(a)(9) of the Code was proper. In contrast, if the standard for liability set forth in section 15.1 of the Emergency Telephone System Act applies, a question would remain as to whether the conduct alleged in the complaint "constitutes gross negligence, recklessness, or intentional misconduct."

¶ 11 Section 4-102 of the Tort Immunity Act provides:

"Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection

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service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals." 745 ILCS 10/4-102 (West 2016).

¶ 12 The complaint alleges that the plaintiff called 9-1-1 on two occasions to request police assistance to intercept the decedent as she was driving under the influence of alcohol and had temporarily parked her car at two separate locations. Our supreme court in *DeSmet* held that section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102 (West 2002)) is implicated where dispatch services are called upon to dispatch police in response to a request for such services and the police do not respond. *DeSmet*, 219 Ill. 2d at 513-14. The *DeSmet* court made clear that section 4-102 of the Tort Immunity Act is "comprehensive in the breadth of its reach, addressing situations where no police protection is provided to the general public and those in which inadequate protection is provided." *Id.* at 515.

¶ 13 Pursuant to our supreme court's holding in *DeSmet*, section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102 (West 2016)) applies to immunize the defendants from liability under the facts as alleged in the complaint. The plaintiff argues, however, that section 15.1 of the Emergency Telephone System Act (50 ILCS 750/15.1 (West 2016)) should control because it applies specifically to the provision of 9-1-1 services. Our colleagues in the first district considered this issue in *Carolan v. City of Chicago*, 2018 IL App (1st) 170205, ¶ 27, holding that where a 9-1-1 call requests police intervention, it involves a police protection service for the purposes of section 4-102 of the Tort Immunity Act, "which is not supplanted by section 15.1 of the Emergency Telephone System Act." We recognize that the analysis in *Carolan* considered a prior version of section 15.1 of the Emergency Telephone System Act, which was amended effective January 1, 2016. However, for the following reasons, we too hold that the "blanket

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immunity" found in section 4-102 of the Tort Immunity Act applies where a 9-1-1 call requests police intervention and liability is premised on the failure of a dispatcher to dispatch police in a timely fashion.

¶ 14 We begin with an examination of the Emergency Telephone System Act (50 ILCS 750/0.01 *et seq.* (West 2016)). The purpose of the statute is stated in section 1 as follows:

> "It is the purpose of this Act to establish the number '9-1-1' as the primary emergency telephone number for use in this State and to encourage units of local government and combinations of such units to develop and improve emergency communication procedures and facilities in such a manner as to be able to quickly respond to any person calling the telephone number '9-1-1' seeking police, fire, medical, rescue, and other emergency services." *Id.* § 1.

¶ 15 The Emergency Telephone System Act directs that all agencies providing emergency services be within the jurisdiction of a 9-1-1 system and that by July 1, 2020, every 9-1-1 system in Illinois shall provide Next Generation 9-1-1 service.[2] *Id.* § 3(b). Section 6 of the statute requires that all systems be designed to meet the specific requirements of each community and public agency served by the system. *Id.* § 6. In addition, section 6 requires that every system have the capability to utilize the direct dispatch method, relay method, transfer method, or referral method in emergency calls. *Id.* Section 6.1 of the Emergency Telephone System Act requires the use of telecommunications technology for hearing-impaired and speech-impaired individuals. *Id.* § 6.1. Section 10 provides for the establishment of "uniform technical and operational standards for all 9-1-1 systems in Illinois." *Id.* § 10.

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[2]Next Generation 9-1-1 refers to an upgrade from an analog 9-1-1 system to a digital or Internet Protocol-based 911 system. *Next Generation 911*, 911.gov, https://www.911.gov/issue_nextgeneration911.html (last visited Dec. 2, 2020) [https://perma.cc/D4GC-4WB6].

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¶ 16 Thus, an overview of the Emergency Telephone System Act reveals that its purpose is to govern the technical aspects of providing emergency services statewide via a 9-1-1 system. "The primary goal of statutory construction is to ascertain and give effect to the intent of the legislature." *In re Detention of Powell*, 217 Ill. 2d 123, 135 (2005). As such, it has been said that the purpose of section 15.1 of the Emergency Telephone System Act (50 ILCS 750/15.1 (West 2016)) "is to provide limited tort immunity for the agencies responsible for creating and running the emergency telephone system in Illinois." *Chiczewski v. Emergency Telephone System Board of Du Page County*, 295 Ill. App. 3d 605, 608 (1997). This interpretation is consistent with the language of 15.1, which focuses on the technical aspects of providing 9-1-1 services, as follows:

> "In no event shall a *** public safety answering point, emergency telephone system board, or unit of local government assuming the duties of an emergency telephone system board, *** or its officers, employees, assigns, or agents be liable for any civil damages *** that directly or indirectly results from, or is caused by, any act or omission in the development, design, installation, operation, maintenance, performance, or provision of 9-1-1 service required by this Act, unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct." 50 ILCS 750/15.1(a) (West 2016).

¶ 17 Based on the foregoing, this court is not convinced that section 15.1 of the Emergency Telephone System Act was designed to apply to situations in which a plaintiff alleges that a dispatcher failed or refused to dispatch emergency services in response to a call via the 9-1-1 system. Rather, because the Emergency Telephone System Act is designed to ensure the infrastructure is in place to provide 9-1-1 services to all of Illinois, it is reasonable to interpret section 15.1 of the statute to provide an immunity for failures within that infrastructure and technology itself. However, assuming that the legislature intended that an immunity be provided

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for misconduct on the part of dispatchers, we agree with the defendants that the provision was not designed to supersede the immunities set forth in the Tort Immunity Act. See 745 ILCS 10/1-101 *et seq.* (West 2016).

¶ 18 "A court must construe statutes relating to the same subject matter with reference to one another so as to give effect to the provisions of each, if reasonable." *Harris v. Thompson*, 2012 IL 112525, ¶ 25 (citing *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 391-92 (1998)). 9-1-1 dispatch services could potentially implicate or coincide with police activities as are addressed in article IV of the Tort Immunity Act (745 ILCS 10/4-101 *et seq.* (West 2016)), fire protection and rescue activities as are addressed in article V of the Tort Immunity Act (745 ILCS 10/5-101 *et seq.* (West 2016)), or medical, hospital, and public health activities as are addressed in article VI of the Tort Immunity Act (745 ILCS 10/6-101 *et seq.* (West 2016)). There are various provisions throughout each of these articles that provide an array of immunities ranging from "blanket immunities" to immunity absent willful and wanton conduct.

¶ 19 The legislature's use of "in no event" to precede the immunity set forth in section 15.1 when it changed the language to include "the provision of 9-1-1 service" indicates that it is designed to apply if no broader immunity is provided elsewhere in Illinois law. This is a reasonable interpretation of that section that gives effect to section 15.1, as well as to all the potentially implicated provisions of the Tort Immunity Act. See *Harris*, 2012 IL 112525, ¶ 25 (citing *Henrich*, 186 Ill. 2d at 391-92). Accordingly, we find that, assuming that section 15.1 of the Emergency Telephone System Act (50 ILCS 750/15.1 (West 2016)) is implicated in a case that is based on the conduct of 9-1-1 operators or dispatchers, it is intended to be a "catch-all" immunity provision to be applied if no section of the Tort Immunity Act applies to the conduct at issue. Based on the foregoing, section 4-102 of the Tort Immunity Act (745 ILCS 10/4-102

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(West 2016)) applies to the conduct at issue and was properly applied by the circuit court to dismiss the plaintiff's complaint pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2018)).

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the April 5, 2019, order of the circuit court of St. Clair County that dismissed the plaintiff's complaint.

¶ 22 Affirmed.

¶ 23 JUSTICE WHARTON, dissenting:

¶ 24 I disagree with the conclusion reached by the majority for two principle reasons. First, I believe the majority's interpretation of section 15.1 of the Emergency Telephone System Act overlooks express language in the statute, making its limited tort immunity applicable to the "performance[ ] or provision of 9-1-1 service." See 50 ILCS 750/15.1(a) (West 2016). Second, unlike the majority, I am reluctant to conclude, based on the pleadings, that the failure to dispatch that occurred in this case was not the result of a "failure within the infrastructure and technology" of the system itself. For these reasons, I respectfully dissent.

¶ 25 The best evidence of legislative intent is the express language of the statute itself. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 421 (2002). If statutory language is clear and unambiguous, there is no need to look beyond that language and "resort to other tools of statutory construction." *Id.* at 421-22. Here, the express language of section 15.1 provides that its limited immunity applies to liability that results from "any act or omission in the development, design, installation, operation, maintenance, *performance, or provision of 9-1-1 service* required by [the Emergency Telephone System] Act." (Emphasis added.) 50 ILCS

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750/15.1(a) (West 2016). Thus, by its express terms, the statute applies to the performance or provision of 9-1-1 services involved in this case.

¶ 26 Although we need not look beyond this clear and unambiguous statutory language, I believe that a consideration of the purpose and policy behind the Emergency Telephone System Act supports my conclusion that section 15.1 is applicable. As the majority points out, the stated purpose of the Emergency Telephone System Act is "to encourage units of local government *** to develop and improve emergency communication *procedures* and facilities in such a manner as to be able to quickly respond to any person calling the telephone number '9-1-1' seeking *** emergency services." (Emphasis added.) *Id.* § 1. To this end, section 6 mandates that all 9-1-1 systems "be designed to meet the specific requirements of each community and public agency served by the system." *Id.* § 6. To satisfy this requirement, a system must not only meet the technological standards set out in the Emergency Telephone System Act, it must also include procedures designed to ensure that necessary services are dispatched when and where they are needed. Indeed, section 6 contains a declaration of legislative purpose that explicitly states, "The General Assembly finds and declares that the most critical aspect of the design of any system is the procedure established for handling a telephone request for emergency services." *Id.*

¶ 27 I recognize that this does not end the inquiry. The plaintiff called 9-1-1 on October 22, 2017, to request police services. The Tort Immunity Act provides blanket immunity from liability "for failure to provide adequate police protection or service." 745 ILCS 10/4-102 (West 2016). As the majority explains, the Illinois Supreme Court found that this blanket immunity provision applied in a case involving a telephone call requesting police assistance for an apparent motor vehicle accident. See *DeSmet*, 219 Ill. 2d at 515. This court is obliged to follow the

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holdings of the Illinois Supreme Court. *Mekertichian v. Mercedes-Benz U.S.A., L.L.C.*, 347 Ill. App. 3d 828, 836 (2004). However, I do not believe *DeSmet* is controlling for two reasons.

¶ 28 First and foremost, the *DeSmet* court did not address the issue before us in this case. There, a motorist used her cell phone to report that she saw another vehicle run off the road and into a ditch. *DeSmet*, 219 Ill. 2d at 500-01. I note that the opinion does not specify whether the motorist dialed 9-1-1. See *id.* (stating only that she spoke to the clerk of the Village of Orion). In any event, no one responded to the scene, and the driver of the other vehicle was found deceased three days later. *Id.* at 502. The administrator of the decedent's estate filed a lawsuit naming numerous public officials and entities as defendants. *Id.* at 502-03. The trial court granted the defendants' motions to dismiss the complaint, finding the blanket immunity provision in section 4-102 of the tort immunity act to be applicable. *Id.* at 503.

¶ 29 On appeal to the supreme court, the plaintiff argued that section 4-102 did not apply in cases where a municipality "sends no assistance whatsoever in response to a request for help at an accident scene." *Id.* at 504. She argued that this " 'complete absences of *any* police service' " was not the same thing as a " 'failure to provide *adequate* police service.' " (Emphases in original.) *Id.* at 512. The supreme court rejected this argument—an argument focused on the language of section 4-102 itself—by explaining that section 4-102 "is comprehensive in the breadth of its reach, addressing situations where no police protection is provided *** and those in which inadequate protection is provided." *Id.* at 515.

¶ 30 The plaintiff in *DeSmet* also argued that the motorist's call for assistance did not necessarily trigger a police search; rather, the call was a request "to send rescue personnel, whose misconduct is not shielded by section 4-102." *Id.* at 504-05. The supreme court rejected this argument too, explaining that "an emergency medical response was not indicated" unless

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and until police determined that there was an accident requiring emergency medical services. *Id.* at 512. The question was whether section 4-102 applied, "rather than some other statutory provision of the Tort Immunity Act," presumably one governing immunity for emergency medical personnel. *Id.* Thus, the *DeSmet* court never considered whether section 15.1 of the Emergency Telephone System Act applied.

¶ 31 The second reason I do not believe *DeSmet* is controlling is that the court expressly recognized that the blanket immunity of section 4-102 might not apply in cases where other legislative enactments identify "a specially protected class of individuals to whom statutorily mandated duties are owed." *Id.* at 521. The Emergency Telephone System Act mandates several duties to the citizens living within a geographic area served by a 9-1-1 system. It is an alleged failure to perform these statutorily mandated duties that is at issue in this case.

¶ 32 I am also not convinced that the First District's decision in *Carolan* requires us to reach the result reached by the majority. I reach this conclusion for three reasons.

¶ 33 First, the *Carolan* court construed an earlier version of section 15.1. See *Carolan*, 2018 IL App (1st) 170205, ¶ 20. Although the version of the statute in effect when the events in that case occurred applied to liability arising from " 'operating or implementing any plan or system' " mandated by the Emergency Telephone System Act (see *id.* (quoting 50 ILCS 750/15.1 (West 2008))), it did not contain language making it applicable to the "performance[ ] or provision of 9-1-1 service," as the amended version applicable to this case does (see 50 ILCS 750/15.1(a) (West 2016); Pub. Act 99-6, § 2-10 (eff. Jan. 1, 2016) (amending 50 ILCS 750/15.1)). In finding the earlier version to be inapplicable, the *Carolan* court emphasized that the preamendment statutory language "did not expressly contemplate the provision of emergency services."

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Carolan, 2018 IL App (1st) 170205, ¶ 21. That is not true of the amended version of the statute, which was in effect when the events at issue in this case took place.

¶ 34 Second, *Carolan* is factually distinguishable from the case before us, although I acknowledge that this distinction does not appear to have played a role in the First District's analysis. There, the delay in dispatching police to the scene of a robbery in progress appeared to have been the result of not having enough units available to respond, rather than a failure on the part of the 9-1-1 system or its dispatchers. See *id.* ¶ 7.

¶ 35 Third, this court is not obliged to follow the holdings of other districts of the Illinois Appellate Court. *Schramer v. Tiger Athletic Ass'n of Aurora*, 351 Ill. App. 3d 1016, 1020 (2004). I therefore believe that neither *DeSmet* nor *Carolan* require us to depart from the unambiguous statutory language making section 15.1's limited immunity provision applicable to the provision and performance of 9-1-1 service mandated by the Emergency Telephone System Act.

¶ 36 Moreover, I would find that dismissal was inappropriate in this case, even if I were to agree with the majority that the Emergency Telephone System Act governs only to "the technical aspects of providing 9-1-1 services" and that section 15.1 therefore applies only to cases involving "failures within that technology and infrastructure itself." I emphasize that when ruling on a motion to dismiss, a court must consider the pleadings and any supporting documentation in the light most favorable to the nonmoving party. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. Applying this standard, I believe it would be premature to determine at the pleading stage that the failure to dispatch police in this case resulted from "misconduct on the part of the dispatchers" and not from a failure within the infrastructure of the system itself.

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¶ 37 In his complaint, the plaintiff alleged that Mascoutah police were dispatched to a Handi-Mart instead of an All-Mart. It is reasonable to assume that a 9-1-1 operator who is unfamiliar with the geographic area is more likely than a local operator to confuse similarly named establishments and to send police or other emergency responders to the wrong location as a result. It is also reasonable to assume that the legislature took this possibility into account when mandating that 9-1-1 systems "be designed to meet the specific requirements of each community" served. See 50 ILCS 750/6 (West 2016). Operators and dispatchers are the essential human nexus between distressed callers and the emergency assistance they are requesting. In order to effectively meet the individual needs of the communities served, a 9-1-1 system must provide these call-takers with immediate access to the information necessary to dispatch services to the correct location even if they are not familiar with the area. This may include technology that allows them to look up precise locations quickly or to relay calls to the appropriate authority automatically.

¶ 38 It is worth noting that, on appeal, the plaintiff also alleges that the 9-1-1 operator refused to dispatch police to the Sax's Speedi-Check in response to his second call unless he provided an exact street address for that establishment. While I recognize that the plaintiff cannot rely on this allegation to survive the defendants' motion to dismiss because he did not include it in his complaint, I believe dismissal was inappropriate for the reasons I have already discussed. I mention this new allegation only because it provides an even more dramatic illustration of the problem this case presents. Clearly, a 9-1-1 system cannot meet the needs of the communities it serves if its operators must rely on distressed callers to provide them with exact street addresses.

¶ 39 Finally, I believe that the errors that led to the lack of response that occurred in this case would have been highly improbable in a locally-based small town emergency response system

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rather than the 9-1-1 system legislatively mandated by the Emergency Telephone System Act, a system that was intended to provide greater protection for the citizenry. The majority's interpretation of the relevant statutes leads to a result in which the plaintiff has no possible means of legal redress. I recognize that when a statute clearly and unambiguously leads to an unjust result, "the appeal must be to the General Assembly," and not to the courts. See *DeSmet*, 219 Ill. 2d at 510. Here, however, I do not believe the unjust result is required by a clear and unambiguous statute. For these reasons, I would reverse the trial court's order dismissing the plaintiff's case.

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No. 5-19-0256

Cite as:	*Schultz v. St. Clair County*, 2020 IL App (5th) 190256
Decision Under Review:	Appeal from the Circuit Court of St. Clair County, No. 18-L-61; the Hon. Heinz M. Rudolf, Judge, presiding.
Attorneys for Appellant:	Rhonda D. Fiss, of Law Office of Rhonda D. Fiss, P.C., of Belleville, for appellant.
Attorneys for Appellee:	K. Andrew Hoerner, of Becker, Hoerner & Ysursa, P.C., of Belleville, for appellees.

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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

LARRY E. SCHULTZ, as Special Administrator of the **ESTATE OF LAURENE T. SCHULTZ, DECEASED,**	)	
Plaintiff,	)	
vs.	)	No. 18-L-61
ST. CLAIR COUNTY, ST. CLAIR COUNTY CENCOM 9-1-1, EMERGENCY TELEPHONE BOARD OF ST. CLAIR COUNTY and **JOHN DOE/JANE DOE,**	)	
Defendants.	)	JURY TRIAL DEMANDED

MOTION TO DISMISS

Come now Defendants, **St. Clair County, St. Clair County CENCOM 9-1-1** and **Emergency Telephone System Board of St. Clair County**, by and through their attorneys, **Becker, Hoerner, Thompson & Ysursa, P.C.**, and for their Combined Motion to Dismiss pursuant to sections 2-619.1 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619.1), states as follows:

BACKGROUND

On January 29, 2018, Plaintiff filed his five (5) count Complaint against Defendants, St. Clair County (County), St. Clair County CENCOM 9-1-1 (CENCOM), Emergency Telephone System Board of St. Clair County (ETSB) and John Doe/Jane Doe (Doe), alleging claims for wrongful death under the Illinois Wrongful Death Act (740 ILCS 180/1 *et seq.*) against the County (Count I), CENCOM (Count II), ETSB (Count III) and Doe (Count IV), as well as a survival action under the Illinois Survival Act (755 ILCS 5/27-6) against the County (Count V).

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ARGUMENT

Section 2-619.1 permits motions to dismiss under section 2-615 of the Illinois Code of Civil Procedure and section 2-619 of the Illinois Code of Civil Procedure to be filed together as a single motion separated into respective parts:

> "Motions with respect to pleadings under Section 2-615, motions for involuntary dismissal or other relief under Section 2-619, and motions for summary judgment under Section 2-1005 may be filed together as a single motion in any combination. A combined motion, however, shall be in parts. Each part shall be limited to and shall specify that it is made under one of Sections 2-615, 2-619, or 2-1005. Each part shall also clearly show the points or grounds relied upon under the Section upon which it is based." 735 ILCS 5/2-619.1.

Section 2-615(a) of the Illinois Code of Civil Procedure provides:

> "All objections to pleadings shall be raised by motion. The motion shall point out specifically the defects complained of, and shall ask for appropriate relief, such as: that a pleading or portion thereof be stricken because it is substantially insufficient in law, or that the action be dismissed ***." 735 ILCS 5/2-615(a).

Our Illinois Appellate Court has fully explained the legal standard for such a motion:

> "A trial court should interpret all pleadings and supporting documents in the light most favorable to the nonmoving party on a motion to dismiss under either section 2-615 or section 2-619 of the Code of Civil Procedure [citation]. [Citation]. Further, the trial court should grant a motion to dismiss only where the plaintiff can prove no set of facts that would support a cause of action. [Citation]. A complaint is subject to dismissal under section 2-615 if it fails to state a cause of action because of factual or legal insufficiency. [Citation]. If a complaint fails to set forth a legally recognized claim upon which the plaintiff can recover, the complaint is infirm because of legal insufficiency, while a factually insufficient complaint fails to allege sufficient facts essential to the cause of action. [Citation]. In a motion to dismiss under section 2-615, all well-pleaded facts and all reasonable inferences that can be drawn from these facts are accepted as true. [Citation]. Legal conclusions and factual conclusions which are unsupported by allegations of specific facts will be disregarded in ruling on a motion to dismiss. [Citation]. Factual deficiencies of a complaint cannot be cured by a liberal construction. [Citation].
>
> * * *
>
> Section 2-615 applies to a failure to state a cause of action, either factually or legally. [Citation]." *Cummings v. City of Waterloo*, 289 Ill. App. 3d 474, 478-79, 683 N.E.2d 1222, 1225-26 (5th Dist. 1997).

Meanwhile, Section 2-619(a) of the Illinois Code of Civil Procedure pertinently provides:

> "Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:
>
> (1) That the court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer of the case to a court having jurisdiction.
>
> (2) That the plaintiff does not have legal capacity to sue or that the defendant does not have legal capacity to be sued.
>
> * * *
>
> (9) That the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a).

A section 2-619 motion to dismiss admits the legal sufficiency of the complaint and raises defects, defenses, or other matters that act to defeat the claim. *Krilich v. American National Bank & Trust Co. of Chicago*, 334 Ill.App.3d 563, 569-70, 778 N.E.2d 1153, 1160 (1st Dist. 2002).

Section 2-615 motions and section 2-619 motions differ in that the former attack the sufficiency of the complaint and the latter, while admitting the legal sufficiency of the complaint, raise defects, defenses or other affirmative matter appearing on the face of the complaint or established by external submissions which defeat the action. *Joseph v. Chicago Transit Authority*, 306 Ill.App.3d 927, 930, 715 N.E.2d 733, 736 (1st Dist. 1999). Alternatively addressing these sections in parts as required by section 2-619.1, each warrants striking and/or dismissal of Plaintiff's Complaint.

Section 1 of the Illinois Wrongful Death Act provides:

> "Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who or company or corporation which would have been liable if death had not ensued, shall be liable

> to an action for damages, notwithstanding the death of the person injured * * *." 740 ILCS 180/1.

The "purpose of the [Wrongful Death] Act is to compensate the surviving spouse and next of kin for the pecuniary losses sustained due to the decedent's death." *Beetle v. Wal–Mart Associates, Inc.,* 326 Ill.App.3d 528, 532, 761 N.E.2d 364 (2001). See also *Foster v. Kanuri,* 241 Ill.App.3d 677, 681, 608 N.E.2d 8 (1992) ("The legislative intent of the Wrongful Death Act is that the claims brought are those of the individual beneficiaries. The claim under the survival statute is that of the deceased which arose during his life and survived his death"). Aside from the additional element of the occurrence of death, the elements of a wrongful death claim are identical to those of a common law negligence claim. Compare *Leavitt v. Farwell Tower Ltd. Partnership,* 252 Ill.App.3d 260, 264, 625 N.E.2d 48 (1993) ("In order to maintain a claim under the Act, plaintiff must demonstrate: (1) defendant owed a duty to decedent; (2) defendant breached that duty; (3) the breach of duty proximately caused decedent's death; and pecuniary damages arising therefrom to persons designated under the Act"), with *Behrens v. Harrah's Illinois Corp.,* 366 Ill.App.3d 1154, 1156, 852 N.E.2d 553 (2006) ("To properly plead an action based in negligence, plaintiff must allege facts sufficient to establish that defendant owed a duty of care to plaintiff, that defendant breached that duty, and that the breach was the proximate cause of plaintiff's injuries"); see also *Beetle,* 326 Ill.App.3d at 540, 761 N.E.2d 364 (Bowman, J., dissenting) ("A wrongful death action requires proof of the same elements-duty, breach of the duty, proximate cause and damages-as a common law negligence action, a classic action in tort").

Furthermore, under the Illinois Survival Act (755 ILCS 5/27–6), "[a] survival action allows for the recovery of damages for injuries sustained by the deceased up to the time of death." *Ellig v. Delnor Community Hospital,* 237 Ill.App.3d 396, 401, 603 N.E.2d 1203 (1992).

Such an action preserves the right of action for a personal injury that accrued before the death of the injured person and preserves causes of action relating to, *inter alia,* prolonged pain and suffering, which would otherwise be extinguished upon the injured party's death. *Ellig,* 237 Ill.App.3d at 401, 603 N.E.2d 1203.

I. Plaintiff's Complaint should be entirely dismissed pursuant to Section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)) because Plaintiff's Complaint fails to sufficiently state a claim based upon willful and wanton conduct.

Illinois is a fact-pleading jurisdiction (*Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 426, 430 N.E.2d 976, 984 (1981)); notice pleading is insufficient (*Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 788 N.E.2d 740 (2003)). As such, conclusions of fact are insufficient to state a cause of action regardless of whether they generally inform a defendant of the claim against him. *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 519, 544 N.E.2d 733, 744 (1989). Thus, a plaintiff must set out ultimate facts that support his cause of action and describe them in such a manner as to support the elements of a claim. *Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 788 N.E.2d 740 (2003).

Each Count of Plaintiff's Complaint is based upon alleged willful and wanton conduct on Defendants' part. To sufficiently plead willful and wanton misconduct, plaintiff must allege course of action which shows either actual or deliberate intent to harm or which, if course of action is not intentional, shows utter indifference to or conscious disregard for a person's own safety or safety or property of others. *Chiczewski By and Through Chiczewski v. Emergency Telephone System Bd. of Du Page County*, App. 2 Dist.1997, 229 Ill.Dec. 702, 295 Ill.App.3d 605, 692 N.E.2d 691. Indeed, The Illinois Appellate Court has explained the stringent pleading requirements for such a willful-and-wanton-conduct claim:

"As the plain and ordinary language of the statute makes clear, a plaintiff must plead a "course of action" that proximately caused the plaintiff's injuries in order to maintain a successful cause of action against a public entity based on a willful and wanton failure to supervise. Inadvertence, incompetence, or unskillfulness does not constitute willful and wanton conduct. [Citation]. Rather, to establish willful and wanton conduct, the public entity must be informed of a dangerous condition, know that others had been injured because of that condition, or intentionally remove a safety feature or device from recreational property. [Citation].

Here, plaintiff failed to plead facts sufficient to establish a "course of action." Absent from plaintiff's complaint is any allegation that registered participants, or particularly Washington, had used metal golf clubs or baseball bats to batter other children, supervisors, or anyone else. Prior knowledge of similar acts is required to establish a 'course of action.' [Citations].

Moreover, even if there was prior knowledge of a similar injury, a plaintiff must plead facts establishing the similarities between the prior injury and the plaintiff's injury. [Citations].

Although plaintiff alleged that the park district instituted a policy prohibiting the use of metal golf clubs and baseball bats after a child was hurt by such equipment, we cannot conclude that this policy constitutes facts sufficient to plead a 'course of action' for purposes of willful and wanton conduct. As defendants note, a public entity's violation of its own internal rules does not constitute proof of negligence, much less willful and wanton conduct. [Citations]. The fact that defendants' policy was promulgated after a child was hit with a metal baseball bat does not change our view, as the particular circumstances of that incident were not pleaded. Specifically, all plaintiff claims is that '[a]fter an accident that occurred in the Rockford Park District in about 1996, wherein a boy was hit with a metal baseball bat, as well as other incidents, the Director of Recreation for the Rockford Park District effectuated new rules that did not allow equipment like metal baseball bats or metal golf clubs to be used by the children in the supervised playground activities except under very limited circumstances.' Like in *Dinelli,* if plaintiff alleged in detail that the 1996 occurrence or the 'other incidents' involved circumstances similar to plaintiff's injuries, he may have succeeded in pleading a 'course of action' for purposes of alleging willful and wanton conduct. Without such facts, we cannot conclude that plaintiff's complaint is sufficient to establish defendants' knowledge of similar situations. Moreover, we note that the park district's rule was abandoned more than two years before plaintiff was injured. Thus, even if the rule could serve as proof of defendants' improper conduct, which it does not, we fail to see how this outdated rule could be proof of anything relevant to this case.

Notwithstanding the 'course of action' requirement, plaintiff failed to allege facts sufficient to establish that defendants intentionally caused harm to plaintiff or showed an utter indifference or conscious disregard for plaintiff's safety. [Citation]. Plaintiff, using the term 'utter indifference or conscious disregard for the safety of others,' alleged that defendants allowed Washington, who arguably was under defendants' control, to continue to act belligerently and

> violently and have access to a metal golf club. Merely alleging an utter indifference or conscious disregard for the safety of others is not enough to withstand a motion to dismiss. [Citation]. Lacking in plaintiff's complaint is any allegation that defendants were aware of Washington physically assaulting someone, let alone plaintiff. If defendants had allowed Washington to have access to the metal golf club, knowing that Washington was *physically* violent to others, then defendants' conduct arguably may have shown an utter indifference for plaintiff's safety. However, as pleaded, defendants could not be guilty of willful and wanton conduct because, among other things, Washington's general aggressiveness was not necessarily a precursor to plaintiff's injuries. [Citation]. Viewing plaintiff's complaint in a light most favorable to him, we hold that plaintiff did not allege facts sufficient to state a cause of action for willful and wanton conduct. Thus, the trial court properly granted defendants' motion to dismiss pursuant to section 2-615 of the Code." *Floyd v. Rockford Park District*, 355 Ill.App.3d 695, 701-704, 823 N.E.2d 1004, 1010-1012 (2nd Dist. 2005).

Plaintiff claims that Defendants were willful and wanton in "dispatch[ing] police to Handi-Mart rather the All-Mart in Mascoutah, Illinois" after receiving information from decedent's husband that the decedent was under the influence of alcohol and driving her car. In *Chiczewski*, a 9-1-1 dispatcher dispatched misrouted the 9-1-1 call to a city in which the parents and child did not reside, which resulted in an eleven-minute delay in response time by police. The court held that this misrouting of parent's 911 emergency telephone call to a city in which parents and child did not amount to willful and wanton conduct. Similarly, Defendants' alleged conduct in this case does not amount to willful and wanton conduct as a mere misroute.

Plaintiff further alleges that the defendants "recklessly abandoned its own protocol and purpose... manned the dispatch line with improperly trained and/or unqualified employees . . . [and] failed to implement, oversee, and manage CENCOM's selection of telecommunicators." These are merely conclusions and not facts, and Plaintiff does not set out the ultimate facts that support and his claim and the claim should therefore be dismissed.

Clearly, Plaintiff fails to plead sufficient facts establishing a "course of action" and/or utter indifference or conscious disregard for safety. Accordingly, Plaintiff's Complaint should

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be entirely dismissed under Section 2-615(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-615(a)).

II. Count II of Plaintiff's Complaint should be dismissed with prejudice pursuant to Section 2-619(a)(2) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(2)) because CENCOM is not a separate legal entity with the capacity to be sued.

Section 5-1001 of the Illinois Counties Code provides that the County is a "body politic and corporate" that "may sue and be sued, plead and may be impleaded, defend and be defended against in any court having jurisdiction of the subject-matter. 55 ILCS 5/5-1001. However, CENCOM is not a separate legal entity with the capacity to be sued; rather, it is merely a division of the County. Accordingly, Count II of Plaintiff's Complaint should be dismissed with prejudice pursuant to Section 2-619(a)(2) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(2)).

III. Count III of Plaintiff's Complaint should be dismissed with prejudice pursuant to Section 2-619(a)(2) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(2)) because ETSB is not a separate legal entity with the capacity to be sued.

Section 5-1001 of the Illinois Counties Code provides that the County is a "body politic and corporate" that "may sue and be sued, plead and may be impleaded, defend and be defended against in any court having jurisdiction of the subject-matter. 55 ILCS 5/5-1001. However, ETSB is not a separate legal entity with the capacity to be sued; rather, as the Illinois Attorney General has opined, "[a] county emergency telephone system board...may not sue or be sued." Ill. Att'y Gen. Op. No. I-07-047. Accordingly, Count II of Plaintiff's Complaint should be dismissed with prejudice pursuant to Section 2-619(a)(2) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(2)).

IV. Plaintiff's Complaint should be entirely dismissed with prejudice pursuant to Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)) because Defendants owed no duty to Plaintiff's decedent.

In order state a cause of action for either simple or wilful and wanton negligence, a plaintiff must allege facts sufficient to show defendant had a duty to plaintiff, a breach of such duty, and an injury proximately resulting from the breach. (*Marshall v. City of Centralia* (1991), 143 Ill.2d 1, 6, 570 N.E.2d 315.) The issue of whether the defendant owed plaintiff a duty of care is a question of law to be determined by the trial court which is properly asserted in a motion to dismiss pursuant to section 2-619 of the Illinois Code of Civil Procedure. (*Brown v. Chicago Park District* (1991), 218 Ill.App.3d 612, 616, 578 N.E.2d 999.) Resolution of the issue depends on whether the parties stood in such a relationship to one another that the law imposes an obligation on the defendant to act reasonably for the protection of plaintiff. (*Gouge,* 144 Ill.2d at 542, 582 N.E.2d 108.) The court must also weigh the foreseeability that defendant's conduct will result in injury and the likelihood of an injury occurring against the burden to defendant of imposing a duty and the consequences of imposing this burden. *Ziemba v. Mierzwa* (1991), 142 Ill.2d 42, 47, 566 N.E.2d 1365.

Plaintiff's Complaint is entirely based upon an alleged duty owed to Plaintiff's decedent. However, addressing similar circumstances, the Illinois Appellate Court has held that any duties established under the Emergency Illinois Emergency Telephone System Act (50 ILCS 750/1 *et seq.*) (ETS Act) run to the public at large, not to each citizen individually. *Donovan v. Village of Ohio*, 397 Ill. App. 3d 844, 921 N.E.2d 1238 (3rd Dist. 2010). Accordingly, in the absence of a duty owed to Plaintiff's decedent, Plaintiff's Complaint should be entirely dismissed with prejudice under Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)).

V. Plaintiff's Complaint should be entirely dismissed with prejudice pursuant to Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)) because Defendants are immune from civil liability under Section 15.1 of the Illinois Emergency Telephone System Act (50 ILCS 750/15.1).

Section 15.1(a) of the ETS Act provides:

> "In no event shall a public agency, the Commission, the Statewide 9-1-1 Advisory Board, the Administrator, the Department of State Police, public safety agency, public safety answering point, emergency telephone system board, or unit of local government assuming the duties of an emergency telephone system board, or carrier, or its officers, employees, assigns, or agents be liable for any civil damages or criminal liability that directly or indirectly results from, or is caused by, any act or omission in the development, design, installation, operation, maintenance, performance, or provision of 9-1-1 service required by this Act, unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct.
>
> A unit of local government, the Commission, the Statewide 9-1-1 Advisory Board, the Administrator, the Department of State Police, public safety agency, public safety answering point, emergency telephone system board, or carrier, or its officers, employees, assigns, or agents, shall not be liable for any form of civil damages or criminal liability that directly or indirectly results from, or is caused by, the release of subscriber information to any governmental entity as required under the provisions of this Act, unless the release constitutes gross negligence, recklessness, or intentional misconduct." 50 ILCS 750/15.1.

Furthermore, Section 15.1(b) of the ETS Act states that exemption from civil liability for emergency instructions is as provided in the Illinois Good Samaritan Act, which pertinently provides:

> "No person who gives emergency instructions through a system established under the Emergency Telephone System Act to persons rendering services in an emergency at another location, nor any person following the instructions in rendering the services, shall be liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful or wanton misconduct." 745 ILCS 49/5.

The purpose of civil damages immunity provision of the ETS Act is to provide limited tort immunity for agencies responsible for creating and running emergency telephone system in state.

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Chiczewski By and Through Chiczewski v. Emergency Telephone System Bd. of Du Page County, App. 2 Dist.1997, 229 Ill.Dec. 702, 295 Ill.App.3d 605, 692 N.E.2d 691.

In the clear absence of sufficient allegations of gross negligence, recklessness, or intentional misconduct, or willful and wanton conduct, Defendants are immune from civil liability under Section 15.1 of the ETS Act (50 ICLS 750/15.1). Accordingly, Plaintiff's Complaint should be entirely dismissed with prejudice under Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)).

VI. Plaintiff's Complaint should be entirely dismissed pursuant to Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)) because Defendants are immune from civil liability under Section 4-102 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/4-102).

Plaintiff's Complaint essentially alleges that Defendants failed to provide police protection services and/or failed to prevent Plaintiff's decedent from committing the crime of driving under the influence of alcohol. However, Section 4-102 of the Illinois Local Governmental and Governmental Tort Immunity Act (Tort Immunity Act) absolutely immunizes public entities and their employees from such claims:

> "Neither a local public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service or, if police protection service is provided, for failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals. This immunity is not waived by a contract for private security service, but cannot be transferred to any non-public entity or employee." 745 ILCS 10/4-102.

Indeed, addressing a similar claim based upon Section 15.1 of the ETS Act (50 ICLS 750/15.1), the Illinois Appellate Court has held that Section 4-102 of the Tort Immunity Act can still provide absolute immunity in 9-1-1 cases. *Galuszynski v. City of Chicago*, 131 Ill.App.3d 505, 475 N.E.2d 960 (1st Dist. 1985). Accordingly, based upon the absolute immunity afforded

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Defendants under Section 4-102 of the Tort Immunity Act, Counts I, II, III, IV and V of Plaintiff's Complaint should be dismissed with prejudice under Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)).

VII. Plaintiff's Complaint should be entirely dismissed pursuant to Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)) because Defendants are immune from civil liability under Section 2-201 of the Illinois Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/2-201).

Plaintiff's Complaint also alleges that Defendants failed to properly supervise employees. However, Section 2-201 of the Tort Immunity Act provides that "a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused." 745 ILCS 10/2-201. Section 2-201 provides absolute immunity from both negligent and willful and wanton conduct. *In re Chicago Flood Litigation*, 176 Ill.2d 179, 196, 680 N.E.2d 265, 273 (1997). That immunity extends to the employer under section 2-109 of the Tort Immunity Act, which provides that "[a] local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable." 745 ILCS 10/2-109. Indeed, addressing strikingly similar allegations, the Illinois Appellate Court has explained that supervision of employees involves inherently discretionary actions subject to Section 2-201. *Johnson v. Mers*, 279 Ill. App. 3d 372, 380, 664 N.E.2d 668, 675 (2nd Dist. 1996). Accordingly, based upon the absolute immunity afforded Defendants under Section 2-201 of the Tort Immunity Act, Plaintiff's Complaint should be dismissed with prejudice under Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)) to the extent that it alleges improper supervision.

VIII. Plaintiff's Complaint should be entirely dismissed pursuant to Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)) because the conduct of Plaintiff's decedent was the sole proximate cause of her alleged injuries and death.

Plaintiff's Complaint expressly acknowledges that Plaintiff's decedent was "under the influence of alcohol" when she "drove her vehicle off of the highway and was killed." Illinois Courts have consistently found that a driver's state of intoxication can be the sole proximate cause of an accident, even where other intervening causes are alleged. *Thompson v. County of Cook*, 154 ILL.2d 374 (1993) (finding that a driver's actions in driving while drunk, speeding, eluding the police, and disregarding traffic signs, were the sole proximate cause of an accident, despite expert testimony that a curve where the accident occurred was not adequately marked); *Billman v. Frenzel Construction Company*, 262 Ill.App.3d 681 (1st Dist. 1994) (finding that a driver under the influence of alcohol was the sole proximate cause of an accident in the absence of evidence that the driver was misled by signage); *Paul v. Illinois Department of Transportation*, 52 Ill.Ct.Cl. 164 (1999) (finding a driver's intoxicated state broke the chain of causation from alleged inadequate signage at an intersection despite expert testimony that additional signs would have reduced the likelihood of an accident in the absence of evidence that the driver was confused by the signage). Here, Plaintiff's allegation that his decedent was intoxicated at the time of the accident is an admission of a violation of a statute designed to protect human life or property that is *prima facie* evidence of her own negligence. *Kalata v. Anheuser Busch Companies, Inc.*, 144 Ill.2d 425 (1991). Accordingly, because such negligence on the part of Plaintiff's decedent is the sole proximate cause of her alleged injuries and death, Plaintiff's Complaint should be entirely dismissed with prejudice under Section 2-619(a)(9) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(9)).

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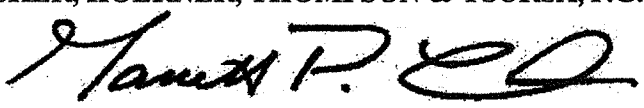
CONCLUSION

WHEREFORE, Defendants, **St. Clair County, St. Clair County CENCOM 9-1-1** and **Emergency Telephone System Board of St. Clair County**, respectfully requests that this Court dismiss Plaintiff's Complaint with prejudice in its entirety pursuant to Section 2-619(a) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)), or, alternatively, dismiss same pursuant to Section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615), and order such other relief as this Court deems just and proper.

BECKER, HOERNER, THOMPSON & YSURSA, P.C.

By: 

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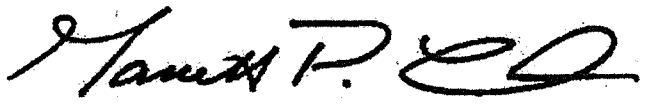
CERTIFICATE OF SERVICE

Pursuant to Illinois Supreme Court Rule 12(b), the undersigned certifies that, on April 13, 2018, the foregoing instrument was electronically filed with the St. Clair County Circuit Clerk's Office, and further that a true and correct copy of the foregoing instrument was sent via U.S. Mail, to:

Ms. Rhonda Fiss
Attorney at Law
23 Public Square, Suite 230
Belleville, IL 62220

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned further certifies that the statements set forth in this Certificate of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



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CERTIFICATE OF COMPLIANCE

I, Rhonda D. Fiss certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 30 pages.

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of Appellant's Motion for Leave to File Brief Instanter was submitted for filing to the Illinois Supreme Court Clerk's Office by Electronic means on May 3, 2021, and that a copy of same was sent by electronic means to opposing counsel's email address provided below:

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/s/ Rhonda D. Fiss
RHONDA D. FISS

Under the penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the above are true and correct.

E-FILED
5/11/2021 11:16 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

/s/ Rhonda D. Fiss
RHONDA D. FISS