
LAW OFFICES OF
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A Limited Liability Company

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Sanford Rader - In Memoriam
1960-2018

May 20, 2026

Via Electronic Filing Only

Motions Clerk

Mercer County Courthouse

175 South Broad Street, 3rd Floor

Trenton, New Jersey 08650

Re: Marcou, David, Executor of the Estate of Jodi Marcou v. Elhajjalik Diallo, et al.
Docket No.: MER-L-2330-23

Dear Sir/Madam:

My Office represents Defendant, Mark Freda, in his capacity as the Mayor of Princeton only ("Defendant") in the above-referenced matter. Attached hereto please find the following being filed in Opposition to the Cross-Motion for Summary Judgment filed by Co-Defendant, Mark Freda, personally, insured through AIG Property Casualty Company's (hereinafter referred to as "AIG") :

1. Defendant's response to AIG's Statement of Material Facts; and
2. Defendant's Brief in Opposition to AIG's Motion.

In accordance with the Orders of the Honorable Douglas H. Hurd, P.J. Cv., all dispositive Motions in this matter will be heard on June 16, 2026. Should you have any questions as to this submission, please do not hesitate in contacting me.

Thank you for your kind attention to this matter.

Respectfully Submitted,

/s/ Brian A. Bontempo, Esq.

CC: All Counsel of record
(Via electronic filing)

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Attorneys for Defendant, Mark Freda, in his capacity as Mayor of Princeton only

DAVID MARCOU, Executor of the Estate of	:	
Jodi Marcou, deceased; and DAVID MARCOU;	:	SUPERIOR COURT OF NEW JERSEY
individually,	:	MERCER COUNTY
	:	LAW DIVISION
Plaintiffs,	:	
	:	Docket No. MER-L-2330-23
vs.	:	
	:	CIVIL ACTION
ELHAJJMALIK DIALLO, an individual; ESTATE	:	
OF DAMAJIA JENAY HORNER, Deceased;	:	
JENNIFER HORNER, an individual; ARBINA	:	
ASANI; MARK FREDa, an individual;	:	
MUNICIPALITY OF PRINCETON, a municipal	:	
entity; PRINCETON FIRST AID & RESCUE	:	DEFENDANT, MARK FREDa IN HIS
SQUAD, a business entity; PRINCETON FIRE	:	CAPACITY AS MAYOR OF
DEPARTMENT, a municipal entity; JOHN DOES	:	PRINCETON'S RESPONSE TO
2-15, fictitious individuals; ABC COS. 3-15, fictitious;	:	DEFENDANT, MARK FREDa
business entities; and THE HANOVER	:	PERSONALLY THROUGH
INSURANCE GROUP, a business entity,	:	AIG PROPERTY CASUALTY
Defendants.	:	COMPANY'S STATEMENT OF
	:	MATERIAL FACTS

Defendant, Mark Freda, in his capacity as Mayor of Princeton only hereby provides the following responses to Defendant, Mark Freda personally, insured through AIG Property Casualty Company's (hereinafter referred to as "AIG") Statement of Material Facts submitted in support of AIG's Cross-Motion for Summary Judgment.

Please be advised that Defendant, Mark Freda, in his capacity as Mayor of Princeton only provides the following responses for the purposes of Summary Judgment only and no responses set forth herein shall be construed as an admission of any kind. Furthermore, no responses set forth herein shall take precedent over any testimony or discovery responses provided to date throughout this litigation:

DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted that N.J.S.A. 40A:60-5 states as such.
12. Admitted that N.J.S.A. 40A:69A-40(c) and (f) state as such.
13. Admitted.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted.
18. Admitted.
19. Admitted.
20. Admitted.
21. Admitted.
22. Admitted.
23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. Admitted.

33. Admitted.

34. Admitted.

35. Admitted.

36. Denied as to Defendant's characterization of the cross-examination and testimony.

37. Admitted as to the cited testimony, denied as to Defendant's characterization/description of same.

38. Admitted as to the cited testimony, denied as to Defendant's characterization/description of same.

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted.

43. Admitted.

44. Admitted.

45. Admitted.

46. Admitted.

47. Admitted.

48. Admitted.

49. Admitted.

50. Admitted.

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The Honorable Douglas H. Hurd, P.J. Cv.
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Re: Marcou, David, Executor of the Estate of Jodi Marcou v. Elhajjalik Diallo, et al.
Docket No.: MER-L-2330-23

Dear Judge Hurd:

My Office represents Defendant, Mark Freda, in his capacity as the Mayor of Princeton only ("Mr. Freda") in the above-referenced matter. Please accept this Letter Brief, in lieu of a more formal submission, being filed in Opposition to Co-Defendant, Mark Freda, personally, insured through AIG Property Casualty Company's (hereinafter referred to as "AIG") Opposition/Cross-Motion for Summary Judgment. Said Motion is currently scheduled to be heard on June 19, 2026 along with all other pending dispositive Motions related to this matter.

PRELIMINARY STATEMENT

It should be noted at the outset that Mr. Freda objects to the submission of AIG's Opposition on several procedural grounds. Firstly, Mr. Freda is represented in his personal capacity through New Jersey Manufacturers Insurance Company ("NJM"). To date, AIG has not stepped into NJM's shoes and offered a complete defense for Mr. Freda in his personal capacity. Now, without even speaking to Mr. Freda on a single occasion, AIG has filed an Opposition to Defendant, the Municipality of Princeton and Princeton Fire Department's Motion for Summary Judgment and a Cross-Motion for Summary Judgment creating chaos rather than providing coverage to Mr. Freda in good faith.

It should also be noted that NJM subsequently filed a Cross-Motion for Summary Judgment on Mr. Freda's behalf in his personal capacity on virtually the same issues (see eCourts Transaction ID:LCV20261208686). NJM, as Mr. Freda's personal coverage attorney, has adopted AIG's arguments as to the dismissal of the Tenth Count, Twelfth Count, and Fourteenth Count of Plaintiff's Second Amended Complaint. In order to avoid the submission of duplicative documents and arguments to the Court, Mr. Freda adopts AIG's arguments as to the dismissal of the Tenth Count, Twelfth Count, and Fourteenth Count of Plaintiff's Second Amended Complaint only.

As evidenced above, this matter creates several ethical quandaries for attorneys and insurance adjusters alike. The one constant however is the insured - Mr. Freda. AIG has a duty to act in Mr. Freda's best interests. NJM has the same duty. The recent filings with the Court however seem to forget and confuse who the actual insured is. Conversely, it would appear that these parties are more concerned with the best interests of NJM and AIG rather than Mr. Freda. Based on the foregoing, it is respectfully requested that in the event that the Court considers AIG's Cross-Motion, Mr. Freda adopts and joins in the specific legal arguments as set forth below.

LEGAL ARGUMENT

POINT ONE

AS MAYOR, FRED A IS ENTITLED TO NJTCA IMMUNITY

As previously stated, on April 10, 2026, Defendant, the Municipality of Princeton filed a Motion for Summary Judgment seeking the dismissal of all claims set forth in Plaintiff's Second Amended Complaint. Mr. Freda's Opposition to said Motion has been filed separately in response thereto. The main contention in this matter is which capacity Mr. Freda was acting in at the time of the incident. In the event that the Court finds that Mr. Freda was acting as the Mayor of Princeton at the time of the accident, it is asserted that any and all applicable immunities under the New Jersey Tort Claims Act ("NJTCA") apply.

Specifically, in the event that it is determined that Mr. Freda was acting as the Mayor on the date of the incident, Mr. Freda would be entitled to discretionary immunity under N.J.S.A. 59:3-1 as set forth in AIG's Brief (See AIG Brief at Point One). Mr. Freda would also be entitled to the "good faith immunity" set forth in N.J.S.A. 59:3-3 (See Mr. Freda's Brief filed in Opposition to Princeton's Motion at Point Two). Finally, there has been no evidence presented of "willful and wanton" behavior which would render these immunities meaningless under the law. As such, Mr. Freda adopts and joins in AIG's arguments as to immunity for Mr. Freda in his capacity as Mayor of Princeton. Furthermore, the Courts of this State have continuously reinforced that "[t]he Act's 'guiding principle' is 'that immunity from tort liability is the general rule and liability is the exception.' " O'Donnell v. N.J. Tpk. Auth., 236 N.J. 335, 345 (2019) (quoting Coyne v. State, 182 N.J. 481, 488 (2005)). Here, there is absolutely no evidence of "palpably unreasonable" conduct which must be present in order to deviate from the NJTCA's general rule of immunity. For these reasons, in the event that it is found that Mr. Freda was acting as the Mayor on the date of the incident, the NJTCA applies.

POINT THREE
**MR. FREDA JOINS IN AIG'S REQUEST TO DISMISS PLAINTIFF'S CLAIMS
 FOR EMOTIONAL DISTRESS, PUNITIVE DAMAGES,
 AND CONSCIOUS PAIN AND SUFFERING**

Defendant once again reasserts that AIG's Cross-Motion for Summary Judgment is improper as Mr. Freda is represented by NJM in his personal capacity. In the event that the Court considers AIG's arguments, Defendant, Mark Freda joins in said arguments as to the dismissal of the Tenth Count, Twelfth Count, and Fourteenth Count of Plaintiff's Second Amended Complaint.

1. Tenth Count - (Portee Claim) Negligent Infliction of Emotional Distress:

The Tenth Count of Plaintiff's Second Amended Complaint asserts a claim of negligent infliction of emotional distress ("NIED"). Legal citations and arguments as to Plaintiff's Portee claim are set forth in AIG's Cross-Motion and need not be restated at length herein (See AIG Cross-Motion

Brief at Page 30, Point II(a)). In the event that the Court considers these arguments, Mr. Freda adopts and joins in same. The facts of this case clearly show that Mr. Marcou was not at the scene of the accident at the time of the crash and did not observe the passing of Plaintiff, Jody Marcou. As such, Plaintiff is unable to satisfy the elements of a claim for NIED and Plaintiff's claim must fail under Portee v. Jaffe, 84 N.J. 88 (1980).

2. Twelfth Count - Punitive Damages:

The Twelfth Count of Plaintiff's Second Amended Complaint sets forth a claim for punitive damages as to all named Defendants. AIG's supportive Brief sets forth the legal citations as to Punitive Damages in New Jersey which need not be restated at length herein. Defendant joins in AIG's arguments as to punitive damages and agrees that said damages are not warranted in the case *sub judice*. Firstly, there has been absolutely no showing whatsoever that Mr. Freda acted with "Actual Malice," or with "wanton and willful disregard." Plaintiff has certainly not presented any evidence which would allow a reasonable juror to conclude that Mr. Freda was involved in an "evil-minded act." (See AIG Cross-Motion Brief at Page 31, Point II(b)). As such, the facts of this case make it emphatically clear that this is simply not the type of case in which punitive damages are warranted.

3. Fourteenth Count - Conscious Pain and Suffering:

The Fourteenth Count of Plaintiff's Second Amended Complaint seeks damages for conscious pain and suffering under New Jersey's Survivor's Act, N.J.S.A. 2A:15-3, et.seq. In order to recover under this Statute, a Plaintiff must show that they suffered "conscious" pain and suffering, for however briefly, prior to death. AIG's arguments in opposition to the application of N.J.S.A. 2A:15-3, et.seq. are set forth in AIG's Cross-Motion and need not be restated at length herein. It must be noted however that other than Plaintiff's medical expert, there are no reports, testimony, discovery or indications that Ms. Marcou was conscious following the initial impact of the collision. Surely, Plaintiff must be required to

demonstrate, through more than unsupported expert testimony, that Ms. Marcou endured any conscious pain and suffering. After all, the Court in Brill v. The Guardian Life Ins. Co., 142 N.J. 540 (1995) eloquently stated that “a party cannot defeat a motion for summary judgment merely by submitting an expert's report in his or her favor.” Id. at 544. Here, as Plaintiff's expert report is the only support for Plaintiff's claims of conscious pain and suffering, said claim must be dismissed.

CONCLUSION

Based on the foregoing, Defendant, Mark Freda in his capacity as the Mayor of Princeton only requests that AIG's Opposition be disregarded. In the event that the Court considers AIG's Cross-Motion arguments, Defendant joins in said arguments to the extent that they support the statutory immunities and protections afforded to Defendant under the NJTCA. Defendant also joins in AIG's request for the dismissal of the Tenth, Twelfth, and Fourteenth Counts of Plaintiff's Second Amended Complaint.

Thank you for Your Honor's kind attention to this matter.

Respectfully Submitted,

/s/ Brian A. Bontempo, Esq.

CC: All Counsel of record
(Via electronic filing)