



STINSON
MORRISON
HECKER LLP

Michael C. Manning
(602) 212-8503
mmanning@stinson.com
www.stinson.com

1850 North Central Avenue
Suite 2100
Phoenix, AZ 85004-4584
Tel (602) 279-1600
Fax (602) 586-5240

March 16, 2009

CITY OF PHOENIX
c/o Phoenix City Clerk
200 W. Washington St., 15th Fl.
Phoenix, AZ 85003

OFFICER DZENAN AHMETOVIC #9232
c/o Phoenix City Clerk
200 W. Washington St., 15th Fl.
Phoenix, AZ 85003

CITY OF PHOENIX POLICE DEPARTMENT
c/o Phoenix City Clerk
200 W. Washington St., 15th Fl.
Phoenix, AZ 85003

SERGEANT SEAN COUTTS #6655
c/o Phoenix City Clerk
200 W. Washington St., 15th Fl.
Phoenix, AZ 85003

**INDIVIDUAL EMPLOYEES OF CITY OF
PHOENIX POLICE DEPARTMENT AS YET
UNIDENTIFIED**
c/o Phoenix City Clerk
200 W. Washington St., 15th Fl.
Phoenix, AZ 85003

OFFICER BRIAN LILLY #7639
c/o Phoenix City Clerk
200 W. Washington St., 15th Fl.
Phoenix, AZ 85003

Re: **NOTICE OF CLAIM – Shooting of Tony Arambula**

Wednesday evening, September 17, 2008 started out as a typical night in the Arambula home. Lesley Arambula was cleaning up after their family dinner. Tony was watching cartoons in their small living room with their two year old son, Zachary. And, their oldest son Matthew was playing in his room. It was a scene of peaceful and cozy comfort. Suddenly, the crack of two gunshots near-by shattered that scene and signaled the beginning of a night-mare that will haunt this family forever. But their nightmare was not caused by the felon firing into their home.

Just moments after hearing the two gunshots, a man crashed through their window and into the family’s living room. He appeared “crazed” and he was wielding a 9 millimeter gun at Tony and his two year old. Blessedly, he didn’t shoot at Tony or Zachary. Instead, the intruder dashed down the hall. But, Tony’s relief was brief. While Tony was thankful that the intruder had not fired on Zachary, Tony realized that this impaired menace was now with Matthew, in his small bedroom, with that 9 millimeter gun. He knew that both his life and Matthew’s were subject to the whim of a desperate and impaired criminal. Tony knew he had to act quickly and

KANSAS CITY
OVERLAND PARK
WICHITA
WASHINGTON, D.C.
PHOENIX
ST. LOUIS
OMAHA
JEFFERSON CITY

carefully. Tony knew that there was a chance this crazed intruder would kill Matthew and then come after the rest of his family. Tony had to act quickly and effectively. First, he crawled with Zachary to the back of the house where Lesley was. Then he retrieved his own handgun. Tony was terrified but he had two young boys and a wife to protect; he knew that if he froze in fear or collapsed in panic, he, his wife, and their children might be murdered within minutes. So, he suppressed his own terror and anger toward the intruder and reacted deliberately, calmly, and even professionally. Tony knew that Matthew had not been shot yet. Armed with his own gun, Tony pensively but quickly closed in on Matthew's room. He did not see Matthew but he managed to corner the intruder and ordered him not to move. He called for Matthew. Fortunately, Matthew had the presence of mind to hide in his closet after he heard the gunshots and the glass-crashing arrival of the intruder. When he heard his Dad call for him, Matthew left his hiding place. Tony ordered him to go to his Mother and Zachary and to call 911 immediately. Then, he had the presence of mind to pick up the telephone and call 911 for police protection, report that he had the intruder at gunpoint, and anxiously await the arrival of police to take over for him and protect his family.

Tony did everything just right, exactly the way City of Phoenix would simulate as the perfect homeowner response to a life-threatening menace and an impaired, armed intruder. The police would be there soon, he thought, and would assume control of the incident. He would soon have his children in his arms and his wife by his side. No one, not even the menacing intruder, would be hurt.

With both kids by her side, Lesley went out to the backyard of their home and called 911. As it turns out, police officers were already in the neighborhood, looking for a "Hispanic male" who had reportedly threatened a woman in a house nearby. Officers had heard the "crash" (which later turned out to be the Arambula window) and rushed into the alleyway behind the Arambula residence, still looking for their suspect. They did not know if he was armed.

While she was on the phone with 911, Lesley noticed the police officers come into the alley behind her backyard and yelled to them for help, telling them that there was someone inside their home. Three officers entered the Arambula's backyard. Two of the officers looked for a way into the residence; the other, Sgt. Coutts, the Supervisor, came and spoke with Lesley. Lesley informed Sgt. Coutts that her husband was the one inside with a gun and that he had the intruder at gun point. She also told him that Tony and the intruder were the only ones inside the home. But Sgt. Coutts never spoke with the other two officers or confirmed that they understood the circumstances they were facing. Instead, all three officers met at the back entrance to the Arambula home, announced their presence by saying "Police," and rushed in. Frightened for their safety and for Tony, Lesley and the boys remained still on the patio just a few feet away from where officers entered the home. The officers left Lesley and the boys all alone and unprotected on the patio while they entered the home.

Phoenix Police officers knew before they entered the Arambula home, from two different sources, that Tony was holding the intruder at gun point and they knew that Tony and the intruder were the only two people left in the home. First, Lesley told that to the Supervising Officer on the scene, Sgt. Coutts, when he and two other officers came into her backyard. Secondly, Tony also reported that to the police 911 operator.

Tony had done the officer's work for them. He held the intruder at gunpoint without any injury to anyone. All that was left for the police to do was assume Tony's control of the situation, cuff the intruder, and remove him from his home. But, unbeknownst to Tony, this incident, which he had under perfect control, was about to turn into his family's nightmare. The Phoenix police did not assume the professional control Tony anticipated. Instead, when the officers entered the Arambula home *an officer immediately shot Tony in the back* without warning. Then, *he shot him five more times, twice after he was already on the ground!*

The shot in his back spun Tony around on to the wall near the doorway of Matthew's room. The shot's exit wound left a gaping hole in the front of his abdomen, large enough to fit an eight-ounce Dixie cup. As he was falling to the floor, he was shot more than three more times. Once he hit the floor, the officer stood and shot Tony two more times!¹ The gunshots were fired by the police while Tony was still on the phone with 911. Tony cried out, "You just killed...you just killed the homeowner. The bad guy is in there."

Only one officer, Officer Lilly, fired all six rounds into Tony. Neither of the other officers opened fire. Even though Officer Lilly is a Field Training Officer, in his Internal Affairs interview, Officer Lilly admits that he fired at Tony without issuing any verbal commands. None of the officers did. Officer Lilly also admitted that it was only after Tony was bullet-ridden on the ground that he did "assess" the situation. The 911 tape recorded Officer Lilly's "assessment" after he shot Tony in the back, three more as he fell to the floor, and a couple of times after he hit the ground. His "assessment" was one word and was recorded on the 911 tape: "Fuck."²

After Officer Lilly's "assessment," Tony was bleeding badly and struggling for a breath but Officer Lilly told Tony to "shut the fuck up." Tony then asked Officer Lilly, "Officer, why did you kill me?" Tony received no answer. So, as he prepared to die, the 911 tape records his plaintive goodbye to his wife and kids: "..., I love you...I love you." Tony then made what he believed was his dying request: he pleaded for officers not to let his young family see him shot and bloodied. Officers callously ignored his request and painfully dragged Tony by his injured leg through his home and out to his concrete patio, where *they left him bloodied and shot right in front of his young children and wife*. Tony was losing blood quickly.

¹ Blessedly, Lilly was no marksman. One of the shots he fired at Tony after he was already down grazed Tony's leg, but did not otherwise enter his body.

² A transcript of the 911 call from Tony is attached as Exhibit A hereto and incorporated by this reference.

Officer Lilly knew that they had made a tragic mistake. Though he did not realize he was being recorded, his admission of fault was recorded on the 911 calls: “we fucked up” he told his Supervisor, Sgt. Coutts, now at his side. Sgt. Coutts knew that they had just shot-up and likely killed an innocent homeowner. Sgt. Coutts was quick to begin the effort to cover-up their terrible mistake. Sgt. Coutts asked Officer Lilly where Tony’s gun was at the time he opened fire on Tony. Officer Lilly admitted he did not know where Tony’s gun was: “I don’t know. I heard screaming and I fired.” Still not knowing that he is being recorded on the 911 tape, Sgt. Coutts assured Officer Lilly: “That’s all right. Don’t worry about it. I got your back.....We clear?”

The cover-up effort was on. In a subsequent interview, Officer Lilly claims that he fired because he was fearful for himself—not for anyone else—after he saw a man who might be “Hispanic” down the hallway with a gun, even though Officer Lilly admitted that the gun was not pointed at him, but angled toward the floor. Obviously, none of the other officers perceived the same threat; they did not shoot at Tony. Officer Lilly admitted that he immediately fired at Tony’s center mass area and kept shooting until Tony laid still on the ground.

After that, the City treated the Arambulas so callously that the Arambulas felt like the City’s dirty laundry. Lesley and the boys were confined in a police squad car for hours, while several officers interrogated Lesley. All Lesley wanted was an update on her husband’s condition and a glass of water. She was given neither. Officers refused to allow her to go to the hospital for nearly four hours, and even hurled suspicions at her. She was treated with such physical force by officers that she sustained bruises.

Tony remembers lying on the concrete patio, all alone, thinking he was about to die and pleading for someone to help him. He received no help. Instead, he lay there as officer after officer stepped over him, on their way to attend to other apparently important matters. After some time and without any medical treatment or medical supervision, officers decided to pick Tony up by his limbs and painfully carry him around the house. They hit his head on a post as they tried to squeeze him through the gate and then eventually laid him on hard gravel driveway. The agony only got worse for Tony. Tony, who had been shot six times, had still not received any medical attention. But, Officers decided to pick him up, again, and place him on top of the hood of a police squad car that was so hot, Tony screamed with pain. Tony was then driven down the street on the hot hood of that car. It was not until later that Tony was eventually taken to the hospital by ambulance and not until hours later that his young wife and children were even allowed to see him.

This letter constitutes a Notice of Claim served on behalf of Tony and Lesley Arambula, and their two minor children, Matthew and Zachary, in connection with all the injuries inflicted upon them by members of the Phoenix Police Department (“PPD”) and City as the result of these tragic events of September 17.

The facts presented in this Notice of Claim are taken primarily from the reports of the PPD, the Phoenix Fire Department, the Maricopa Medical Center hospital records, and the testimony of the Arambulas.

Despite a Public Records Request pursuant to A.R.S. § 39-121 *et. seq.* the PPD has not released all of its records of this incident and its aftermath, or the PPD's investigations. Those records, once received, will provide additional detail to the claims made herein and may themselves reveal separate, independent claims against the PPD and other individual PPD employees, as yet unidentified, who may have been involved with the Arambulas that day. Even the facts known at this time paint a disturbing picture of culpability and an attempt to callously cover it up, which is more than sufficient to establish civil rights violations and sufficient to support various legal claims by the Arambulas. Once the remaining records are provided, this Notice of Claim may be amended to reflect the existence of additional defendants and/or additional claims. Based on the evidence gathered thus far, the Arambulas have been unable to determine, to date, the names and identities of the supervisors and/or other members of the chain of command for the City of Phoenix Police Department who were and are responsible for the promulgation of the applicable police procedures, policies, customs, and/or practices and for the specific supervision or command authority with respect to the events of September 17 and following, as set forth in this Notice of Claim. Once revealed, the Arambulas intend, and expressly reserve the right, to amend this Notice to name those individual supervisors and/or members of the chain of command as individuals who bear responsibility for what happened to the Arambulas through their own negligence, gross negligence, recklessness, and/or deliberate indifference through their own supervisory responsibility and authority with respect to the police. In addition, to the extent these and/or other supervisors and commanders were acting on behalf of the City or police as official policymakers with respect to the adoption of, ratification of, or failure to correct certain policies, procedures, customs, and/or practices at issue in this claim, their actions and omissions may give further support to the claims against the City and/or the police, for which the Arambulas intend and reserve the right to later amend this Notice of Claim.

Additional Facts Supporting Claim

Anthony ("Tony") Arambula is 35 years old and Lesley Arambula is 32 years old. They have been together for more than 11 years and married for the last 5 years. Tony works as a supply-chain analyst for Fender Guitars. Lesley is a legal secretary with the Greenberg Traurig law firm. They have two children, Matthew (age 12 at the time of the incident) and Zachary (age 2 at the time of the incident). Tony is an avid shooter, a member of the Scottsdale Gun Club, and was, before this event, a dedicated "law enforcement guy." He keeps licensed handguns in his home.

Although Tony never had the privilege of receiving any warnings from the police officers before he was shot on the evening of September 17, officers immediately began to shout commands into Matthew's room for the intruder to come

out. The intruder complied and was immediately taken into custody and removed from the home. At that time, Tony was still lying on the floor of his hallway shot, bloodied, and drifting toward death as he watched the menacing intruder, who had so viciously entered his home, was simply escorted away by the police, without a scratch.

Eventually, Tony was taken to the hospital; but, remarkably, the PPD would not let Lesley and the boys go with him. Instead, officers detained them at the home for nearly four hours, while they investigated and “cleared” the scene, even though the intruder had been immediately removed from the Arambula’s home after the shooting.

At the hospital, Tony was immediately taken into surgery. When he recovered hours later, PPD interviewed him and took his statement. They told him they had searched the home and conducted their investigation, but that they were only able to cite the intruder for trespass, since he had no weapon. Tony questioned their investigation. He told PPD that he had observed the intruder reaching under his son’s bed, that he was not sure if there was a weapon under there or not, and asked whether they had simply looked under the bed before they “cleared” their crime scene. Obviously, they had not. When the officers returned to the Arambula home, after their crime scene “professionals” had “cleared” the crime scene, they found the intruder’s 9 millimeter gun, in plain sight, under Matthew’s bed!

Officer Lilly Was Not Justified in Using Lethal Force

What happened to the Aramabulas was shocking and outrageous in itself. But the Officers’ attempts to cover-up their own mistakes in this case are, perhaps, even more shocking and unbelievable. After all, this was the Phoenix PD, not the Maricopa County Sherriff’s Office.

Officer Lilly denies that he had any information that Tony was the homeowner and the one with the gun, even though it is undisputed that the Arambulas reported that to a police 911 operator and the Supervising officer on the scene, Sgt. Coutts, *before the officers entered the home*. Sgt. Coutts claims that he thought Officer Lilly had overheard his conversation with Lesley Arambula and the information that Tony was the one with the gun. If Officer Lilly did not, then Sgt. Coutts’ apparently mistaken assumption and failure to ensure that this critical information was understood with his fellow officers resulted in devastating consequences for the Arambula family.

But even if Officer Lilly did not know about the information the Arambulas provided to the police before they entered the home, Lilly’s claims that he shot Tony without warning because he feared for his own life are directly contradicted by his own recorded admissions at the scene. He admitted that he “fucked-up” and that he did not even see Tony’s gun before he shot Tony six times. From his vantage point approximately 13 feet away, it would have been difficult for Officer Lilly to even see all of Tony’s gun, which was in Tony’s right hand. Tony knows he never turned

around and faced Officer Lilly with his gun because that would have meant turning his back completely on the impaired armed intruder that had threatened his family. And the 911 recording makes it plain that the police did not announce themselves or warn Tony before they opened fire! In addition, doctors have told Tony that the first shot hit Tony in the back, which is consistent with what Tony recalls, having been spun around without ever knowing or seeing who or what was making the noise behind him.

The truth is, there was never any reasonable excuse for Officer Lilly's use of force. He candidly admitted that once, right after the shooting, when he did not know he was being recorded. Officer Lilly was trigger happy that night. Either he knew that Tony had the gun before he entered the home and ignored it, or Sgt. Coutts never bothered to tell him that very critical piece of information. Either way, Officer Lilly and his fellow officers entered the home filled with adrenaline, simply heard noises, and recklessly started shooting to kill when he saw someone in the doorway of that room, without ever assessing the situation. Then he shot Tony, an innocent man, in the back and then continued to shoot him over and over, even when Tony was already on the floor. And rather than treating the Arambulas for the victims that they are, the police simply "got [Lilly's] back" in a callous and deliberately indifferent attempt to cover-up their tragic mistakes.

The jury will recognize this evidence and learn the sad truth one of our community's most respected and honored police departments would rather work hard to cover-up its mistakes than admit them, even when the victim is a law-abiding citizen and innocent hero, like Tony was here.

Claims Against the City, the Phoenix Police Department, and the Phoenix Police Officers, for the Shooting of Tony Arambula

The Arambulas have causes of action for negligence, reckless conduct, gross negligence, deliberate indifference, dangerous customs, policies, training, practices, and unreasonable and excessive use of lethal force under Arizona law and 42 U.S.C. § 1983 against all of the above-named individuals and entities and others yet unidentified, including (among others) the entities, like the City, who are directly liable for their own conduct and/or vicariously liable for the actions of their agents and officers and the supervisors, who have their own supervisory responsibility for what happened and also the responsibility for those they supervise. The Arambulas have claims against these same persons and entities for negligent and intentional infliction of emotional distress and Lesley, Zachary, and Matthew have additional claims for false arrest and imprisonment and constitutionally unlawful detainment. Finally, they have claims for punitive damages under federal and state law.

Damages Calculation

The events of September 17 have devastated the Arambula family. They have incurred significant damages as the result of the incident, which are ongoing and will

only increase in the future. The Arambulas will also be entitled to recover punitive damages and their attorneys' fees.

Tony's billed medical costs stemming from the incident with PPD have already exceeded \$250,000. They are expected to greatly increase in the future. Doctors initially told Tony that there was a high probability that his hand and wrist would have to be amputated because of the injuries he sustained. Thus far, they have avoided amputation. But his future prognosis with respect to his wrist is unknown. Doctors have told Tony that they are in uncharted waters—they have never before attempted to repair a wrist like his, with so much bone loss.

At a recent January 14, 2009 appointment, when pressed by Tony, one physician estimated that there is a 60-70% chance that the latest bone graft procedure (performed in December, 2008) would hold, but that it would take approximately five years for his bone to fully develop and for doctors to be certain that the graft would be successful. Assuming the graft holds, Tony has been told that he will likely need three to five additional surgeries in the future to repair the remaining damage to his wrist, in addition to the usual follow-up care, medication, and physical therapy. Doctors have told Tony that the years of additional surgeries, pain, and disability described above is the best possible outcome. But, they have also warned him that he may still suffer some permanent loss of use of his hand and wrist.

Doctors estimate that there is a 30-40% chance that the recent graft procedure will not be successful. If it is not, then he will suffer far more dramatic damage and greater disability. Before amputation, doctors would first attempt to implant a "mechanical structure" into his wrist, hoping that it would allow them to perform additional surgeries to save his hand and wrist.

In addition to the concerns with respect to his wrist, Tony has suffered permanent and life-long injuries. Even if Tony gains back full use of his wrist, doctors have told him to expect a lifetime of pain and arthritis, given the trauma he sustained. The bullets that penetrated Tony's knee and leg have left him with daily pain and swelling. Doctors have told him that they are unsure about whether he will suffer any long-term arterial damage and that he should, at least, expect to deal with increased pain and arthritis throughout his left leg for the rest of his life. In addition, the surgeries performed to date on his wrist required doctors to intentionally break Tony's right hip and remove fragments of bone to place in his wrist. As a result, Tony must now live with daily pain in his hip and doctors have also told him to expect a lifetime of arthritis in there, as well. At the young age of 35, Tony now faces chronic arthritis and pain throughout his body that, for the rest of his life, will greatly diminish the ability for him to live his life, engage in an active lifestyle, and enjoy his young family.

Given the certainty of additional surgeries for Tony together with all of the follow-up care and therapy that will attend the procedures, and in light of the medical bills he has already incurred, it reasonable to project that Tony will incur a total of more than \$500,000 in liability-related medical costs through the next five to six

years. His insurance company will attempt to recover all of that from him in the event of any settlement or damages award. Utilizing the standard damage calculation of three times these specials, it is easy to predict that the standard valuation of damages to Tony alone in this case ranges from \$1.5 million on the certain low end to \$5 million, in the event of amputation or further damage if his prognosis becomes less favorable.

And, given the undisputed facts known to date from the police records, it is likely that a jury would find the presence of aggravating circumstances that would drive the valuation damages even higher. It is undisputed, for example, that the officers had actual knowledge that Tony, the homeowner and Lesley's husband, was the one holding the gun—*before they entered the home* (they admit that Lesley told the supervising Sergeant that before they entered the home). Additionally, Tony told the Police 911 operator that he had the intruder at gunpoint. *Tony was first shot in the back* without being given any prior verbal commands or warnings by the officers, even though Tony was holding an armed intruder at gunpoint and engaged in a conversation with a 911 operator at the time he was shot in the back. *Then, he was shot five more times, several times while on the ground.*

After being shot six times by Officer Lilly and before assessing the severity of his wounds, officers then dragged the shot and bleeding Tony, head-down, by his feet through his home and through dirt and gravel outside his home, while his wrist was flapping against his arm, causing him excruciating pain. Tony's physical pain was but a fraction of the horror of those moments. Tony believed that his wounds were fatal and that he would likely die in a matter of minutes. He begged the officers not to drag him through the dirt in front of his wife and young children. He did not want them to see him die that way. The officers, knowing that they had shot the wrong man—six times—ignored this simple request from an innocent, dying father.

To compound this insensitive and callous treatment, officers then picked him up and tossed him onto the hot hood of a squad car and drove him down the street. This action is inexplicable, as the officers knew they shot an innocent homeowner, they could see the obvious severity of Tony's injuries, and recognized that he appeared to have compound fractures to his wrist and multiple gunshot wounds to his abdomen and legs. And to make matters worse, while follow-up police investigation "cleared" the crime scene, the investigators failed to discover the intruder's loaded 9 millimeter handgun—in plain sight—under Matthew's bed and failed to retrieve the bullets from the intruder's gun that had penetrated the Arambula home. The police discovered these critical items only after Tony told the police about them for a second time after they had "cleared" the scene. These and other undisputed—and horrifying—facts will be aggravating factors for the jury to consider in assessing the additional value of this case.

Lesley and the Boys

Tony's wife and young sons have suffered a tremendous amount of trauma from their experience, as well. The family is under increased financial pressure, as

Tony and Lesley have been forced to take significant time off of work and have had to pay for increased medical costs. They have also had to pay thousands of dollars for the costs of repairing their house, cleaning the bloody carpets and walls, and fixing shattered glass and bullet holes in the wall. The children have been under the care of a child psychologist since the incident, dealing not only with the experience of emotional trauma itself, but also the anxiety and other problems that have resulted. The youngest boy, Zachary, may even need more intensive therapy to deal with the emotional trauma, since he is too young to be able to fully articulate the trauma he has experienced. And Lesley and the boys have all suffered a loss of consortium with Tony as the result of what happened.

Lesley expects to commence therapy soon, as well, to deal with the anxiety she has experienced since the incident. All have suffered physical effects of the emotional trauma they experienced. Lesley even suffered bruises from the way in which the police grabbed and controlled her that evening. And, all were in the zone of danger that night, subjected to the outrageous conduct of the police. They were already frightened by the armed intruder who entered their home. Then, the police left them all alone on the patio of their home, approximately twenty feet away from where Officer Lilly fired the shots. They heard the shots and became terrified for themselves and for their Dad and her husband. They had no idea who had fired the shots and no idea whether those shots might be directed at them or whether the same armed intruder that had first shot and then entered their home would, at any moment, run out of the house toward them and keep shooting, as they stood all alone on the patio, without any police protection. Instead, they heard the gunshots and screams from feet away and then watched as officers dragged their Dad and her husband, shot and bleeding, through the house and onto the patio, where he was dumped right in front of them on the patio before he was taken away from them and tossed on the hood of a hot squad car.

After that, Lesley and the boys were escorted to another squad car, where they were detained for hours and interrogated on multiple occasions. Needless insult was added to needless injury when Lesley was accusingly asked "what do you have to hide" in response to her simple plea for a glass of water and permission to go to the hospital to be with what she assumed was her dying husband. She and the boys were not permitted to do so and were not even advised of Tony's status. These, too, are aggravating circumstances of the extreme and outrageous conduct of the police that are likely to influence the jury's damages consideration in this case. Given these and other facts, it is reasonable to expect that a jury would award between \$500,000 and \$1.5 million each to Lesley, Matthew, and Zachary.

Verdict Value Research

Our initial research on verdict values in factually similar mistaken-identity police shooting cases supports an even larger range of damages. For example, in *Veriguette v. City of New York*, 1996 WL 33339972, a man was on his way to work when he was mugged on the sidewalk outside his workplace. The man pulled-out an

unlicensed handgun to ward off his attacker, shooting the attacker in the hip, and then hurried inside the vestibule of his workplace. While inside the vestibule, police officers arrived on the scene and, within minutes of their arrival, opened the workplace door and shot the man twice, leaving him paralyzed and confined to a wheelchair. Officers claimed that they were simply responding to reports of an attacker with a gun and mistakenly, although reasonably, perceived that to be the man in the vestibule. Some witnesses claimed that the police had issued warning before firing, but other witnesses testified that they heard no such warnings. The New York jury found that the shooting was not justified and that the man's civil rights had been violated under § 1983. They awarded him \$12,661,000.

Similarly, in 2005, the parties reached a \$7,355,000 settlement in *Hoskins v. Keddie Jr.*, 2005 WL 3618248. There, Middletown Township Police officers were investigating an apartment with a search warrant for illegal drug activity related to Hoskins' brother. Hoskins and his girlfriend were in his bedroom with the door closed when they heard noise outside in the apartment. Hoskins claims that just when he was approaching the bedroom door to open it, police broke it down and shot him in the abdomen.

While these cases are illustrative only and not representative of what the Arambulas expect to receive in an early settlement, they do represent a realistic potential for damages that could be awarded in this case, should it go to trial. And, should this case go to trial, the jury will hear their story, which is a story that, unlike the above cases, involves no fault to assign to the Arambulas nor any potential wrongdoing in their home. There is simply no excuse or defense for what was done to this family and no tolerable justification for the way PPD acted in attempting to cover-up their reckless actions.

Settlement Demand

A.R.S. § 12-821.01 requires that the Arambulas' estate include in this Notice of Claim a specific dollar amount for which their claims can be settled.

Based on the above calculation of damages and the verdict value research performed to date, and based on the facts set forth above, this case will result in a verdict of between \$5 and \$9.5 million (the aggregate for all four plaintiffs) should the Arambulas prevail at trial with an even-tempered jury. Of course, that verdict range is exclusive of costs and attorneys' fees. It is hard to predict what an aggravated jury would do given the police behavior, both before Tony was shot in the back and their behavior toward Tony, his wife, and their little children after the shooting.

At this time, however, the Arambulas are willing to settle this case as follows:

\$3.5 million to Tony Arambula;
\$750,000 to Lesley Arambula;
\$750,000 to Matthew Arambula; and
\$750,000 to Zachary Arambula.

The evidence gathered so far supports both that figure and our expectation that a jury would award a much greater amount than that claimed.

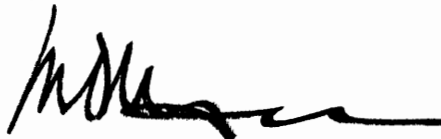
Conclusion

The jury will identify with the Arambulas and this case. It is a case about an involuntary hero who saved his family and did everything exactly as the police would have scripted for him as the perfect homeowner response. Yet, the Arambulas are the ones who suffered physically and emotionally. Tony went from being a citizen-hero who confidently and calmly awaited police protection to a bloody, bullet-ridden citizen who faces certain surgeries, uncomfortable rehabilitation, potential amputation of his wrist and hand, and a lifetime of physical and emotional suffering. And his young family has to endure their own pain and suffering too. What happened to the Arambulas is unacceptable and should not happen to citizens in this community.

We believe a jury would respond with a message to these defendants and this community that what happened here is inexcusable and that the attempt to cover-up their admitted reckless mistakes is intolerable. Do not force a jury to send that message in this case, a case involving good people who did everything right to protect themselves, safeguard their home and their family, and cooperate with a police force that they have, until now, always respected and honored.

Very truly yours,

STINSON MORRISON HECKER LLP

A handwritten signature in black ink, appearing to read 'M. Manning', with a long horizontal flourish extending to the right.

Michael C. Manning

MCM:JTW:rvs

EXHIBIT A

Call #5: F1871
 Anthony Arambula
 3126 E. Flower
 Incident No. 081601871
 Time Received: 20:04:19

Time lapsed	Speaker	
0:00	Arambula:	I want to see your hands.
0:02	911:	911, what is the location of the emergency?
0:04	Arambula:	3126 East Flower
0:06	911:	What's the emergency?
0:07	Arambula:	I just heard gunshots through my window.
0:09	Canales:coming too.
0:11	911:	Is anybody in your house?
0:12	Arambula:	I don't know yet,. But I have two kids here.
0:14	911: (simultaneous)	Okay, Sir, I want you to check your children immediately. Check your children.
0:15	Arambula: (simultaneous)	I have a man in my house and I have him at gunpoint.
0:17	911:	Check your children. I'll get some help started. Check your family, Sir.
0:20		[screaming, sound of gunshots fired.]
0:24	Arambula:	I'm sorry, I'm right here, I'm right here. I'm the homeowner. You just killed, you killed the homeowner. The bad guy's in here.
0:33	Police:	Get out, get out, get out man, get out.
0:36	911:	What's going on sir?
0:37	Arambula:	Oh, my God. Oh, my God.
0:40	911:	Sir, what's happening?
0:41	Arambula:	I'm the homeowner.
0:42	Police:	998
0:43	Arambula:	I'm the homeowner.
0:44	Police:	Right now.
0:45	911:	What's happening, Sir?
0:48	Arambula:	Call 911. I just died. Please.
0:52	911:	Sir, I've got help coming, tell me what happened.
0:54	Arambula:	I could die
0:56	Police:	Okay.
0:58	Arambula:	You I can't believe this is happening to me.
1:01	Police:	_____ it out me now.
1:02	911:	Sir, can you tell me what's going on?
1:05	Arambula:	Oh, my God.
1:07	911:	Sir?
1:08	Arambula:	Oh, my God.
1:09	Police:	Where's the gun? Is there a gun inside there, Sir?
1:11	Police	[inaudible]
1:13	Police:	Okay.

Time lapsed	Speaker	
1:16	Police	Fuck
1:17	911:	Sir?
1:17	Police:	71. We have him contained in the west bedroom.
1:20	Police: (multiple voices yelling)	Get out here now. Get on the ground right now. Roll your ass out of here right now, Mother Fucker. Get down. Get your ass out here.
1:30		[Beep, beep beep sound of 911 calling Fire]
1:34	Police:	Get the fuck out. Right now Mother Fucker.
1:42	Fire:	Fire Department. What's the address?
1:42	Police: (multiple voices)	[inaudible voices in the background]
1:43	911:	Say, I've got someone saying there are shots fired at 3126 East Flower. I'm not getting any response from my caller. I just wanted to get you on the line with me and do whatever you need to do, but they're not answering. I've heard shots over the phone and heard someone yelling. I think someone's hurt, but I don't know.
1:59	Fire:	Okay. I'll let the supervisor know. Thank you.
2:03	Police:	What's your address?
2:04	911:	Okay. Okay. I guess we're on scene. It's some kind of officer involved shooting. Do you want to stage? I don't even know if anybody's been shot.
2:12	Police:	[inaudible voices in the background]
2:15	Fire:	Yeah. Yeah. You're gonna have to let us know.
2:19	911:	Okay. I'll say Fire advised and needs to be advised.
2:21	Fire:	Sounds good.
2:22	911:	Okay. Thank you.
2:23	Fire:	Thank you. Bye, bye.
2:24	Arambula:	I can't breathe. I can't breathe.
2:26	Police:	Shut the fuck up.
2:26	Arambula:	Officer, why did you kill me?
2:30	Police:	Here, I got him. You guys hold on the bedroom.
2:42	Police:	We just fucking shot a man.
2:48	Arambula:, I love you.
2:51	Police:	Fuck.
2:52	Arambula:	I love you.
2:58	Police:	[inaudible voices in the background]
3:04	Police:	[inaudible voice over the radio]
3:38	Police:	Alright, back out. [inaudible]
3:47	Arambula:	Hey.
3:50	911:	Sir, are you there? Hello?
4:08	Arambula:	I need help.
4:10	Police:	Fire's coming buddy. Fire's coming.
4:20	911:	Sir, has anybody injured in your home? Sir? Sir?
		(lots of noise and talking in the background)
4:47	911:	Sir, this is the police department. Are you on the line?

Time lapsed	Speaker	
		Can you advise me if anybody has been injured inside your home? Hello?
		(talking in background.)
5:25	911: (to someone there with her)	Hey Tammy. I heard my guy yelling "I need help" but I cannot....(inaudible) yelling "I need help." (inaudible) Okay.
		(talking in background)
5:58	Police:	(inaudible) we fucked up. (inaudible)
5:59	Lilly:	I fucking shot this guy. (inaudible) fucked up.
6:04	911:	Sir? Sir?
		(talking in background.)
6:07	Lilly:	Someone came out of the fucking room.
6:10	Coutts:	Was the gun down here?
6:13	Lilly:	I don't know. I heard screaming and I (inaudible) fire
6:15	Coutts:	That's alright. (talking at same time as Lilly)
6:16	Coutts:	Don't worry about it. I got your back.
6:20	Coutts:	We clear?
6:21	Operator:	3126.
		(talking in background)
6:44	Operator:but he's not responding to me.
		(talking in background)
7:25	Police on radio:	Ok. Officers inside of that house we're just getting Fire to (inaudible)
7:50	Operator:	Hello?
		(inaudible talking in the background)
7:54	Police on radio:for the time being. I want all responding officers to just go ahead and.....32 nd street and Flower. All responding officers.
8:13	Police:the back of the house
		(inaudible talking in the background)
9:07	Police on radio:	...up here to stand by the shooting officer.
		(inaudible talking in the background)
9:39	Police:there is to be no one else inside that house. (inaudible)
		(inaudible talking in the background)
10:00		...evac the subject to
10:02		[alarm sound]
10:10		(no more background sounds)
11:10		[audio recording ends]