

**IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO**

TREVON BOONE, INDIVIDUALLY and as  
ADMINISTRATOR OF THE ESTATE OF  
TONYA R. JOHNSON, DECEASED  
646 Canteridge Drive  
Pickerington OH 43147

and

DEJON NEWELL  
2820 Heritage Ave NW  
Canton OH 44718

and

JAMES A. JOHNSON, as GUARDIAN OF  
TEMARIA D. JOHNSON  
6441 Candlestick Ave NE  
Canton, Ohio 44721

Plaintiffs,

vs.

DR. LISA KOHLER  
SUMMIT COUNTY MEDICAL  
EXAMINER  
85 N. Summit Street  
Akron, OH 44308

and

THE GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA  
7 HANOVER SQUARE  
NEW YORK, NY 10004

and

CASE NO. \_\_\_\_\_

JUDGE \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY JUDGMENT  
Request to Direct Medical  
Examiner to Correct Erroneous  
Manner of Death Determination,  
Request to Direct Akron Police  
Department to Correct Erroneous  
Offense Code & Description on  
Police Incident Report**

**BREACH OF CONTRACT  
BAD FAITH  
NEGLIGENCE  
INTENTIONAL AND  
NEGLIGENT INFLICTION OF  
EMOTIONAL DISTRESS  
INJUNCTION**

**REQUEST FOR EVIDENTIARY  
HEARING**

**JURY DEMAND ENDORSED  
HEREON**

MICHAEL S. VAVRO  
Individually and in his official Capacity as  
Sergeant of Police of the City of Akron  
217 S. High St.  
Akron, OH 44308

and

RICHARD DECATUR  
Individually and in his official Capacity as  
Supervisor/Lt. of Police of the City of Akron  
217 S. High St.  
Akron, OH 44308

and

AKRON POLICE DEPARTMENT  
217 S. High St.  
Akron, OH 44308

and

CITY OF AKRON  
Harold K. Stubbs Justice Center  
161 S. High Street  
202 Ocasek Government Office Bldg  
Akron, OH 44308

and

JOHN DOE(S)  
Individually and in their official capacity as  
other police officers/supervisors who were  
involved in the investigation and  
determination of the death of Tonya Johnson,  
the identity is known to Defendants  
C/O JAMES NICE, Chief of Police, Akron  
Police Department  
217 S. High St.  
Akron, OH 44308

Defendants.

## COMPLAINT

Now comes Trevon Boone, individually and as Administrator of the Estate of Tonya R. Johnson, deceased, Dejon Newell, and James A. Johnson, as Guardian for minor Temaria Johnson (collectively referred to hereinafter as the "Plaintiff"), by and through undersigned counsel, for their Complaint against:

Dr. Lisa Kohler, Summit County Medical Examiner ("Kohler");

The Guardian Life Insurance Company of America ("Guardian Life"); and

Michael S. Vavro, Richard Decatur, Akron Police Department, the City of Akron, and John Doe(s) c/o James Nice, Chief of Police, and the Akron Police Department (collectively referred to hereinafter as the "Akron Police Department") (Kohler, Guardian Life, and Akron Police Department hereinafter collectively referred to as "Defendant").

And, pursuant to Ohio Revised Code (ORC) §313.19, Article I, §16 of the Constitution of the State of Ohio and Ohio Revised Code §2721, seeks adjudicatory relief from this Court, to wit:

An order directing Lisa Kohler, Medical Examiner the County of Summit to amend her opinion concerning the manner of death, rendered on or about April 18, 2016, replacing "suicide" with a non-suicide causation, as it does not conform to the requirements for an opinion of suicide as set forth by ORC §313.19 and the related precedential case law;

An order directing Sgt. Michael Vavro, Lt. Richard Decatur, Chief James Nice, and/or other unnamed employees of the Akron Police Department or the City of Akron to amend their reports concerning the manner of death, rendered on or about

April 20, 2016, replacing “suicide” with a non-suicide determination, as a claim of “suicide” is contrary to law and counter to the available evidence provided by the facts and circumstances;

An order directing The Guardian Life Insurance Company of America to pay the total amount of the benefits due under the Policy that is a subject within this action, in the amount of \$3,000,000, plus interest, from the date of death to the date of payment, at a rate of 0.81% per ORC §3915.052.

Plaintiff asks that a full evidentiary hearing be conducted upon the record, and that Plaintiff is granted judgment in their favor and awarded all monies owed to them plus damages, including emotional distress, punitive damages, and attorney fees and costs associated with this action.

#### **JURISDICTION AND VENUE**

1. This action includes seeking injunctive and equitable relief, to wit: Declaratory Judgment under Ohio Revised Code §313.19 and Ohio Revised Code §2721 .01, *et seq.*

2. Plaintiff, Trevon Boone, is a proper party in this action as he is the duly appointed Administrator of the Estate of Tonya R. Johnson, the deceased whose death is the subject matter of this litigation [a copy of Trevon Boone’s appointment as fiduciary by the Stark County Probate Court is attached hereto as Exhibit A]. Trevon Boone is also is a surviving adult son of Tonya Johnson and her direct lineal descendant under Ohio law.

3. Plaintiff, Dejon Newell, is a surviving adult son of Tonya Johnson. Dejon Newell is Tonya Johnson’s direct lineal descendant under Ohio law.

4. Plaintiff, James Johnson, is the legal guardian of Temaria Johnson, surviving minor daughter of Tonya Johnson. Temaria Johnson is Tonya Johnson’s direct lineal

descendant under Ohio law [a copy of James Johnson's appointment as fiduciary by the Stark County Probate Court is attached hereto as Exhibit B].

5. Trevon Boone, Dejon Newell, and Temaria Johnson are the collective beneficiaries of a life insurance policy issued by Guardian Life to policyholder Tonya R. Johnson, deceased. Consequently, they have a direct and palpable interest in this matter and a claim for recovery of benefits due under said life insurance policy issued by Guardian Life.

6. Upon information and belief, the Medical Examiner is the duly-appointed Coroner for Summit County, Ohio, responsible for determining the cause, manner, and mode of otherwise unexplained deaths in the county.

7. Dr. Lisa Kohler is the duly appointed medical examiner for the County of Summit and was serving in that capacity at all relevant times herein.

8. Sgt. Michael S. Vavro, as an officer with the Akron Police Department in Summit County, Ohio, participated in the investigation of the incident surrounding the death of Tonya Johnson, which occurred in Summit County, Ohio.

9. Lt. Richard Decatur, as an officer with the Akron Police Department in Summit County, Ohio, is named as supervisor on the investigation report of the incident surrounding the death of Tonya Johnson, which occurred in Summit County, Ohio.

10. Chief James Nice, or the acting Chief of Police of the Akron Police Department in Summit County, Ohio, as the chief over any and all employees, officers, and supervisors involved in the investigation surrounding the death of Tonya Johnson, who died in Summit County, Ohio.

11. The Akron Police Department is located in the City of Akron, Summit County, Ohio, and is a division of the municipal corporation, the City of Akron.

12. Guardian Life is a corporation registered with the Ohio Department of Insurance to sell insurance in the State of Ohio and does so through multiple agents located throughout, with its headquarters located in the State of New York.

13. The transactions/occurrences giving rise to this lawsuit makes venue in this Court proper pursuant to Ohio Civ. R. 3, based upon the fact that the death of Tonya Johnson occurred in Summit County, Ohio.

### **FACTS AS TO ALL COUNTS**

1. Tonya Johnson is the mother of three children: Trevon Boone, 23 years old at Tonya's date of death, Dejon Newell, 21 years old at Tonya's date of death, and a young daughter Temaria Johnson, 12 years old at Tonya's date of death.

2. Tonya Johnson was a full-time firefighter and paramedic employed by the City of Canton, Ohio for 18 years.

3. In 2009, though working full-time at the City of Canton Fire Department, Tonya began her company *In Trusting Care LLC*, which became successful, profitable, and provided jobs within her community.

4. Tonya Johnson served as owner and president of her business *In Trusting Care LLC*, a Medicaid service provider for the disabled, which helped individuals with daily medical care, food, housing, and transportation.

5. *In Trusting Care, LLC* employed Tonya's son, Dejon Newell, and her cousin, Regina Skinner, as well as more than 30 other people.

6. *In Trusting Care, LLC* shows growth for the year of 2015, hiring ten (10) new employees that year.

7. Tonya Johnson and Randey Johnson began a romantic relationship in October of 2015.

8. Tonya Johnson and Randey Johnson were married on February 14, 2016.

9. Tonya initiated a dissolution of their short-term marriage on February 22, 2016, nine (9) days after they were married.

10. Specifically, on the morning of February 22, 2016, Tonya Johnson's date of death, at approximately 8:45 a.m., Tonya received an email from *Divorcewriter.com* containing multiple dissolution documents prepared for Tonya Johnson and Randey Johnson, including a Petition for Dissolution, Affidavits, and a Separation Agreement.

11. Regina Skinner, Tonya's cousin, kept track of Tonya's schedule and assisted with running the business and, as was standard, Tonya had been in contact with Regina throughout the day. On February 22<sup>nd</sup>, Tonya informed Regina that she and Randey had been in Cleveland for the purpose of having dissolution documents notarized.

12. The GPS from Tonya's cell phone shows her in Cleveland at the corner of East 9<sup>th</sup> St. and St. Clair Ave NE, from 1:33 p.m. to 2:35 p.m., just steps away from Navy Federal Credit Union, where Randey Johnson had recently opened a checking account.

13. On the date of her death, Tonya was texting with her sister Tiffani Walker. Tonya was planning to pick up her sister in Canton, upon her return home from Cleveland.

14. At 3:29 p.m., Tonya informed her little sister Tiffani, by text message, she was on the highway from Cleveland and may be a couple minutes later than the 4:30 pm

pre-scheduled arrival time. Tiffani asked Tonya if she should find another ride. Tonya responded that it was not necessary because she would only be fifteen (15) minutes late.

15. Randey Johnson was the driver of a black Cadillac Escalade, titled in Tonya Johnson's name, traveling southbound on Route 8 on February 22, 2016.

16. Per Randey Johnson's own statement, given to an Akron police officer, he and Tonya began arguing during the drive.

17. Tonya Johnson called Regina Skinner and asked her to come pick her up on Route 8, specifically stating "come get me, come get me." Regina was expecting a follow up telephone call or message from Tonya, providing additional details as to where to find Tonya.

18. Regina Skinner headed North on Route 8 in order to pick up Tonya.

19. Randey Johnson stopped the vehicle to the right of the travel lanes, just past the Tallmadge exit around 4:00 p.m. Tonya then quickly exited the vehicle on the passenger side.

20. Traffic in the southbound lanes of Route 8 was described as being "stop and go."

21. She began to cross the southbound lanes, specifically witnessed to outstretch her hands and place them on the hood of a car to have them stop.

22. According a witness, Tonya moved very quickly to avoid being hit. More specifically, she stopped mid-tracks and backed up, to avoid being hit, then hurried forward to the median.

23. Tonya then climbed over the cement barrier in the median, which took more than one attempt due to its height.

24. Traffic was moving at approximately fifty-five (55) to sixty (60) miles per hour or above in the northbound lanes.

25. Tonya was observed to step into the first lane in the northbound lanes, and then backward to the median.

26. During a following attempt to cross the northbound lanes, Tonya was struck and killed.

27. Tonya Johnson was pronounced dead as of 4:31 p.m., on February 22, 2016.

28. Randey Johnson filled out a Traffic Crash Witness Statement stating that “We had just Clevend [sic] from going to the bank traffic [sic] was slow I was about to get of [sic] highway she jumps out of the car and startes [sic] crossing the highway and got hit.”

29. Vavro and Officer Lemonier obtained a verbal statement from Randey Johnson after the incident. In the statement, he gives conflicting reasons as to why she exited the vehicle.

30. Tonya’s mother, children, sister, and cousin all stated unequivocally that Tonya would only have exited the vehicle out of fear for her life, most likely fear that Randey Johnson would cause her imminent harm and that she had no other choice than to exit the vehicle and flee.

31. Randey Johnson stated that Tonya was bi-polar and suffering from depression and that she had stopped taking her prescribed medication several days prior to the incident. Medical records, as well as statements by Tonya’s family and friends, prove these allegations to be completely false. Randey Johnson left the scene shortly after making the false statement to police, leaving Tonya’s body and driving away in her vehicle.

32. Despite the fact that a death occurred, and despite the fact that the Cadillac Escalade had expired tags, the Akron Police Department allowed Randey Johnson to drive away without first searching the vehicle and without questioning Randey Johnson about the specific events leading up to Tonya's death.

33. Randey went to Tonya's home the night of her death. Randey showed no signs of remorse and gave family members conflicting stories about the events leading to Tonya's death. Randey retained possession of Tonya's vehicle and went to work out at Planet Fitness, leaving his wedding ring behind.

34. On Thursday, February 25, 2016 – three (3) days after Tonya's death – Randey dropped off the recently and extensively cleaned Escalade. Dejon informed the police of his belief that Randey was about to leave the state, requesting that the police prevent Randey from getting away.

35. More than thirteen hundred (1,300) attended Tonya Johnson's funeral – including at least one hundred fifty (150) active and retired firefighters – which took place on February 29, 2016, and her service to Canton as a firefighter of eighteen (18) years granted her the largest gathering of colleagues in the city's history. Randey Johnson did not attend the funeral of Tonya Johnson.

36. Randey Johnson fled the jurisdiction of the State of Ohio; attempts to reach him have been unsuccessful.

37. Randey Johnson's current whereabouts are unknown.

38. Tyrone Massey, father of Tonya Johnson, informed police she has never been on psychiatric medication of any kind and that she has no history of mental illness. Mr.

Massey added that Tonya would never hurt herself and that he believed that something was up with his daughter's death. Officer Vavro dismissed his statements and took no action.

39. Regina Skinner, cousin of Tonya Johnson, informed police that Tonya had only been married nine (9) days and that she had already begun the process for dissolving of the marriage. Ms. Skinner added that Tonya has no history of mental illness, was not on any medication for that reason, and would never intentionally cause harm to herself. She also was adamant the Randey actions led directly to Tonya's death. Vavro dismissed her statements and took no action.

40. A full review of all of Tonya Johnson's medical records proves that she has no history of bipolar disorder or depression nor had she ever taken any medications relating to any such diagnoses.

41. Tonya Johnson has no history of suicide attempts nor is there any credible source indicating that she ever spoke about an intention to commit suicide. To the contrary, Tonya had a strong religious belief that suicide was a sin, leading to eternal damnation.

42. Following Tonya Johnson's death in Summit County, Ohio, on or about April 18, 2016, the Medical Examiner purported to determine that that the cause of death for Tonya Johnson was "blunt force trauma to the head," manner of death being "suicide" [a copy of the Certificate of Death for Tonya Johnson is attached hereto as Exhibit C].

43. The Akron Police Department's Incident Report, dated April 20, 2016, lists the offense code and type as A220-suicide.

44. Initially, the Akron Police Department filed a Crash Report listing Tonya Johnson's death as being the result of a "traffic crash." On April 18, 2016, Kohler stated her determination that Tonya Johnson's death was the result of a suicide. On April 20, 2016, seemingly counter to conducting an investigation independent from the Medical

Examiner, Sgt. Vavro removed the existing Crash Report from the record and filed an Incident Report in its place; the Incident Report listed an offense code and type of A220-suicide.

45. On or about September 1, 2015, Tonya R. Johnson purchased a term life insurance policy from Guardian Life, known as Policy No. 6849002 (hereinafter "Policy"), through financial representative Gary Sirak of The Sirak-Brockett Agency, Ltd. predecessor in title Sirak Financial, of Canton, Ohio, the beneficiaries being her three young children Trevon Boone, Dejon Newell, and Temaria Johnson.

46. The Policy contained an Incontestability Provision stating, "We will not contest this policy after it has been in force during the insured's lifetime for 2 years from its issue date, except for non-payment of premiums. The contestable period of any additional benefit rider attached to this policy is stated in the rider."

47. The Policy also contained a Suicide Exclusion stating, "If the insured commits suicide, while sane or insane, within 2 years from the issue date, our liability will be limited to the premiums paid."

48. On or about October 11, 2016 Guardian Life sent a letter to the beneficiaries of the Policy: Trevon Boone, Dejon Newell, and James Johnson on behalf of Temaria Johnson, a minor. Guardian Life did not contest the validity of the Policy, but declined to pay the claim for death benefits under Guardian Life Policy #6849002, specifically denying said claim for death benefits under the Policy's Incontestability Provision and Suicide Exclusion Provision [a copy of this letter is attached hereto as Exhibit D].

**COUNT ONE****(Correction of Medical Examiner's Erroneous Determination)**

49. In relevant part, O.R.C. §313.12 (A) states that:

When any person dies as a result of criminal or other violent means...or in any suspicious or unusual manner...the physician called in attendance, or any member of an ambulance service, emergency squad, or law enforcement agency who obtains knowledge thereof arising from the person's duties, shall immediately notify the office of the coroner of the known facts concerning the time, place, manner, and circumstances of the death, and any other information that is required pursuant to sections §313.01 to §313.22 of the Revised Code.

50. The investigation of a death involves both a medical and legal phase, and requires a specialized discipline correlating knowledge of both law and medicine.

51. Accordingly, it was incumbent upon Kohler to conduct a competent and thorough investigation into both the actual manner and cause of death of Ms. Johnson. This includes adhering to accepted policies and practices for investigating unexpected, unusual, and suspicious deaths.

52. The National Association of Medical Examiners categorizes all manners of death into one of the following:

**Natural** — Due solely or nearly totally to disease and/or the aging process.

**Accident** — Due to an injury or poisoning that occurred without intent to harm or cause death. In essence, the fatal outcome was unintentional.

**Suicide** — Due to an injury or poisoning that was the result of an intentional, self-inflicted act committed to do self-harm or cause the death of one's self.

**Homicide** — Due to an injury or poisoning or from a volitional act committed by another person to cause fear, harm, or death. Intent to cause death is a common element but is not required.

53. The Medical Examiner or Coroner must use *all* information available to make a determination about the death. This may include information from his or her own

investigation, police reports, staff investigations, and discussions with the family and friends of the decedent.

54. On or about April 18, 2016, the Medical Examiner purported to determine that the cause of death for Tonya Johnson is "blunt force trauma to the head," manner of death being "suicide."

55. After routine testing, the toxicology report results were negative for alcohol and drugs.

56. Ohio Revised Code §313.19 empowers the Court of Common Pleas for the county in which a death occurred to direct a change as to cause, manner, and mode of death whenever appropriate and after an opportunity for a hearing.

57. According to the Report of Autopsy dated May 5, 2016, Lisa Kohler supports her opinion of suicide based on the following:

- a. The testimony of Randey Johnson, to whom Tonya Johnson was married for only the nine days prior to her death and who had known Tonya for less than five months prior to her death.
- b. Tonya was "reported to have been in the process of a divorce" from her husband of nine (9) days.
- c. Purported witnesses who claim to have observed Tonya having "purposely step into rush hour traffic on a highway, with traffic moving at posted speeds of 55+ mph, with the intent to be struck by a vehicle."
- d. Unsubstantiated claims alleging that Tonya "was known to have had significant financial difficulty at the time of her death."
- e. Circumstances show that Tonya "walked across the slow southbound lanes of traffic without haste."

- f. Statements from witnesses claiming that, in the very brief moment they observed her, she was standing still, not attempting to cross the rapidly moving traffic lanes.
- g. “In this instance, any reasonable adult would recognize that intentionally stepping in front of multiple moving vehicles traveling at rapid highway speeds is a self-destructive act. These actions indicate a desire to cause self-harm and therefore the manner of death is ruled Suicide.”

58. A review of Kohler’s findings reveals several pertinent flaws in her analysis – as she failed to consider other relevant evidence, testimony and other possibilities – resulting in a determination of suicide that is contrary to Ohio law.

59. Specific flaws in Kohler’s analysis are as follows:

- a. Randey Johnson’s testimony was given undue weight considering his potential culpability and the fact that Randey Johnson’s statement regarding Tonya not taking her medication for depression or bipolar disorder was known to Kohler to have been a complete fabrication, as proven by a review of her medical records.
- b. It was Tonya that initiated the dissolution of her nine (9) day marriage to Randey.
- c. Given that Tonya’s death yields a direct financial benefit to Randey, his actions should have been more thoroughly scrutinized regarding the incident. Note that, because Tonya died without having a chance to file for the dissolution from Randey, he will receive lifetime pension benefits derived

from Tonya's 18 plus years as a Canton City Firefighter as well as full interest in Tonya's personal residence.

- d. Given that, other than those strangers who saw her for the few moments as they sped by in their vehicles, Randey was the last person to see Tonya alive, his actions should have been more thoroughly scrutinized regarding the incident.
- e. Given that, Tonya's family have steadily maintained their belief that she would only have exited the vehicle if she feared for her life, Randey Johnson's actions should have been more thoroughly scrutinized regarding the incident.
- f. The witnesses claim an extra-sensory ability to visually observe an individual's psychological intent based on a few seconds of observation at a speed of more than 55 mph.
- g. Tonya put forth significant effort to avoid being struck by a vehicle in the southbound lanes of traffic, successfully making it to the highway median, thereby proving that her intent was to get across the road.
- h. Kohler stated, categorically and unequivocally, that no one would try to cross a busy road and that the only reason to walk onto a highway is to commit suicide, thus allowing for only one conclusion at the end of her "investigation."

60. Lisa Kohler certifies, the following:

After an examination of all the available evidence, I do find that the deceased came to the death by:

Cause of Death: Blunt force trauma to the head.

Manner of Death: SUICIDE: Stepped into traffic lane of highway near median.

61. An alternative, equally valid analysis of the evidence and totality of the circumstances surrounding the Tonya Johnson's death shows that Tonya was attempting to cross the road.

62. Due to the complete lack of thoroughness in its scope and numerous questionable actions by Kohler during the entire process, her alleged investigation and ultimate opinion as to Ms. Johnson's manner of death are both inexplicable and disturbing – especially considering the minimal effort to collect evidence and statements.

63. Some examples of the incompleteness of her investigation are:

- a. There was a lack of a thorough and competent investigation of the pertinent people and surrounding circumstances.
- b. Although Kohler valued information gathered from passersby, she did not see fit to interview family members who had communicated with Tonya just prior to her death. Kohler did not pursue information from Regina Skinner, whom Tonya called moments before her death to request a ride from her location on Route 8. Kohler did not pursue information from Tonya's sister, Tiffani, whom Tonya messaged to say she would be late.
- c. Kohler relied on Randey Johnson's statements despite the fact that a bare minimum investigation proved that he lied regarding Tonya's mental state.
- d. Kohler included "witness" statements made to an officer even though they were made substantially after the fact and display

uncharacteristic uniformity. Note that there is a stark contrast between the statements taken the day of the accident, written by the witness immediately after the accident, and those taken well after the incident, taken down by the investigator.

64. Kohler's opinion is contrary to established Ohio case law governing the role of the Coroner's office on the issue of suicide.

65. According to the Supreme Court of Ohio "as do many states, Ohio has recognized the legal presumption that in the absence of sufficient substantial evidence to the contrary, a person is presumed not to have taken his own life." (Emphasis added) *Evans v. Nat'l Life & Acci. Ins. Co.*, 22 Ohio St.3d 87, 89, 488 N.E.2d 1247 (1986).

66. Specifically, the *Evans* Court states:

- a. The crux of the question is who shall determine the sufficiency of the evidence produced contrary to the presumption, and whether the presumption has been rebutted – the trial judge, or the jury. This Court, by its case law on this subject, has concluded that it must be the trial court, and when it is so determined by the trial court that there has been a sufficiency of evidence adduced to rebut the presumption of non-suicide, the jury should be charged in the normal fashion with no instruction being given concerning the presumption of non-suicide. However, in these types of cases, we conclude it to be reasonable that the trial court may, in its discretion, refer to the improbability of suicide as an inference of fact, based upon the common experience of mankind, and then to give the jury the standard instruction upon inferences.

*Id.* This sets the standard that there is a rebuttable presumption against suicide.

67. In *Holley v. Am. Family Life Assur. Co.*, the court, applying *Evans*, held that there is a rebuttable presumption against suicide, which, in that case, was not overcome. The court noted that there was no direct evidence of suicide, and that the trial court's decision was based on wholly circumstantial evidence. The court further noted, the

expert opinions on that issue lacked foundation and were a result of multiple inferences that had been based on other inferences. The court pointed out that there were other reasonable inferences that could have been drawn from the evidence and, therefore, the presumption against suicide was not overcome. *Estate of Holley v. Am. Family Life Assur. Co.*, 4th Dist. Pickaway No. 04CA5, 2005-Ohio-2281, 1.

68. Specifically, the *Holley* court states the following:

- a. A trier of fact may draw reasonable inferences from established evidentiary facts just as an expert witness may have an opinion based on inferences drawn from facts as provided for in Ohio R. Evid. 703. But an expert witness cannot, as courts instruct the juries, reach a conclusion where one inference is based on another inference. One may make separate inferences from the same fact. This often is a hard distinction to make. The long-standing rule in Ohio, namely, that an inference drawn from another inference is rejected as without probative force, may well be modified to the extent that an inference may rest upon a prior inference that has been established to the exclusion of all other reasonable inferences. But an inference resting on an inference drawn from established facts must be rejected where the facts from which it is drawn are susceptible of another reasonable inference.

*Id.*

- b. Regarding the facts and circumstances of the particular case, the court states

“[t]here is no evidence in this case to show suicide except the coroner and his expert's vague impression that Mr. Holley's dull, routine life was not worth living. If Mr. Holley made such a judgment and ended his own life, there is no real proof of it. Without such proof, we cannot pass judgment on the quality of his life.”  
*Estate of Holley*

*Id.* at ¶ 36.

Only a slight modification is required for the *Holley* court's analysis to apply to the present case [changes underlined]:

There is no evidence in this case to show suicide except the coroner and her expert's vague impression that Ms. Johnson's dull, routine life was not worth living. If Ms. Johnson made such a judgment and ended her own life, there is no real proof of it. Without such proof, we cannot pass judgment on the quality of her life.

- c. Applying to the present case the Supreme Court of Ohio's ruling in *Evans*, as well as subsequent application of their ruling in *Holley*, Tonya Johnson did not commit suicide because substantial evidence to the contrary has not been presented sufficient enough to overcome the presumption against suicide.
- d. In the present case, just as in *Holley*, there was no direct evidence of suicide. All evidence suggesting otherwise is merely circumstantial. And, the "expert" opinions lack foundation because they are based only on inferences that are based on other inferences.
- e. As to the present case, despite the fact that Kohler has no proof of suicide, and in fact significant evidence to the contrary exists, she stands by her opinion that Tonya Johnson committed suicide and steadfastly refuses to acknowledge or review any additional evidence to the contrary.

69. Kohler has ignored the long-existing precedent that an opinion of suicide *requires* substantial evidence sufficient enough to overcome the presumption against it.

70. Presently, Kohler states that Tonya Johnson's death was self-inflicted with the intent to cause harm. Her opinion lacks substantial evidence sufficient enough to overcome the presumption against suicide as there exists neither explicit nor implicit evidence that at the time of injury the decedent intended to kill herself or wished to die. Her opinion appears to be based on the belief that no one tries to cross a busy highway unless they are trying to commit suicide.

**COUNT TWO**  
***(Medical Examiner)***

71. Plaintiff incorporates by reference all the above averments as if fully rewritten herein.

72. Kohler's actions amount to wanton misconduct as they were grossly careless and negligent. She acted in reckless disregard for the consequences of her behavior, which has caused harm to the reputation of Tonya Johnson, harm to her children and family, emotional distress in her children, family members, and friends, and the denial of life insurance claims.

73. Kohler knew, or should have known, that her actions were likely to cause harm to the reputation of Tonya Johnson, her children and her family, pain & suffering, humiliation, disgrace, and mental anguish of her children and other family members, and the denial of life insurance claims.

74. The pain & suffering, humiliation, disgrace, and mental anguish was the reasonably foreseeable result of Kohler's actions requiring that they relive the horrific day over and over again in the posthumous defense of Tonya.

75. The harm that Tonya Johnson's family has suffered was the direct and proximate cause of Kohler's grossly careless and negligent action. The harm caused by Kohler's actions continue to this day and her careless actions have created emotional damage that will likely never heal.

76. After Kohler stated suicide as the cause of death, the shocked family and friends of Tonya Johnson attempted to provide additional evidence to Kohler in the hopes of informing her that her opinion was inaccurate. Kohler did not reconsider her opinion.

77. After having the additional evidence seemingly rejected by Kohler, the family and friends of Tonya Johnson publicly protested in the hopes of clearing Ms. Johnson's name. Kohler did not reconsider her opinion.

78. After having been informed that her opinion would force the family and friends of Tonya Johnson to litigate to clear Ms. Johnson's good name, Kohler did not reconsider her opinion. Kohler had several opportunities to reconsider her unsubstantiated opinion.

79. At each opportunity Kohler was made aware of the severe consequences of her reckless behavior. At each opportunity, she refused to change her course of conduct.

### **COUNT THREE**

#### ***(Correction of Akron Police Department's Erroneous Determination)***

80. Plaintiff incorporates by reference all the above averments as if fully rewritten herein.

81. Due to the complete lack of thoroughness in its scope and numerous questionable actions by the Akron Police Department during their investigation and,

ultimately, their report as to Ms. Johnson's manner of death is both incomprehensible and disturbing, especially given the minimal effort given to collect evidence and statements.

82. Some examples of the incompleteness of the Akron Police Department's investigation are:

- a. There was a lack of a thorough and competent investigation of the pertinent people and surrounding circumstances.
- b. They did not interrogate Randey Johnson, nor search his person or Tonya's vehicle, in which he drove away the night of Tonya's death with expired tags.
- c. They made only one (1) attempt to contact a witness who is said to have crucial information on the death of Tonya, stating "I feel if the information he had was crucial to the investigation, he would have returned my call."
- d. They made no attempt to interview Deborah or Tyrone Massey, Tonya's mother and father.
- e. They made no attempts to interview Trevon Boone, Tonya's son.
- f. They made no attempts to interview Dejon Newell, Tonya's son, who had possession of his mother's cell phone.
- g. When family members called the Akron Police Department, they were dismissed and told they would be contacted when the investigation was concluded.
- h. They made no attempt to contact Tonya's co-workers, supervisors or other friends.

- i. They did not interview Regina Skinner, whom Tonya called just prior to her death to come pick her up on Route 8.
- j. They did not interview Tonya's sister, Tiffani, with whom Tonya messaged regarding their plans for that evening, wherein Tonya expressed concerns about being late to pick up Tiffani, but nonetheless Tonya stated with certainty that she would see Tiffani that night.
- k. They did not properly investigate Randey Johnson's statements; did not question the veracity of his statements nor investigate his potential culpability, even after Tonya's family expressly voiced their concern regarding Randey Johnson's actions and motives surrounding Tonya's death.

83. The statements purported to have been made to Sgt. Vavro are different than the statements taken the day of the accident.

84. According to the Akron Police Department's Report of Investigation: "Many theories, opinions, and assumptions have been stressed...I have received various statements," then jumps to "Mrs. Johnson stepped into traffic on her own accord, not in an attempt to cross traffic, but to intentionally be struck," and then backpedals to state "her emotional state or intention at the time of the incident is disputable, but her actions are not."

85. The fact that Tonya was struck by a moving vehicle is not a fact in contention; however, if there are various theories, opinions, and assumptions, it is wholly inappropriate under the circumstances for an officer to leap to a conclusion of just one theory, opinion,

and assumption to the exclusion of all others, particularly when the assumed conclusion of suicide lies at the far end of the spectrum, one of the most horrific descriptions of death that should be reserved for only the most certain of situations.

86. The Akron Police Department conveys an understanding that Tonya's intent is unknown, yet proceeds to make a determination of suicide, which by definition requires the intent to cause self-harm or death.

87. The Akron Police Department claims to support its conclusion on eye-witness testimonies, taken days after the incident, that were tainted with the illusion of suicide and leading questions, such as "Do you feel that this was an intentional act?" These statements drastically deviate from those taken the night of the accident, which mention nothing of her "intent" to be struck and killed.

88. Collectively, the Police reports and the Medical Examiner's reports constitute circular reasoning. The Akron Police Department's incident report dated April 20, 2016, was issued two days after Kohler signed her supplement to the Certificate of Death dated April 18, 2016, both parties relying on each other's report as support for their erroneous conclusions.

**COUNT FOUR**  
***(Akron Police Department)***

89. Plaintiff incorporates by reference all the above averments as if fully rewritten herein.

90. The Akron Police Department's actions amount to wanton misconduct as they were grossly careless and negligent. They acted in reckless disregard for the consequences

of their behavior, which has caused harm to the reputation of Tonya Johnson, harm to her children, family members, and friends and the denial of life insurance claims.

91. The Akron Police Department knew, or should have known, that their actions were likely to cause harm to the reputation of Tonya Johnson, her children and her family, pain & suffering, humiliation, disgrace, and mental anguish of her children and other family members, and the denial of life insurance claims.

92. The pain & suffering, humiliation, disgrace, and mental anguish was the reasonably foreseeable result of their actions, requiring that they relive the horrific day over and over again in the posthumous defense of Tonya. The harm that Tonya Johnson's family has suffered was the direct and proximate cause of the Akron Police Department's grossly careless and negligent action. The harm caused by Akron Police Department's actions continue to this day and her careless actions have created emotional damage that will likely never heal.

**COUNT FIVE**  
***(Guardian Life)***

93. Plaintiff incorporates by reference all the above averments as if fully rewritten herein.

94. Guardian Life claims to have completed an investigation regarding the death of Tonya R. Johnson. Guardian Life states that, during the course of their routine investigation, they obtained information from a variety of sources including, but not limited to, the Akron Police Department, the Medical Examiner of Summit County, Ohio, and the Ohio Department of Health.

95. In summary the Report of Investigation obtained from the Medical Examiner, County of Summit, Case No. 55346 indicated that the Medical Examiner concluded the manner of death as suicide following their investigation, which included autopsy, toxicology findings, medical records from Massillon Family Practice and Mercy Medical Center, and information from the Akron Police Department.

96. The information obtained from Akron Police Department's incident report 16-008451 classified the incident as Offense Code & Description: A220-Suicide and indicated that the "victim was struck by a vehicle on State Route 8 n/b as she stepped into the travel lane" and cited several corroborating accounts by eye witnesses. It is reported that Ms. Johnson also had a recent history of marital and financial problems. The Ohio Department of Health, Vital Statistics issued a Supplementary Medical Certification indicting the manner of Ms. Johnson's death was Suicide.

97. This investigation was not independent, and instead relied on reports already tainted with the false premise of suicide. One false inference after another has led to great harm of Tonya Johnson and her family.

98. An interview completed by Guardian Life's insurance investigator, Duaine Klucke on April 18, 2016, revealed no indication for a finding of suicide as a cause of death.

99. As a result of Tonya R. Johnson's death, Guardian Life is obligated to pay the benefit due under the Policy. The life insurance benefit due is \$3,000,000.00, plus interest from the date of death.

100. According to Duaine Klucke's statement provided to Guardian Life, Guardian Life was on notice that Tonya was in contact with family members moments before her

death, specifically to come pick her up. Guardian Life did not follow up with these statements, or ask for any additional information that has been available throughout this process.

101. Guardian Life's breach directly and proximately caused Plaintiff to suffer compensatory damages; incidental damages, including expenses incurred due to the delay or breach; and consequential damages that Guardian Life knew at the time, damages which could not reasonably be prevented.

**COUNT SIX**  
***(Guardian Life)***

102. Plaintiff incorporates by reference all the above averments as if fully rewritten herein.

103. Guardian Life owes Plaintiff a duty to act in good faith in the processing and administration of Plaintiff's claim, including completing a thorough and competent investigation of the pertinent people and surrounding circumstances.

104. Guardian Life breached a duty owed to Plaintiff when it failed to complete a thorough and competent investigation of the pertinent people and surrounding circumstances.

105. Guardian Life's actions amount to wanton misconduct as they were grossly careless and negligent. They acted in reckless disregard for the consequences of their behavior, which has caused harm to the reputation of Tonya Johnson and harm to her children, family members, and friends and the denial of life insurance claims.

106. Guardian Life knew, or should have known, that their actions were likely to cause harm to the reputation of Tonya Johnson, harm to her children and her family, pain

& suffering, humiliation, disgrace, and mental anguish of her children and other family members, and the denial of life insurance claims.

107. The pain & suffering, humiliation, disgrace, and mental anguish was the reasonably foreseeable result of their actions as they require having to file a lawsuit and relive the horrific day over and over again. The harm that Tonya Johnson's family has suffered was the direct and proximate cause of the Guardian Life's grossly careless and negligent action. The harm caused by Guardian Life's actions continue to this day and her careless actions have created damage that will likely never heal.

108. Defendant's breach directly and proximately caused Plaintiff to suffer compensatory damages, incidental damages, including expenses incurred due to the delay or breach; and consequential damages which Defendant at the time knew and which could not reasonably be prevented.

**COUNT SEVEN**  
***(Defendants)***

109. Plaintiff incorporates by reference all the above averments as if fully rewritten herein.

110. Defendant's extreme and outrageous behavior amounts to reckless disregard of the serious emotional distress upon the Plaintiff and the Defendant's conduct was the proximate cause of Plaintiff's serious emotional distress including harm to reputation, pain & suffering, humiliation, disgrace, and mental anguish. The infliction of emotional distress was the reasonably foreseeable result of their actions as they require having to file a lawsuit and relive the horrific day over and over again. The emotional distress that Tonya

Johnson's family has suffered was the direct and proximate cause of the Defendant's reckless, extreme, and outrageous behavior.

111. Defendant's actions directly and proximately caused Plaintiff to suffer compensatory damages and consequential damages which Defendant, at the time, knew and which could not reasonably be prevented.

**COUNT EIGHT**  
***(Defendants)***

112. Plaintiff incorporates by reference all the above averments as if fully rewritten herein.

113. Defendant's failure to take proper care regarding the investigation into the cause of death of Tonya Johnson caused the Plaintiff serious emotional distress and the Defendant's conduct was the proximate cause of Plaintiff's serious emotional distress to Tonya's children and her family including pain & suffering, humiliation, disgrace, and mental anguish. The infliction of emotional distress was the reasonably foreseeable result of their actions as they require having to file a lawsuit and relive the horrific day over and over again. The emotional distress that Tonya Johnson's family has suffered was the direct and proximate cause of the Defendant's failure to take proper care.

114. Defendant's actions directly and proximately caused Plaintiff to suffer compensatory damages and consequential damages which Defendant, at the time, knew and which could not reasonably be prevented.

**REQUEST FOR HEARING**

There is no medical, factual, or evidentiary basis for the Medical Examiner's manner of death determination or the Akron Police Department's Incident Report determination, both of which state suicide as the cause/manner of death determination. A full review of the facts and circumstances surrounding Tonya Johnson's death will confirm that the Medical Examiner and the Akron Police Department are precluded from a determination of suicide.

Pursuant to Ohio Revised Code §313.19, an interested party may seek to have the manner and cause of death changed subsequent to an evidentiary hearing.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs requests judgment for Plaintiff and against Defendants, jointly and severally, and that this Court:

1. Promptly hold and conduct an evidentiary hearing and thereafter direct Kohler to change the manner of death of Tonya R. Johnson from suicide to an appropriate, non-suicide manner of death.
2. Direct the Akron Police Department to remove the offense code & description of suicide from the Incident Report dated April 20, 2016, and replace with an appropriate, non-suicide code & description.
3. Direct Guardian Life to pay the total amount of the benefits due under the Policy, \$3,000,000 plus interest from the date of death.

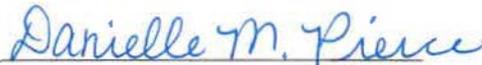
4. Direct Defendant to pay total damages, separate from the benefits under the Policy, in excess of \$5,000,000, plus interest, attorney's fees, and other expenses, as well as any additional amounts deemed appropriate by the Court.
5. Direct Defendant to pay punitive damages in an amount to be determined at trial.
6. Grant Plaintiff all the other relief available in law and equity.

Plaintiff, by and through counsel, demand a trial by jury on all issues contained in the herein action.

Respectfully submitted;



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ATTORNEYS FOR PLAINTIFF

**INSTRUCTIONS FOR SERVICE**

TO THE CLERK OF COURTS:

Please issue Summons together with a copy of the foregoing Complaint to be served upon the Defendants at the addresses as set forth in the above caption, by certified mail, return receipt requested and make the same returnable according to law.



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David R. DuPlain (#0090434)  
Danielle M. Pierce (#0088685)