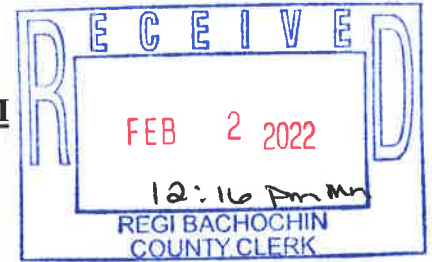


2-2-22 My 12:45P
Michelle Nelson

6L-0422

NOTICE OF CIRCUMSTANCES OF CLAIM
PURSUANT TO WIS. STATS. § 893.80



TO:

County Clerk Regi Bachochin
Kenosha County
1010 56th Street
Kenosha, WI 53140

Kenosha County Executive Jim Kreuser
Kenosha County
1010 56th Street
Kenosha, WI 53140

Kenosha County Sheriff David Beth
Kenosha County Sheriff's Office
1000 55th Street
Kenosha, WI 53140

CLAIMANTS:

Estate of Christopher A. Basina by
Special Administrator, Cheryl Basina
9051 S. Annette Place
Oak Creek, WI 53154

Cheryl Basina
9051 S. Annette Place
Oak Creek, WI 53154

CLAIMANTS' ATTORNEYS:

Kevin R. Martin
Martin Law Office, S.C.
7801 S. Howell Ave., Ste. 102
Oak Creek, WI 53154

Frankie J. Wermerskirchen
Martin Law Office, S.C.
7801 S. Howell Ave., Ste. 102
Oak Creek, WI 53154

DATE OF INCIDENT:

October 8, 2021

This notice serves as the Estate of Christopher A. Basina and Cheryl Basina's "Notice of Circumstance of Claim," pursuant to Wis. Stat. § 893.80(1d)(a).

1. That the claimant, Christopher A. Basina, was an adult resident and citizen of the State of Wisconsin; that at the time of his death, Christopher Basina resided at 9051 S. Annette Place, Oak Creek, WI 53154; that at the time of his death, Christopher A. Basina, was employed by the Kenosha County Sheriff's Department as a Corrections Corporal.

2. That at the present time, the claimant, Cheryl Basina, is an adult citizen and resident of the Wisconsin, residing at 9051 S. Annette Place, Oak Creek, WI 53154; that Cheryl Basina is the wife of Christopher Basina; that Cheryl Basina was appointed Special Administrator of the Estate of Christopher Basina by the Milwaukee County Register in Probate.

3. That at all times material hereto, Kenosha County was a municipal corporation organized under the laws of the State of Wisconsin with offices located at 1010 56th Street, Kenosha, WI 53140.

4. That at all times material hereto, defendant, Jim Kreuser was the Kenosha County Executive with offices located at 1010 56th Street, Kenosha, WI 53140.

5. That at all times material hereto, defendant, David Beth, was the Kenosha County Sheriff with offices located at 1000 55th Street, Kenosha, WI 53140.

6. That Christopher A. Basina was employed as a corrections officer for Kenosha County for 23 years; that Christopher A. Basina's placement was at the Kenosha County Detention Center.

7. That in the months of August and September 2021, there was an increase in the number of Covid-19 cases, both with the staff and inmates, at the Kenosha County Detention Center.

8. That Christopher A. Basina's job duties included conducting roll call, rounding to each dorm, talking with guards, talking with inmates, performing administrative tasks, and

administering nasal swabs to inmates; that these tasks resulted in Christopher A. Basina being exposed (within 6 feet for greater than 15 minutes) to individuals infected with Covid-19 and otherwise inside the Kenosha County Detention Center facility.

9. That at work, Christopher A. Basina was required to wear a KN95 mask; that the inmates housed at Kenosha County Detention Center were not required to wear masks.

10. That in the days prior to September 20, 2021, Christopher A. Basina was working 12-hour days at the Kenosha County Detention Center; that Christopher A. Basina worked on September 10, 2021, September 11, 2021, September 12, 2021, September 15, 2021, and September 16, 2021.

11. That on the evening of September 19, 2021, Christopher A. Basina developed symptoms of Covid-19; that Christopher A. Basina tested positive for Covid-19 on September 20, 2021; that Christopher A. Basina was hospitalized after testing positive for Covid-19 and passed away due to Covid-19 on October 8, 2021. (See Exhibit A – Death Certificate).

12. That Christopher A. Basina's primary care physician, Dr. Roman Pyasta, authored a letter stating that Christopher A. Basina died as a result of Covid-19 as a result of workplace exposure. (See Exhibit B – Dr. Pyasta's Letter).

13. That Kenosha County has failed to classify Christopher A. Basina's death as occurring in the line of duty; that because of the failure to classify Christopher A. Basina's death as in the line of duty, Cheryl A. Basina has been unable to receive the benefits arising from a death occurring in the line of duty, including, but not limited to, health insurance continuation under Wis. Stat. § 66.0137, monetary death benefit under Wis. Stat. §§ 102.45, 102.47, 102.475, & 102.48, and burial expenses under Wis. Stat. § 102.50.

14. That this Wis. Stat. § 66.0137 provides that if a city, villages, or town pays health insurance premiums for its law enforcement officers, that entity must continue to pay the premiums for the surviving spouse of an officer who dies in the line of duty. Wis. Stat. § 66.0137(5)(1m).

15. That “law enforcement officer” is defined to include an “any jailer, who under the direction of a sheriff under s. 59.27(1), keeps persons in a county jail.” Wis. Stat. § 66.0137(1)(am)2.

16. That “dies in the line of duty” is defined as “a death that occurs, or occurred, as a direct and proximate result of a personal injury sustained by, or a single exposure to a hazardous material or condition experienced by, a law enforcement officer, fire fighter, or emergency medical services practitioner while he or she was engaged in a line of duty activity or that arose out of and as a result of such an individual's performance of a line of duty activity.” Wis. Stat. § 66.0137(1)(af).

17. That “line of duty activity” is defined as “ any employment-related action taken by a law enforcement officer, fire fighter, or emergency medical services practitioner that is required or authorized by law, rule, regulation, or condition of employment and for which compensation is provided by his or her employing agency or would have been eligible to have been provided by the employing agency if the law enforcement officer, fire fighter, or emergency medical services practitioner had been on duty when he or she took the action in question.” Wis. Stat. § 66.0137(1)(ap).

18. That “compensation and death benefit payable to an employee or dependent who was a minor when the employee’s or dependent’s rights began to accrue, may, in the discretion of the department, be ordered to be paid to a bank, trust company, trustee, parent or guardian, for

the use of such employee or dependent as may be found best calculated to conserve the employee's or dependent's interests. Such employee or dependent shall be entitled to receive payments, in the aggregate, at a rate not less than that applicable to payments of primary compensation for total disability or death benefit as accruing from the employee's or dependent's 18th birthday." Wis. Stat. § 102.45.

19. That "where death proximately results from the injury and the deceased leaves a person wholly dependent upon him or her for support, the death benefit shall equal 4 times his or her average annual earnings, but when added to the disability indemnity paid and due at the time of death, shall not exceed two-thirds of weekly wage for the number of weeks set out in s. 102.44 (3)." Wis. Stat. § 102.46.

20. That "if death occurs to an injured employee other than as a proximate result of the injury, before disability indemnity ceases, death benefit and burial expense allowance shall be as follows: (1) Where the injury proximately causes permanent total disability, they shall be the same as if the injury had caused death, except that the burial expense allowance shall be included in the items subject to the limitation stated in s. 102.46. The amount available shall be applied toward burial expense before any is applied toward death benefit...(2) Where the injury proximately causes permanent partial disability, the unaccrued compensation shall first be applied toward funeral expenses, not to exceed the amount specified in s. 102.50. Any remaining sum shall be paid to dependents, as provided in this section and ss. 102.46 and 102.48, and there is no liability for any other payments. All computations under this subsection shall take into consideration the present value of future payments." Wis. Stat. § 102.47.

21. That "if the deceased employee is a law enforcement officer, correctional officer, fire fighter, rescue squad member, or diving team member, or if a deceased person is an

employee or volunteer performing emergency management activities under ch. 323 during a state of emergency or a circumstance described in s. 323.12 (2) (c), who sustained an accidental injury while performing services growing out of and incidental to that employment or volunteer activity so that benefits are payable under s. 102.46 or 102.47 (1), the department shall voucher and pay from the appropriation under s. 20.445 (1) (aa) a sum equal to 75 percent of the primary death benefit as of the date of death, but not less than \$50,000 to the persons wholly dependent upon the deceased.” Wis. Stat. § 102.475.

22. That partial dependents are entitled to “such a sum as the department or the division determines to represent fairly and justly the aid to support which the dependent might reasonably have anticipated from the deceased employee but for injury.” Wis. Stat. § 102.48(2).

23. That “in all cases in which the death of an employee proximately results from the injury, the employer shall pay the actual expense for burial, not exceeding \$10,000.” Wis. Stat. § 102.50.

24. That under Protecting America’s First Responders Act of 2020 (P.L. 116-157), the death of an officer will be presumed to be directly and proximately caused by Covid-19 and incurred in the line of duty, and thus compensable, if the following conditions are met: “(1) the officer engaged in a line of duty action or activity between January 1, 2020 and December 31, 2021; (2) the officer was diagnosed with Covid-19 (or evidence indicates that the officer had Covid-19) during the 45-day period beginning on the last day of duty of the officer; and (3) evidence indicates that the officer had Covid-19 (or complications therefrom) at the time of the officer’s death.” Public Law 116-157 (08/14/2020).

25. That Kenosha County is authorized to declare Christopher Basina’s death as occurring in the line of duty. Wis. Stat. § 59.51, *et. seq.*

26. That Jim Kreuser, in his official capacity as Kenosha County Executive, is authorized to declare Christopher Basina's death as occurring in the line of duty. Wis. Stat. § 59.17.

27. That David Beth, in his official capacity as Kenosha County Sheriff, is authorized to declare Christopher Basina's death as occurring in the line of duty. Wis. Stat. § 59.27.

Dated: February 2, 2022

MARTIN LAW OFFICE, S.C.
Attorney for Plaintiff(s)



Kevin R. Martin
State Bar No. 01045748
Frankie J. Wermerskirchen
State Bar No. 01116037

ADDRESS

7801 S. Howell Avenue, Ste.102
Oak Creek, WI 53154
414-856-2310 (office)
414-856-2675 (fax)
kevin@martin-law-office.com
frankie@martin-law-office.com