

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 26-P-0632

BRISTOL, ss

KATHLEEN SLAVIN, PERSONAL REPRESENTATIVE
of the ESTATE of PATRICIA SLAVIN, and
KATHLEEN SLAVIN, INDIVIDUALLY,
Petitioners-Appellants

v.

AMERICAN MEDICAL RESPONSE of MASSACHUSETTS, INC., and
CITY OF TAUNTON,
Defendants-Appellees

ON APPEAL FROM A SUMMARY JUDGMENT OF THE
BRISTOL SUPERIOR COURT

PETITIONERS-APPELLANTS' APPLICATION FOR
DIRECT APPELLATE REVIEW

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TABLE OF CONTENTS

Table of Authorities	4
Request for Direct Appellate Review	10
Statement of Prior Proceedings	10
Statement of Facts Relevant to Appeal	13
Statement of Issues of Law Raised by the Appeal	28
Argument	28
The Plaintiffs' Declaration Of Rights Claims Are Supported By Supreme Judicial Court Precedent And The Facts At Bar	28
Statement of Reasons Why Direct Appellate Review is Appropriate	38
Conclusion	46
Certifications	47
Addendum	48
Docket Entries	48
Order on the Defendant City of Taunton's Motion to Dismiss (Dupuis, J., Oct. 28, 2019)	81
Memorandum of Decision and Order on Motion of the Defendant, City of Taunton for Judgment on the Pleadings (McGuire, J., Aug. 21, 2024)	84

Memorandum of Decision and Order on the City of Taunton’s Motion for Summary Judgment (Glenny, J., Dec. 31, 2025)	94
Summary Judgment	103

TABLE OF AUTHORITIES

Cases

<i>Barry v. Department of Correction</i> , 98 Mass. App. Ct. 1104, 2020 Mass. App. Unpub. LEXIS 683 (2020)	45
<i>Batchelder v. Allied Stores International, Inc.</i> , 388 Mass. 83 (1983)	29, 32, 40, 41-42
<i>Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics</i> , 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971)	37
<i>Breault v. Chairman of Bd. of Fire Comm'rs.</i> , 401 Mass. 26 (1987)	35, 44
<i>Burke v. Toothaker</i> , 1 Mass. App. Ct. 234 (1973)	44
<i>Commonwealth v. Bergstrom</i> , 402 Mass. 534 (1988)	31
<i>Commonwealth v. DiBenedetto</i> , 491 Mass. 390 (2023)	33
<i>Corum v. University of North Carolina</i> , 330 N.C. 761 (1992)	37, 44
<i>County of Sacramento v. Lewis</i> , 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed. 2d 1043 (1998)	34
<i>Doe, Sex Offender Registry Bd. No. 474362 v. Sex Offender Registry Bd.</i> , 94 Mass. App. Ct. 52 (2018)	28, 35-36, 42, 44-45
<i>Egbert v. Boule</i> , 596 U.S. 482 (2022)	37
<i>Fisher v. McGirr</i> , 67 Mass. (1 Gray) 1 (1854)	33

<i>Folsom v. Manchester</i> , 65 Mass. (11 Cush.) 334 (1853)	33
<i>Freeman v. Planning Bd.</i> , 419 Mass. 548 (1995)	34
<i>Goldey v. Fields</i> , 606 U.S. 942, 2025 U.S. LEXIS 2572 (<i>per curiam</i> , June 30, 2025)	37
<i>Goodridge v. Department of Public Health</i> , 440 Mass. 309 (2003)	29, 38
<i>Grinnell v. Phillips</i> , 1 Mass. (1 Tyng) 529 (1805)	33
<i>Horsemen's Benevolent and Protective Association, Inc.</i> <i>v. State Racing Commission</i> , 403 Mass. 692 (1989)	32
<i>Hudson v. Thompson</i> , 96 Mass. App. Ct. 1105, 2019 Mass. App. Unpub. LEXIS 690 (2019)	45
<i>Humphrey v. Comoletti</i> , 2017 U.S. Dist. LEXIS 50465 (D.Mass. 2017)	40
<i>In the Matter of the Estate of Slavin</i> , 492 Mass. 551 (2023)	11
<i>Jackson v. Hogan</i> , 388 Mass. 376 (1983)	31
<i>Kendall v. Doe</i> , 2024 U.S. Dist. LEXIS 230637, 2024 WL 5187697 (D. Mass. 2024)	40
<i>Kligler v. Attorney General</i> , 491 Mass. 38 (2022)	29, 33, 37, 38, 42
<i>Lattanzio v. Mass. Dept. of Pub. Health</i> , No. 2172CV00053, 2024 Mass. Super. LEXIS 706 (Barnstable Super. Ct., Nov. 22, 2024, Hogan, J.)	42
<i>Layne v. Superintendent, Mass. Correctional Inst.</i> , <i>Cedar Junction</i> , 406 Mass. 156 (1989)	32, 34-36, 40, 41-42, 44

<i>Leo v. Mici</i> , No. 2084CV01728, 2025 Mass. Super. LEXIS 14 (Suffolk Super. Ct., Feb. 19, 2025, Gordon, J.)	42
<i>Magliacane v. Gardner</i> , 483 Mass. 842 (2020)	36
<i>Martino v. Hogan</i> , 37 Mass. App. Ct. 710 (1994)	35, 41
<i>Matter of McKnight</i> , 406 Mass. 787 (1990)	41
<i>McClure v. Town of East Brookfield</i> , No. 97-2004B, 9 Mass.L.Rptr. 680, 1999 WL 1323628, 1999 Mass. Super. LEXIS 133 (Worcester Super. Ct., March 11, 1999, Hillman, J.)	41
<i>McDuffy v. Secretary of the Executive Office of Educ.</i> , 415 Mass. 545 (1993)	42-43
<i>Miga v. Holyoke</i> , 398 Mass. 343 (1986)	34
<i>Morash & Sons, Inc. v. Commonwealth</i> , 363 Mass. 612 (1973)	36, 44
<i>Obergefell v. Hodges</i> , 576 U.S. 644 (2015)	38
<i>O'Brien v. King</i> , 103 Mass. App. Ct. 1121, 2024 Mass. App. Unpub. LEXIS 75 (2024)	45
<i>O'Connell v. Chasdi</i> , 400 Mass. 686 (1987)	30
<i>O'Connor v. Police Comm'r of Boston</i> , 408 Mass. 324 (1990)	32, 40
<i>Orekoya v. Sex Offender Registry Board</i> , 100 Mass. App. Ct. 1131, 2022 Mass. App. Unpub. LEXIS 239 (2022)	45

<i>Parsons ex rel. Parsons v. Town of Tewksbury</i> , 26 Mass.L.Rptr. 555, 2010 WL 1544470, 2010 Mass. Super. LEXIS 67 (Middlesex Super. Ct., January 19, 2010, Fishman, J.)	41, 42
<i>Parsons v. Willette</i> , 29 Mass.L.Rptr. 312, 2012 Mass. Super. LEXIS 12 (Middlesex Super. Ct., January 20, 2012, Leibensperger, J.)	41
<i>Phillips v. Youth Development Program, Inc.</i> , 390 Mass. 652 (1983)	31, 32, 36, 37, 40, 41, 44
<i>Slavin v. American Medical Response of Massachusetts, Inc.</i> , 99 Mass. App. Ct. 55 (2021)	10-11
<i>Tomaselli v. Beaulieu</i> , 967 F.Supp.2d 423 (D.Mass. 2013), aff'd. No. 132218 (1st Cir. Dec. 16, 2014)	40

Constitutional Provisions

Magna Charta Chapter 29	30
Massachusetts Declaration of Rights, Preamble	28-29, 33
Massachusetts Declaration of Rights, Article I	28, 29, 30, 33, 41
Massachusetts Declaration of Rights, Article 9	32
Massachusetts Declaration of Rights, Article X	28, 29, 20-31, 33, 41
Massachusetts Declaration of Rights, Article XI	28, 33
Massachusetts Declaration of Rights, Article XII	28, 29, 30, 31, 33
Massachusetts Declaration of Rights, Article 14	32
Massachusetts Declaration of Rights, Article 16	32

Massachusetts Declaration of Rights, Article CVI	28, 29, 30, 31, 33
Massachusetts Declaration of Rights, Article 114	32, 35, 44
<u>Statutes</u>	
42 U.S.C. §1983	31
G.L. c. 12, §111H	31, 42
G.L. c. 12, §111I	31, 42
G.L. c. 211A, §10	10
G.L. c. 211A, §10(A)	39
G.L. c. 211A, §10(A)(2)	40, 43
G.L. c. 211A, §10(A)(3)	43, 45
G.L. c. 258	36
G.L. c. 258, §9	35
G.L. c. 258, §9A	35
G.L. c. 258, §13	35
Massachusetts Civil Rights Act	31, 32, 35, 36, 40, 41
Massachusetts Tort Claims Act	10, 31
<u>Court Rules</u>	
Mass. R. App. P. 11	10
Mass. R. App. P. 11(a)	39
Mass. R. App. P. 11(a)(2)	40, 43

Mass. R. App. P. 11(a)(3)	43, 45
Mass. R. Civ. P. 54(b)	12

Other Authorities

1 The Founding Fathers: John Adams: A Biography in His Own Words (J. Peabody, ed., 1973)	29-30
1 Legal Papers of John Adams, (L. K. Wroth & Hiller B. Zobel, ed., 1965)	30
1 WILLIAM BLACKSTONE, COMMENTARIES	30
B. Finkelman, <i>Further Appellate Review in Civil Cases: How the Court Decides What Cases to Take</i> , 69 MASS. L. REV. 108 (September 1984)	39-40
D. Johnedis, <i>Massachusetts Two Court Appellate System: A Decade of Development</i> , 67 MASS. L. REV. 103 (1982)	38, 39, 44
S. Kafker, <i>State Constitutional Law Declares Its Independence: Double Protecting Rights During a Time of Federal Constitutional Upheaval</i> , 49 HASTINGS CONST. L. Q. 115 (2022)	43
S. Rikleen, <i>The Supreme Judicial Court's Workload: A Review of the Available Data</i> , 44 BOSTON B. J. 6 (2000)	38-39
D. Skeels, <i>Due Process and the Massachusetts Constitution</i> , 84 MASS. L. REV. 76 (1999)	30

REQUEST FOR DIRECT APPELLATE REVIEW

Kathleen Slavin, Personal Representative of the Estate of [her mother] Patricia Slavin, and Kathleen Slavin, Individually, the Plaintiffs-Appellants (“Slavins”), hereby request this Honorable Court to assume direct appellate review of the instant appeal, pursuant to G.L. c. 211A, §10 and Mass. R. App. P. 11.

STATEMENT OF PRIOR PROCEEDINGS

The Slavins filed a civil action in the Bristol Superior Court on April 24, 2019, asserting claims on behalf of each plaintiff against defendants American Medical Response of Massachusetts, Inc. (“AMR”) and City of Taunton under the Wrongful Death Act, against Taunton for civil rights violations directly under the Massachusetts Declaration of Rights, and against both defendants for negligent infliction of emotional distress only on behalf of Kathleen individually.

Defendant Taunton moved to dismiss all of the claims filed against it. The Superior Court, Dupuis, J., denied the City’s motion. On interlocutory appeal, the Appeals Court reversed the denial of the City’s motion to dismiss the wrongful death and Massachusetts Tort Claims Act claims but allowed the Slavins’ state constitutional claims to proceed. *Slavin v. American Medical Response of Massachusetts, Inc.*, 99 Mass. App. Ct. 55 (2021). Although the City argued error in the Superior Court’s constitutional decision, the City did not address whether the

doctrine of present execution applied to that portion of its appeal and the Appeals Court declined to address either issue further. *Id.*, 99 Mass. App. Ct. at 56 n.4.

While extensive discovery followed in the Superior Court, a related proceeding in the Bristol Probate Court reached this honorable Court on direct appellate review, establishing new law concerning the conversion of voluntary probate administration to formal administration. *In the Matter of the Estate of Slavin*, 492 Mass. 551 (2023).

When discovery concluded, Taunton moved for judgment on the pleadings on the Declaration of Rights counts. The Superior Court, McGuire, J., denied Taunton's motion and also denied its related motion to stay expert witness disclosures, in which Taunton notified the Superior Court of its intention to file a late summary judgment motion should the Superior Court deny its motion for judgment on the pleadings. Taunton again filed an interlocutory appeal in the Appeals Court and also filed a motion to extend the Tracking Order deadlines in the Superior Court to enable it to seek summary judgment. The Slavins filed a motion in this Court for leave to file a late Application for Direct Appellate Review of Taunton's second interlocutory appeal. The Superior Court, O'Shea, J., allowed the Tracking Order extension, enabling Taunton to move for summary judgment. The City voluntarily dismissed its second interlocutory appeal, and the Slavins dismissed the related proceedings in this Court.

On December 31, 2025, the Superior Court, Glenny, J., allowed the City's motion for summary judgment.

AMR settled with the Slavins and the parties so notified the Superior Court. On January 2, 2026, the Superior Court entered dismissal *nisi*, requiring AMR and the plaintiffs to file closing documents by March 3, 2026. The Superior Court also cancelled the trial scheduled for January 12, 2026, but did not separately enter judgment for the City under Mass. R. Civ. P. 54(b). The Slavins noticed their appeal from the Superior Court summary judgment decision on January 30, 2026 to preserve their rights but did not pursue that appeal as it would have been interlocutory.

After AMR and the Slavins filed a Stipulation of Dismissal on March 3, 2026, preserving the plaintiffs' right to pursue the instant appeal, the Superior Court entered Summary Judgment for the City on March 5, 2026. The Slavins filed their Notice of Appeal from the judgment on March 31, 2026. The Superior Court assembled the record on April 23, 2026. The plaintiffs timely docketed their appeal in the Appeals Court on May 6, 2026. On June 11, 2026, the Appeals Court granted an extension of time to file the Slavins' Brief until July 20, 2026.

STATEMENT OF FACTS RELEVANT TO APPEAL

At 18:37:48¹ on May 10, 2016, defendant Taunton's Fire Department ("TFD") received an emergency 911 telephone call from a caller at 1 Birch Avenue, reporting a motor vehicle crash at Myricks Street and Claire Terrace. All 911 calls in the City of Taunton were answered by TFD personnel, who ascertained the nature of the call (whether requiring fire, police or ambulance response) and directed the call to either TFD, the Taunton Police Department ("TPD"), or the City's contracted ambulance service, defendant American Medical Response of Massachusetts, Inc. ("AMR"). TFD dispatchers could not dispatch police or emergency medical technicians ("EMTs"), so calls requiring such services were transferred by TFD dispatch to separate TPD or AMR dispatchers by pressing the appropriate connecting button on the TFD Public Safety Answering Point ("PSAP") call center to transfer the call to AMR or picking up a distinct "ring-down phone" which connected directly to TPD without dialing. Upon transferring the call, TFD dispatchers lost contact with the 911 caller and with the transferee dispatcher, and could not monitor the emergency response. TPD also requested that TFD not listen to TPD calls. Neither TFD nor TPD dispatchers utilized automatic vehicle location ("AVL") systems in 2016, so dispatchers could

¹ TFD records reported times using a 24 hour/military time clock. There is approximately a 20 second discrepancy between times reported by the TFD and the Ryan Strategy Group Report.

not monitor the locations of responding vehicles. Defendant Taunton did not coordinate the actions or communications of its several emergency responders in 2016. Neither the TFD nor TPD dispatchers on duty on March 10, 2016 were certified to use the 911 system, and both received only on the job training. TFD and TPD dispatchers used a computer assisted dispatch (“CAD”) system but their systems were not connected, so TFD and TPD dispatchers could not see each other’s CAD entries and could not use the CAD system to coordinate emergency responses. Neither TFD nor TPD dispatch could see AMR’s CAD entries. Although trained to enter information accurately into the CAD at the time the call was received, dispatchers did not necessarily enter information contemporaneously or accurately and did not understand that the system was designed to assist dispatch operations. TFD dispatcher shifts lasted 24 hours. Taunton’s 911 dispatch system was designed to operate in this quiltpatch fashion.

TFD dispatcher, Jeffrey Gallagher, who was 11 hours into his 24 hour shift, testified that he transferred the Birch Avenue call to TPD and AMR dispatchers for police and EMT response, and dispatched TFD Engine 1 and Car 2 to the crash site. However, no recording dispatching Engine 1 or Car 2 in response to the reported car crash contemporaneous with the first report of the crash was produced in discovery and none was included in the summary judgment record. TFD’s 911 recordings reflect that AMR was not notified of the crash until several minutes

later, and not until after TFD notified AMR that Patricia and Kathleen Slavin had been stabbed at 270 Myricks Street. TPD dispatcher, Lt. Eric Moura, testified that he dispatched TPD cruisers to the crash site.

Kathleen and Patricia Slavin heard the crash outside their front door at 270 Myricks Street, left their dinners on the table, and went to their front door to see what happened. Arthur Darosa, the man who caused the crash, pushed his way into their living room, knocked down Patricia Slavin, Kathleen's 80 year old mother, muttered gibberish about a gun, grabbed a knife from their kitchen and stabbed Patricia and Kathleen Slavin multiple times each, returned to his car and drove to the Galleria Mall.

At 18:37:59, TFD dispatch received Kathleen Slavin's frantic 911 emergency call reporting that someone just stabbed her mother and her **inside** their home and fled their house, leaving them bleeding and in desperate need of emergency medical care: "a guy just came in and stabbed us.... 270 Myricks Street...." Forty-five seconds later at 18:38:44, TFD dispatch transferred Kathleen's call to AMR to dispatch appropriate EMT responders. While Kathleen remained on the line answering questions ("we're in the house.' 'We're in the house,' giving him all the information"), TFD call taker Josh Correia informed AMR dispatcher Miguel Rivera: "AMR, 270 Myricks with two stabbing victims.... M-y-r-i-c-k-s, double stabbing." While he remained on the line with

AMR, TFD call taker Correia also notified TPD that he received a call from one of two stabbing victims at 270 Myricks. [TFD:] “270 Myricks for two people stabbed.... 270 Myricks. Two people got stabbed. [TPD:] Two people stabbed? [TFD:] Yup. [TPD:] OK.”

Because Kathleen placed her 911 call from the landline telephone at 270 Myricks Street, her address automatically appeared on the monitor attached to the dispatcher’s PSAP and remained on the monitor until the call was completed. Even if Kathleen had not provided her address, the dispatcher would have known it because of the PSAP’s operation. A TPD monitor also received the 270 Myricks Street address in “orange letters” “almost like a teletype that came across the screen” when TFD dispatch received the 911 call. AMR’s monitor also displayed the address of landline calls. AMR’s CAD report (emphasis in original), which was available to the responding ambulance, documents that AMR was informed that the assailant “STARTED STABBING WOMEN **IN HOME**” at 270 Myricks.

TFD procedures required a fire engine to accompany ambulances at the scene of a medical emergency. Gallagher dispatched TFD Engine 9 to 270 Myricks Street at 18:38:42, while TFD call taker Correia contacted AMR and TPD. Three of Engine 9’s four crew members were certified EMTs and all four were certified first responders trained to treat stabbing victims. The dispatch stated:

Engine 9. 270 Myricks, two stabbings. You're responding to 270 Myricks Street for two stabbing -- two stab victims. Engine 9. 270 Myricks Street and Birch Ave. 270 Myricks Street and Birch Ave. for multiple stab victims.

Engine 9 was not provided any information about a motor vehicle crash. It was “dispatched out for a stabbing.” Engine 9 acknowledged the dispatch and answered that it was “responding” at 18:42:16.

Although Engine 9’s commander, Lt. Aaron Gilbert, and its driver, Steven Wentworth, testified that neither heard the 18:38:42 dispatch to “270 Myricks [for] two stabbings” or the subsequent 18:44:28 dispatch to “270 Myricks Street for a stab victim,” Lt. Gilbert could not explain to what dispatch order Engine 9 was responding, but confirmed that the dispatch referenced “stabbing.” Wentworth testified that he thought he was responding to a car crash and denied hearing several of the dispatches which mentioned “stabbing.” However, he admitted at his deposition that he could not locate a recording of any TFD dispatch that sent Engine 9 to a car crash. Gilbert also testified that a computer in Engine 9 would show the address of the call, but he did not recall whether the computer was working that day. Procedures for repairing non-functioning radios and computers existed but Engine 9 witnesses did not recall reporting any defects on May 10, 2016 (Wentworth: “I don’t believe there was any problem that day”). No repair records were produced in discovery or appear in the summary judgment record.

Only after notifying TPD and AMR and dispatching TFD Engine 9 to the double stabbing at 270 Myricks Street did TFD dispatcher Gallagher dispatch TFD Engine 1 to the scene of the reported motor vehicle crash in “the vicinity of Birch Ave. and Myricks Street” at 18:39:31. Gallagher told Engine 1 that TFD dispatch had received 911 calls reporting a crash and a double stabbing and he was not sure whether Engine 1 would find “a severe car accident or multiple stabbing or a combination of the two.” Engine 9’s Lt. Gilbert testified that he could not confirm hearing TFD dispatch’s transmission to Engine 1, but he believed that Engine 9 was responding to details contained in that dispatch. Firefighter Wentworth testified that he did not hear a dispatch to Engine 1 before Engine 9 was dispatched. Gilbert and Wentworth testified that from Engine 9’s station, Engine 9 could not hear TFD dispatch to Engine 1 unless it had been dispatched as an “all tone” dispatch. Gilbert did not recall hearing an all tone dispatch but inferred it. Wentworth testified that he did not hear an all tone dispatch.

While the fire engines were en route, several other callers dialed 911 to report the crash on Myricks Street. As the Slavins had been stabbed inside their home and lie bleeding on their floor, none of the callers could see that two stabbing victims who had called 911 for help were inside 270 Myricks, just feet away from the crash site outside. However, TFD, TPD, and AMR dispatchers had received and transmitted that information to first responders. TFD dispatch later created

confusion by blurring the multiple calls, ignoring the facts that TFD's 911 call taker had spoken with a stabbing victim (Kathleen Slavin) and that TFD's PSAP monitor showed that Kathleen's call came from a landline phone inside 270 Myricks Street. TFD dispatch did not distinguish the two emergency incidents and did not mention Kathleen Slavin's landline call from 270 Myricks in Gallagher's dispatch to Engines 9 and 1 at 18:42:30, while both were still en route:

Dispatch to Engine 9 and Engine 1. We received multiple 9-1-1 calls. The first one was from a landline at No. 1 Birch Ave. They reported a loud motor vehicle crash. And then we received a few other 9-1-1 calls shortly thereafter at Myricks and Birch Ave. for two people who were stabbed.

TPD Sgt. McCaffrey acknowledged to a female caller to TPD dispatch that TPD had received the report of a "stabbing" at "270 Myricks Street" and was responding. However, TPD's dispatcher, Lt. Eric Moura, did not recall dispatching any police officer to 270 Myricks Street. Derek Feeney, the first TPD officer to respond, testified that he was dispatched to the crash.

AMR dispatched TAU2, an advanced life support ambulance which was one of the two ambulances that it had designated primarily for use in the City of Taunton pursuant to the Taunton-AMR contract, to respond to 270 Myricks Street for the double stabbing on a "Priority One" basis.

Myricks Street was on the Taunton-Lakeville boundary. Lakeville police and EMTs also were dispatched to the crash scene, arriving before Taunton first responders.

Arriving at the Taunton Galleria Mall, Darosa began stabbing people. Emergency calls from the Mall arrived at TFD 911 dispatch and were relayed to AMR. Police, fire and EMT first responders were dispatched to the Mall.

It was the mandatory policy of Taunton and AMR that first responders dispatched to a particular location were required to respond to that location as soon as possible unless and until their particular dispatchers issued revised orders. Violations were punishable by discipline, including termination. En route and upon arrival, protocol required responding field personnel to notify dispatch of their location.

No TFD, TPD, or AMR unit dispatched to 270 Myricks Street for the double stabbing of Patricia and Kathleen Slavin reported to or entered 270 Myricks in response to their respective dispatch orders. No TFD, TPD, or AMR dispatcher ordered Engine 9, TPD officers, or TAU2 to report elsewhere instead of 270 Myricks. No TFD, TPD, or AMR field personnel reported to their respective dispatchers that they had arrived inside 270 Myricks Street in response to the reported double stabbing. Accordingly, each dispatcher knew that the emergency responders he/she had dispatched had failed to arrive and that the emergency call

for a double stabbing at 270 Myricks remained unanswered and unresolved. Indeed, TFD and AMR dispatch personnel discussed the situation at 18:55:45, more than 17 minutes after TFD received Kathleen's desperate 911 call.

[TFD:] What's going on at Myricks? Do we have an engine out there? Yeah. Yeah, we have an engine out there.
[AMR:] Alright. That's another double stabbing, too.
[TFD:] That's another?
[AMR:] Yeah....
[TFD:] Um, do you, do you need more people out there? ... We got that as a car accident and a double stabbing.
[AMR:] Yeah, there is no car accident. I just have it as a double stabbing.
[TFD:] Okay.
[AMR:] At 270. Inside.
[TFD:] Yeah, we ... and our Engine 9 should be out there.
[AMR:] Okay.
[TFD:] Okay?
[AMR:] Alright, sir.

Taunton's dispatchers understood that "in an emergency, every second counts, so the more rapid and immediate the response, the better." TPD dispatcher's responsibility was to dispatch "immediately." TFD policy required dispatchers "to connect the citizens as quickly as possible with the agency or agencies most able to provide the help they need." Not sending a first responder immediately to the scene of a double stabbing would be a violation of TPD policy. Taunton's first responders understood that responding as soon as possible increased a victim's probability of survival. AMR shared that understanding. Nevertheless, the City's dispatch system was so poorly designed and operated that the dispatchers

could not and did not track information accurately and did not continue to monitor and order emergency responders into 270 Myricks Street.

Arriving at the crash site, TPD Officer Feeney and other TPD officers asked onlookers and witnesses about stabbing victims but did not enter 270 Myricks Street, which was only “two to three houses away.” Instead, they remained outside by the Myricks Street crash site.

TAU2 drove from its base onto Route 140 and exited at the Myricks Street exit. Within approximately one minute of its estimated arrival time at 270 Myricks Street, TAU2 ignored its dispatch order and changed direction, turning back onto the highway and going to the Galleria Mall. TAU2 had not received any instruction from AMR which countermanded its dispatch order. It did not request further instructions from AMR, TFD, or TPD dispatchers. It did not seek clarification of its order, as it was required to do if it perceived conflicting orders. It did not inform dispatchers that it was violating its order. It did not inform dispatchers that it was going elsewhere. It violated AMR policies and rules. It abandoned the Slavins as they lay bleeding.

AMR’s call takers were confused by TAU2’s absence and kept asking AMR dispatch where TAU2 was: “Where the fuck!?!” Kathleen Slavin kept asking the same question: “why aren’t they coming in?,” “no, I don’t hear him coming in.,” “why isn’t he coming in?,” “Why aren’t they in this house yet? Why aren’t they

here?” TAU2 did not respond to AMR’s inquiries. AMR dispatch could see TAU2’s movements on its dispatcher’s monitor. No replacement ambulance was timely dispatched to substitute for the AWOL TAU2. There is no evidence that AMR dispatch notified Taunton Fire or Police or Lakeville Fire or Police of TAU2’s disappearance. AMR’s call taker told Kathleen that help was on its way as fast as it could go, but it was not.

Arriving at the crash site within ten minutes, TFD Engine 9’s Lt. Gilbert saw Lakeville EMTs and police attending to a crash victim who did not appear seriously injured. Lt. Gilbert asked people near the crash about stabbing victims there but was told of none. Engine 9 did not respond to 270 Myricks Street, inquire about it, or enter the house where the Slavins lay bleeding. TFD driver Wentworth deferred to Lt. Gilbert and asked no questions. No Engine 9 crew member inquired of TFD dispatch about the location of the stabbing victims. Lt. Gilbert tried to blame TFD dispatch for Engine 9’s non-response because dispatch did not repeat “270 Myricks” in response to Engine 9’s transmission that it was “responding,” even though Engine 9 had not requested repetition or clarification of the dispatch order and even though Gilbert recognized that the combination of a “motor vehicle accident with a stabbing” was “unusual.” Gilbert testified: “My whole career, I’ve never gone to a motor vehicle accident with a stabbing.” He acknowledged:

“During that 15 minutes, people were aware of what Engine 9 was doing and what we were saying, that we didn’t need more help. And I now know that there were people on the phone with that woman who was bleeding in the kitchen, and someone should have notified me.”

Despite Gilbert’s insinuation that TFD dispatch was responsible for confusing the two emergencies on Myricks Street, TFD dispatch did repeat that the stabbing was at “270 Myricks Street” in its dispatch of 18:44:28 to Dighton ambulance A1. [TFD:] “270 Myricks Street for a stab victim...” [Dighton A1:] “Received.... You said Myricks. 270 Myricks.” Nevertheless, TFD dispatch did not again direct Engine 9 inside 270 Myricks Street despite Kathleen Slavin’s report that she and her mother had been stabbed inside their home. Engine 9’s EMTs and first responders milled about on Myricks Street, feet from the Slavins inside 270, for approximately 15 minutes without providing them life-saving assistance. Gilbert testified: “We’re just standing there.”

“[A]ll that time went by and we were standing right out on the street across from that house and we didn’t know. *** I had a crew of four. This is what we do. It’s our profession. If we knew, we would have gone in. ... We were there for 15 minutes or whatever the time was. *** I think it’s obvious that something different should have happened. ... It’s obvious.”

“I’m still conflicted about how not one individual but an organization as a whole could have been on the phone with someone for 15 minutes who may be dying and who was reporting that first responders are right in front of the house and they’re asking or telling AMR to send them in and how is it that[,] what was the breakdown,

how did we not get – how did someone not communicate to us what was happening.”

After TAU2 disobeyed its dispatch order and self-dispatched to the Mall without permission and in violation of protocol, AMR dispatch sought mutual aid for 270 Myricks Street. Dighton ambulance A1 headed to 270 Myricks and so notified TFD and AMR dispatch. TFD Engine 9’s Lt. Gilbert, learning of Dighton A1’s intentions over his radio, tried to redirect Dighton A1 to the Mall. Being unable to reach Dighton A1 directly, Gilbert told TFD dispatch to reroute the ambulance away from 270 Myricks to the Mall. TFD dispatch rerouted Dighton A1 to the Mall without notifying AMR dispatch. AMR procedure required that a priority one call not be diverted until a replacement ambulance had been dispatched. Lt. Gilbert gave his rerouting direction without ever entering or investigating inside 270 Myricks, where Engine 9 had been dispatched in the first place. No dispatcher countermanded his instruction. Had he entered 270 Myricks as dispatched, Lt. Gilbert would not have directed an ambulance away from the Slavins.

Kathleen Slavin remained on the landline with AMR call takers, Miguel Rivera and Shatterria Shepard, while she begged for emergency medical help. She followed all of their instructions and did everything she could to save her mother and herself. Kathleen heard the sirens as first responders arrived outside her door.

She saw the lights of police, fire, and ambulance responders outside. No one came in to help. She kept asking the call takers, “why aren’t they coming in?” “[N]o, I don’t hear him coming in.” “[W]hy isn’t he coming in?” [Kathleen Slavin:] “Why aren’t they in this house yet? Why aren’t they here?” [AMR:] “They’re going as fast as they can, ok.” [Kathleen:] “270 Myricks Street in East Taunton, right?” [AMR:] “Yes. We, we got that address, 27 [*sic*] Myricks Street. We’re on our way.” AMR’s call taker told Kathleen, “It’s [] the fire department outside your home. They’re waiting for the police before they enter, ok?” “Mam, the fire department should be there any moment, ok?” Kathleen saw the flashing lights turning away from her home and vanishing. Lifesaving help was seconds away, but did not enter as she and her mother lay bleeding.

Michael Slavin returned home to 270 Myricks Street. As he entered with a neighbor who had been watching the crash site and emergency response, Michael saw blood everywhere. Learning that the assailant was no longer in their home, Michael ran outside and yelled “[b]lood-curdling screams” for help, while his neighbor tried to help Kathleen. Engine 9 firefighters and TPD and Lakeville Police raced inside. Firefighter Matthew Lee immediately told Lt. Gilbert that they needed more help. Gilbert did not remain inside to witness the tragedy which he had compounded, but went outside to call for more aid. So did TPD Officer Feeney. Thirty-one (31) minutes after Kathleen first dialed 911, an ambulance

arrived at 270 Myricks Street. It was not TAU2 or Dighton A1. Emergency medical technicians provided CPR to Patricia and first aid to Kathleen. Both Slavin victims were transported to Morton Hospital in separate ambulances.

Morton Hospital physicians were advised that Patricia Slavin had been without a pulse for about 30 minutes by the time she arrived in the emergency room. Resuscitation efforts obtained a pulse but ultimately failed. Patricia Slavin was pronounced dead at 19:52. Patricia had suffered five stab wounds, four of which were superficial. The fifth punctured her lung, which required the prompt emergency medical response and care that the 911 system was designed to provide and upon which Taunton residents relied. One hour and fourteen minutes had expired since the defendant City first received Kathleen's 911 medical emergency call. Terrance L. Baker, M.D., the plaintiffs' expert medical witness, opined, *inter alia*:

[T]o a reasonable degree of medical certainty that had the City of Taunton arrived at Patricia Slavin's side in compliance with the standard of care for emergency medical technician response time to a 911 stabbing call, immediately assessed Patricia Slavin, and applied resuscitative measures, Patricia Slavin would have survived. Dr. Baker will testify that but for the City of Taunton's negligent delayed response to plaintiff Kathleen Slavin's 911 call, Patricia Slavin would have survived.

The Superior Court's two paragraph fact narrative ignored virtually all of the facts recited above, which are verified by the summary judgment record.

STATEMENT OF ISSUES OF LAW RAISED BY THE APPEAL

Whether the Superior Court committed reversible error by holding that: a) there exist no viable claims for damages for substantive due process violations of the Massachusetts Declaration of Rights, and b) the Slavins do not state viable claims for damages for violations of their fundamental substantive due process rights protected by the Massachusetts Declaration of Rights even were the Court to recognize such claims as viable?

ARGUMENT

THE PLAINTIFFS' DECLARATION OF RIGHTS CLAIMS ARE SUPPORTED BY SUPREME JUDICIAL COURT PRECEDENT AND THE FACTS AT BAR.

The Slavins' claims are based on the substantive due process protections found in Massachusetts Declaration of Rights Articles I, X, XI, XII, CVI, and the Preamble. "The distinction between claims under the Federal and State Constitutions is important: first, because under the case law the due process rights secured by the two Constitutions are not identical, and second, because the remedies available for violations of the two Constitutions may not be the same." *Doe, Sex Offender Registry Bd. No. 474362 v. Sex Offender Registry Bd.*, 94 Mass. App. Ct. 52, 57 (2018) (hereafter "*SORB No. 474362*"). The Declaration of Rights explicitly codified this Commonwealth's social compact, whose "end[s]" include "protect[ing the body-politic] ... to furnish the individuals who compose it, with

the power of enjoying in safety and tranquility their natural rights, and the blessings of life.” Preamble.

The Declaration of Rights repeatedly has been held to be “more protective of individual liberty and equality than the Federal Constitution[and] may demand broader protection for fundamental rights.” *Goodridge v. Department of Public Health*, 440 Mass. 309, 313 (2003); *Batchelder v. Allied Stores International, Inc.*, 388 Mass. 83, 88-89 (1983). While this Court generally adheres to federal due process analysis, the entire Court has “part[ed] ways with the recent Federal analysis of substantive due process” because “the narrow approach adopted by the United States Supreme Court ... does not adequately protect the rights guaranteed by the Massachusetts Declaration of Rights.” *Kligler v. Attorney General*, 491 Mass. 38, 60-62, and 82 (Cypher, J. *concurring*, with Wendlandt, J. *concurring in part*) (2022).

The Declaration of Rights explicitly protects individual safety and security under substantive due process. Preamble, Arts. I, X, XII, CVI. Preserving the safety and security of its covenantors against persons who violated rights guaranteed by the social compact was among Massachusetts colonists’ “constitutional” rights when John Adams drafted the Declaration of Rights. *See* 1 *The Founding Fathers: John Adams: A Biography in His Own Words* (J. Peabody, ed., 1973) 148 (closing argument of John Adams in *King v. Stewart* (1773-1774))

and 182 (Thoughts on Government (1776)). “The basic rights of Englishmen[,]” incorporated from Magna Charta Chapter 29 into Declaration of Rights Article XII’s “law of the land” clause, “consisted of ‘the right of personal security, the right of personal liberty, and the right of private property[.]’” D. Skeels, *Due Process and the Massachusetts Constitution*, 84 MASS. L. REV. 76, 80 (1999), quoting 1 WILLIAM BLACKSTONE, COMMENTARIES at 129. The principles that the social compact binds individuals and government, and that breaches of that compact are compensable in damages, were so widely accepted in Massachusetts that before the American Revolution John Adams demanded monetary damages from a patriot mob for breaching the “Solemn Covenant” that Richard King “shall enjoy in his own dwelling House [] compleat [] security, safety and Peace and Tranquility.” 1 Legal Papers of John Adams, (L. K. Wroth & Hiller B. Zobel, ed., 1965) 135-136. See *O’Connell v. Chasdi*, 400 Mass. 686, 693 (1987) (Article I prohibits sexual harassment).

The federal and state constitutional provisions differ in purpose, intent, and language. Article I, as amended by Art. CVI, ensures: “All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.” Article X explicitly guarantees individuals

protection by law and society: “Each individual of the society has a right to be protected by it in the enjoyment of his life, Liberty and property, according to standing Laws.” Articles XII and CVI prohibit society, including the municipal defendant, from “put[ting the plaintiff] out of the protection of the law ... or depriv[ing her] of h[er] life, liberty, or estate, but by the judgment of h[er] peers, or the law of the land.” The words used in the Declaration of Rights were “chosen advisedly” and may not be ignored. *Commonwealth v. Bergstrom*, 402 Mass. 534, 541 (1988).

There exists no statutory vehicle to obtain relief for most state constitutional substantive due process violations. The federal civil rights statute, 42 U.S.C. §1983, “does not provide a statutory vehicle for the enforcement of State constitutional rights.” *Phillips v. Youth Development Program, Inc.*, 390 Mass. 652, 658 n.4 (1983). Nor does the Massachusetts Tort Claims Act. *Jackson v. Hogan*, 388 Mass. 376, 380 n.4 (1983). The Massachusetts Civil Rights Act, G.L. c. 12, §§111H and 111I (“MCRA”), is not a general enforcement statute because it only applies to a subset of constitutional violations, those caused by threats, intimidation or coercion, which did not occur here. However, this Court has never deemed MCRA the “exclusive” statutory vehicle to enforce state civil rights.

Instead, this Court repeatedly has allowed or at least considered monetary damages claims, as well as declaratory and injunctive relief claims, based directly

on the Declaration of Rights in the absence of a statutory enforcement mechanism without explicitly recognizing the viability of such claims. *Layne v. Superintendent, Mass. Correctional Inst., Cedar Junction*, 406 Mass. 156, 161 (1989) (monetary damages claim for Article 114 violations asserted directly under Constitution, remanded after Court vacated summary judgment due to fact dispute; Article 114 injunctive and declaratory relief denied as moot, and MCRA claim dismissed for lack of threats, intimidation or coercion); *Phillips*, 390 Mass. at 657-660 (declining to consider constitutional damages claim because issue was belatedly raised only in supplemental appellate brief); *O'Connor v. Police Comm'r of Boston*, 408 Mass. 324, 325, 329-32 (1990) (substantive due process claims seeking damages, reinstatement, and declaratory relief analyzed under direct Article 14 claim, finding no constitutional violation); *Horsemen's Benevolent and Protective Association, Inc. v. State Racing Commission*, 403 Mass. 692, 693, 694 n.1, 698 (1989) (declaratory judgment claim alleging due process violations from drug testing program decided only under Article 14); *Batchelder*, 388 Mass. at 84, 84 n.2 (declaratory and injunctive relief action alleging interference by non-government defendant with Articles 9 and 16 rights decided under Article 9, not MCRA).

Historically, this Court has allowed damages claims against government officials for substantive due process violations, though not framing them as state

constitutional claims. *Fisher v. McGirr*, 67 Mass. (1 Gray) 1, 44-48 (1854) (affirming viability of damages action against constable and remanding for assessment in case arising from unconstitutional search and seizure); *Grinnell v. Phillips*, 1 Mass. (1 Tyng) 529, 535-537 and 537 n.1 (1805), *partially overruled on unrelated issue by Folsom v. Manchester*, 65 Mass. (11 Cush.) 334, 337 (1853) (affirming damages award against sheriff for deputy's wrongful seizure of property pursuant to writ of execution).

Taunton argued that the Slavins could have pursued action against a City official. But, many employees throughout Taunton's entire emergency response system harmed the Slavins – ambulance, fire, police, and all of their dispatchers.

“Substantive due process prevents the government from engaging in conduct that shocks the conscience ...’ or that ‘unduly interfere[s] with rights that are deemed fundamental.’” *Commonwealth v. DiBenedetto*, 491 Mass. 390, 401 (2023) (internal citations omitted). “Fundamental rights are...explicitly or implicitly guaranteed by the Constitution.” *Id.* 491 Mass. at 402, *quoting Kligler*, 491 Mass. at 55. The Declaration of Rights explicitly guarantees the rights to “life,” “protection,” and “safety,” Preamble, Arts. I, X, XII, CVI, implicitly guarantees the rights to affirmative protection and security, *id.*, and explicitly guarantees the right to redress grievances. Art. XI. Taunton “unduly interfere[d] with” these fundamental rights. *DiBenedetto*, 491 Mass. at 401.

Further, a jury could find that Taunton's misconduct shocked the conscience and constituted deliberate indifference to the plaintiffs' desperate situation "in violation of [their] rights to substantive due process." *Miga v. Holyoke*, 398 Mass. 343, 352 (1986) (affirming jail suicide civil rights verdict). Misconduct which is "stunning, evidencing more than humdrum legal error" violates federal substantive due process. *Freeman v. Planning Bd.*, 419 Mass. 548, 560 (1995) (citation omitted). Federal due process standards do not govern state standards. *County of Sacramento v. Lewis*, 523 U.S. 833, 854 n.14, (1998). There is virtually no comparison between the administrative derelictions in the cases cited by the Superior Court and the collapse of Taunton's emergency response system. Here, as in *Miga*, Kathleen Slavin remained in communication with City personnel who were able to avoid the tragedy, begging for help, while City personnel disobeyed, ignored, countermanded, and did not enforce orders, interfered with other rescuers' efforts, and lied and excused Taunton's repeated and ongoing failures. "[S]ubstantive due process imposes absolute limits on State action[.]" *Miga*, 398 Mass. at 354. The harms caused by Taunton's catastrophic public safety failures demand relief against the City for violating the Slavins' substantive due process rights.

An Appeals Court panel issued a holding conflicting with *Layne* and the cited SJC precedent, none of which has been overruled, denying that a monetary

damages claim can be based directly on the Declaration of Rights in the absence of a statute by which substantive due process rights can be enforced, even as the panel recognized the availability of and upheld the plaintiffs' claims for declaratory and injunctive relief. *SORB No. 474362*,² 94 Mass. App. Ct. at 64. *See also Martino v. Hogan*, 37 Mass. App. Ct. 710, 720 (1994). *SORB No. 474362*, 94 Mass. App. Ct. at 63-65, ignored many of the cited SJC decisions when the Appeals Court panel held damages recoveries "against State officers for actions taken as State officers" limited to those covered by MCRA. The decision cited *Layne*, 406 Mass. at 159-161, in a cautionary footnote noting the distinction between this Court's precedent and the panel's conclusion. *SORB No. 474362*, 94 Mass. App. Ct. at 65 n.14 ("But cf. *Layne* ... (discussing possible availability of damages relief under art. 114 of Amendments to Massachusetts Constitution)."). *SORB No. 474362* also cited *Breault v. Chairman of Bd. of Fire Comm'rs.*, 401 Mass. 26, 36, 36 n.12 (1987), in which this Court observed that indemnification provisions for certain civil rights claims in G.L. c. 258, §§9, 9A, and 13, plus the adoption of MCRA "indicated [both] a legislative willingness to see public officers sued for violations of civil rights ... [and] an awareness by the Legislature of the possibility of suits [asserting atypical civil rights violations]."

² *SORB No. 474362* addressed procedural due process rights only, 94 Mass. App. Ct. at 63 n.12, not substantive due process rights, and did not specifically discuss relief for substantive due process violations.

In contrast to *SORB No. 474362*, this Court stated: “a person whose constitutional rights have been interfered with may be entitled to judicial relief even in the absence of a statute providing a procedural vehicle for obtaining relief.” *Phillips*, 390 Mass. at 657-658. *SORB No. 474362*, 94 Mass. App. Ct. at 65, and the Superior Court summary judgment allow “a damages remedy for some constitutional deprivations but not others[,]” in direct conflict with this Court’s directive in *Layne*, 406 Mass. at 160: “Certainly, a State may not violate a person’s constitutional rights and then fairly assert that no redress can be had because the State has not provided a statutory means of enforcing those rights.”

The *SORB No. 474362* panel based its denial of a damages claim on sovereign immunity, 94 Mass. App. Ct. at 64, “‘a judicially created common law doctrine’ ... [b]ased on the antiquated notion that the ‘King can do no wrong’ and that ‘no one else could do wrong on his behalf’” *Magliacane v. Gardner*, 483 Mass. 842, 848 (2020), *quoting Morash & Sons, Inc. v. Commonwealth*, 363 Mass. 612, 615 (1973). In *Morash*, this Court recognized its authority to reject or modify “a judicially created common law concept” without legislative approval. The General Court adopted G.L. c. 258, which is now “the exclusive remedy for bringing *tort* claims against the Commonwealth[,]” *Magliacane*, 483 Mass. at 850 (emphasis added), a status not shared by MCRA.

The North Carolina Supreme Court explicitly rejected the notion that sovereign immunity can bar a claim for state constitutional violations.

The doctrine of sovereign immunity cannot stand as a barrier to North Carolina citizens who seek to remedy violations of their rights guaranteed by the Declaration of Rights. It would indeed be a fanciful gesture to say on the one hand that citizens have constitutional individual civil rights that are protected from encroachment actions by the State, while on the other hand saying that individuals whose constitutional rights have been violated by the State cannot sue because of the doctrine of sovereign immunity.

[C]onstitutional rights are a part of the supreme law of the State. ... [S]overeign immunity is not a constitutional right; it is a common law theory or defense established by this Court [W]hen there is a clash between these constitutional rights and sovereign immunity, the constitutional rights must prevail.

Corum v. University of North Carolina, 330 N.C. 761, 786 (1992) (citation omitted).

Declaratory and injunctive relief cannot always remedy constitutional rights deprivations. Recognizing courts' historic power to fashion remedies for liberty deprivations, the U.S. Supreme Court awarded damages in *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388, 395-397 (1971),³ as this Court noted in *Phillips*, 390 Mass. at 658 n.4. The Slavins cannot vindicate

³ This Court is not bound by the U.S. Supreme Court's retreat from *Bivens*, *Goldey v. Fields*, 606 U.S. 942, 2025 U.S. LEXIS 2572 (*per curiam*, June 30, 2025), *citing Egbert v. Boule*, 596 U.S. 482 (2022), just as it is not bound by that Court's retreat from other due process protections. *See Kligler*, 491 Mass. at 60-62.

the City's deprivation of their state constitutional rights by injunctive or declaratory relief. Damages are the only meaningful relief available to them. "[O]ur State constitutional provisions [] 'are, and must be, adaptable to changing circumstances and new societal phenomena.'" *Kligler*, 491 Mass. at 60, *quoting Goodridge*, 440 Mass. at 350 n.6 (Greaney, J. *concurring*). Reversing summary judgment and allowing a jury to award damages directly under the Declaration of Rights to compensate the Slavins for Taunton's denial of their substantive due process rights

ensure[s] that the rights protected by the Massachusetts Declaration of Rights are not inappropriately limited by an unduly restrictive reading of history or tradition. In this way, [the Court] allow[s] our State Constitution to respond effectively to our changing world, and to "define a liberty that remains urgent in our own era."

Kligler, 491 Mass. at 62, *quoting* *Obergefell v. Hodges*, 576 U.S. 644, 672 (2015).

STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Since the creation of the Appeals Court, it has been the policy of Massachusetts appellate courts to ensure that each appeal receives a single, complete review, largely through transfer of cases between the courts on SJC initiative or parties' motion(s). D. Johnedis, *Massachusetts Two Court Appellate System: A Decade of Development*, 67 MASS. L. REV. 103, 106-107 (1982) ("Johnedis"). See S. Rikleen, *The Supreme Judicial Court's Workload: A Review*

of the Available Data, 44 BOSTON B. J. 6, 6-7 (2000). The transfer mechanism has been assisted by the General Court's allowance in G.L. c. 211A, §10(A) and the Supreme Judicial Court's encouragement in Mass. R. App. P. 11(a) of the transfer of three categories of cases for initial determination by the SJC:

- (1) questions of first impression or novel questions of law which should be submitted for final determination to the supreme judicial court;
- (2) questions of law concerning the Constitution of the commonwealth ... which have been raised in a court of the commonwealth;
- (3) questions of such public interest that justice requires a final determination by the supreme judicial court.

The categories reflect recognition that “[t]he role of the Supreme Judicial Court in the development of the law is preeminent.” *Johnedis*, 67 MASS. 1. REV. at 113. “Although both courts have the obligation of maintaining a harmonious body of decisional law, the Supreme Judicial Court has the primary responsibility. Innovation in the law normally has come from the Supreme Judicial Court. The main function of the Appeals Court has been to correct errors of law.” *Id.* at 110. More precisely, “[t]he role of [the] Appeals Court in this area has been to develop new principles of law that do not conflict with those followed by the Supreme Judicial Court.” *Id.* at 116.

The case at bar raises issues which require resolution by this Court. As it historically has done, *Johnedis*, 67 MASS. 1. REV. at 110; B. Finkelman, *Further*

Appellate Review in Civil Cases: How the Court Decides What Cases to Take, 69 MASS. L. REV. 108, 116 n. 8, 117 (September 1984), this Court should assume direct appellate review for the following reasons.

The only issues on appeal concern the viability of damages claims for substantive due process violations of the Commonwealth's Declaration of Rights which have been properly raised and preserved in the Superior Court. G.L. c. 211A, §10(A)(2); Mass. R. App. P. 11(a)(2). The issues raised have been addressed by this Court several times and the principles remain undisturbed, *Layne*, 406 Mass. at 161; *Phillips*, 390 Mass. at 657-660, and 658 n.4; *O'Connor*, 408 Mass. at 325, 329-32; *Batchelder*, 388 Mass. at 84, 84 n.2, but they have never been asserted definitively enough by this Court to satisfactorily instruct inferior and federal courts. *See e.g., Kendall v. Doe*, 2024 U.S. Dist. LEXIS 230637, 2024 WL 5187697 (D. Mass. 2024) (granting summary judgment because Massachusetts appellate courts have not explicitly recognized cause of action); *Humphrey v. Comoletti*, 2017 U.S. Dist. LEXIS 50465 at 27 n.6 (D.Mass. 2017) (dismissing claim where MCRA claim available, *citing Tomaselli v. Beaulieu*, 967 F.Supp.2d 423, 448 (D.Mass. 2013), *aff'd*. No. 132218 (1st Cir. Dec. 16, 2014) for proposition that viability of Declaration of Rights claim is an "open question"). Superior Court justices have reached conflicting decisions about the scope of state

constitutional rights,⁴ even within this very case. *Compare* Addendum 81 *with* 84 *with* 94 (decisions on the City's motions to dismiss, for judgment on the pleadings, and summary judgment). In contrast with J. Glenny's decision that no state constitutional damages claim exists, J. Maguire denied the City judgment on the pleadings because this Court has allowed such a damages claim in practice.

The Supreme Judicial Court rejected the [City's] argument that the sole remedy for a violation of State constitutional rights is provided by the Massachusetts Civil Rights Act, G.L. c. 12, § 11I in a line of cases beginning over forty years ago.

The city reads the dictum that the State Civil Rights Act "may be thought, as it were, to occupy the field," *Martino* at 720, too broadly. The Supreme Judicial Court clearly held in *Batchelder*, *Phillips*, and *Layne* that the judiciary must provide a remedy for violation of State constitutional rights directly under the State Constitution if no remedy is provided by statute. In *Doe*, the Appeals Court held that declaratory and injunctive relief are available under the State Constitution. The issue addressed by the Appeals Court in *Martino* and *Doe* is not whether a person whose State constitutional rights are

⁴ Superior Court decisions have found a right to affirmative protection in Article X, *Matter of McKnight*, 406 Mass. 787, 795 (1990); *Parsons ex rel. Parsons v. Town of Tewksbury*, 26 Mass.L.Rptr. 555, 2010 WL 1544470 at *6, 2010 Mass. Super. LEXIS 67 at *14-*15 (Middlesex Super. Ct., January 19, 2010, Fishman, J.) (recognizing principle but dismissing for lack of authority providing school security); *McClure v. Town of East Brookfield*, No. 97-2004B, 9 Mass.L.Rptr. 680, 1999 WL 1323628 at *2, 1999 Mass. Super. LEXIS 133 (Worcester Super. Ct., March 11, 1999, Hillman, J.) (denying summary judgment on Declaration of Rights claim in case alleging police refusal to enforce domestic violence laws), and a right to "safety" in Article I. *Parsons v. Willette*, 29 Mass.L.Rptr. 312, 2012 Mass. Super. LEXIS 12 (Middlesex Super. Ct., January 20, 2012, Leibensperger, J.) (denying summary judgment on G.L. c. 12, §11I claim in bullying case).

violated may obtain relief under the State Constitution, but whether the relief available under the State Constitution includes money damages. The Supreme Judicial Court left that question open in *Batchelder* and appeared to answer it in the affirmative in *Layne*.

Addendum 88-91. Superior Court Justice Fishman recognized a direct state constitutional cause of action for similar reasons in *Parsons ex rel. Parsons v. Town of Tewksbury*, 26 Mass.L.Rptr. 555, 2010 WL 1544470 at *5, 2010 Mass. Super. LEXIS 67 (Middlesex Super. Ct., January 19, 2010, Fishman, J.):

In light of the Supreme Judicial Court’s indication that a cause of action is likely viable for violations of the state constitution in situations where there is no statutory vehicle for relief, and recognition that constitutional violations may occur even where there are no acts of threats, coercion or intimidation, see G.L. c. 12, §§11H & 11I, this Court finds that, as a general proposition, a cause of action can, in certain circumstances, be brought directly under the Massachusetts Declaration of Rights in the absence of a statutory vehicle for obtaining relief.

Other Superior Court decisions follow *SORB No. 474362* in holding that no damages claim can be based on the Declaration of Rights. *Leo v. Mici*, No. 2084CV01728, 2025 Mass. Super. LEXIS 14 at *14 (Suffolk Super. Ct., Feb. 19, 2025, Gordon, J.); *Lattanzio v. Mass. Dept. of Pub. Health*, No. 2172CV00053, 2024 Mass. Super. LEXIS 706 at *1-*3 (Barnstable Super. Ct., Nov. 22, 2024, Hogan, J.).

“[O]ur Constitution evolves alongside newly discovered insights about the nature of liberty.” *Kligler*, 491 Mass. at 66, citing *McDuffy v. Secretary of the*

Executive Office of Educ., 415 Mass. 545, 620 (1993) (“constitutional protections ‘necessarily will evolve together with our society’”).

[I]ndependent state constitutional interpretation, [] is built into the design of our federal constitutional structure. Federalism is designed for dual sovereignty, including a double protection of individual rights and a division of authority between the states and the federal government to further protect our liberty. * * * if state courts do not perform that independent, non-deferential review of state constitutional provisions, including those that share a common origin and wording with federal constitutional provisions, state courts are not fulfilling their function in the federalist system, which is to provide the double protection of American rights and liberty the system is designed to achieve.

S. Kafker, *State Constitutional Law Declares Its Independence: Double Protecting Rights During a Time of Federal Constitutional Upheaval*, 49 HASTINGS CONST. L. Q. 115, 116, 141 (2022) (“Kafker”). It is the duty of the Supreme Judicial Court to resolve state constitutional questions. G.L. c. 211A, §10(A)(2); Mass. R. App. P. 11(a)(2). The state constitutional issues remain unresolved at a time when the need for the “double protection of individual rights and [] division of authority between the states and the federal government to further protect our liberty” has seldom been more urgent. Kafker, 49 HASTINGS CONST. L. Q. at 116. The question of whether to reaffirm state constitutional protections as federal constitutional protections recede alone makes the questions on appeal “of such public interest that justice requires a final determination by the Supreme Judicial Court.” G.L. c. 211A, §10(A)(3); Mass. R. App. P. 11(a)(3).

Moreover, the Superior Court summary judgment relies upon the *SORB No. 474362* panel overstep of its authority as an “intermediate appellate court,” *Burke v. Toothaker*, 1 Mass. App. Ct. 234, 239 (1973), in which the panel “develop[ed] new principles of law that [] conflict with those followed by the Supreme Judicial Court.” *Johnedis*, 67 MASS. 1. REV. at 110. Worse, the *SORB No. 474362* panel acknowledged that its rejection of a right to damages for substantive state constitutional due process violations conflicted with this Court’s *Layne* decision and principles this Court expressed in *Phillips*, 390 Mass. at 657-658, *Breault*, 401 Mass. at 36, and elsewhere. *SORB No. 474362*, 94 Mass. App. Ct. at 63-65, 65 n.14 (“But cf. *Layne* ... (discussing possible availability of damages relief under art. 114 of Amendments to Massachusetts Constitution).”). The *SORB No. 474362* panel rested its reasoning on the apparent conflict between the express language of the Declaration of Rights and this Court’s judicial enactment of the sovereign immunity doctrine. Putting aside for the moment the fundamental principle that the Declaration of Rights is the “supreme law of the [Commonwealth]” to which judicial doctrines must yield, *Corum*, 330 N.C. at 786, the Appeals Court panel lacked the ability to harmonize a doctrine created by and modifiable by this Court, *Morash*, 363 Mass. at 615, with the Declaration of Rights because “we do not regard it as one of our functions to alter established rules of law governing principles of substantive liability.” *Burke*, 1 Mass. App. Ct. at 239. Only this

Court can resolve the apparent conflict between the Declaration of Rights and this Court's sovereign immunity doctrine. Harmonizing or modifying the judicial doctrine also makes the questions on appeal "of such public interest that justice requires a final determination by the Supreme Judicial Court." G.L. c. 211A, §10(A)(3); Mass. R. App. P. 11(a)(3). And, worst of all, while this Court fails to resolve open constitutional questions of such great import, subsequent Appeals Court panels and Superior Court judges simply adopt *SORB No. 474362*'s outcome without further analysis, as did the summary judgment decision, thus building a line of inadequately analyzed precedent in contravention of state constitutional rights. See e.g., *O'Brien v. King*, 103 Mass. App. Ct. 1121, 2024 Mass. App. Unpub. LEXIS 75 at *5 (2024); *Orekoya v. Sex Offender Registry Board*, 100 Mass. App. Ct. 1131, 2022 Mass. App. Unpub. LEXIS 239 at *2 n.4 (2022); *Barry v. Department of Correction*, 98 Mass. App. Ct. 1104, 2020 Mass. App. Unpub. LEXIS 683 at *17 n.13 (2020); *Hudson v. Thompson*, 96 Mass. App. Ct. 1105, 2019 Mass. App. Unpub. LEXIS 690 at *6 (2019). This Court alone should answer the state constitutional question it left open, harmonize and resolve any conflicts in the law, and educate the courts and the public concerning the scope of state constitutional rights in this tumultuous constitutional era.

CONCLUSION

For all of the above reasons, Kathleen Slavin, Personal Representative of the Estate of Patricia Slavin, and Kathleen Slavin, Individually, the petitioners-appellants, respectfully request this honorable Court to assume direct appellate review of the appeal at bar.

Respectfully Submitted,
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By their Attorneys,

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ken@kolpan.com

Dated: July 20, 2026

CERTIFICATION OF COMPLIANCE

I hereby certify that the above Application for Direct Appellate Review complies with the rules of court that pertain to the filing of such documents, including, but not limited to: Mass. R. App. P. 11(b), 16(a)(13), 16(e), 18, 20, and 21, subject to the Petitioners-Appellants' Motion to File Application for Direct Appellate Review Late and to Exceed Word Count by Approximately 360 Words. Compliance with Mass. R. App. P. 20 was determined by using Times New Roman 14 point proportionally spaced font, totaling 2,363 words of non-excluded text.

/s/ Mark F. Itzkowitz
MARK F. ITZKOWITZ (BBO #248130)

CERTIFICATE OF SERVICE

I, Mark F. Itzkowitz, hereby certify that on July 20, 2026, a copy of the foregoing document was served via email only upon the following:

Douglas I. Louison, Esquire
Stephen C. Pfaff, Esquire
Joseph A. Mongiardo, Esquire
Louison, Costello, Condon and Pfaff
Ten Post Office Square, Suite 1330
Boston, MA 02109
dlouison@lccplaw.com
spfaff@lccplaw.com
jmongiardo@lccplaw.com
Defense Counsel for City of Taunton.

Daniel J. Buoniconti, Esq.
John Waldron, Esq.
Foster & Eldridge, LLP
300 Trade Center, Suite 2610
Woburn, MA 01801
dbuoniconti@fosteld.com
jwaldron@fosteld.com
Defense Counsel for AMR of
Massachusetts, Inc.

/s/ Mark F. Itzkowitz
MARK F. ITZKOWITZ (BBO #248130)



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

1973CV00388 Kathleen Slavin Personal Representative for the Estate of Patricia Slavin et al vs. American Medical Response of Massachusetts, Inc. et al

CASE TYPE: Actions Involving the State/Municipality	FILE DATE: 04/24/2019
ACTION CODE: AB1	CASE TRACK: A - Average
DESCRIPTION: Tortious Action involving the Commonwealth, Municipality, MBTA, etc.	
CASE DISPOSITION DATE: 03/05/2026	CASE STATUS: Open
CASE DISPOSITION: Summary Judgment	STATUS DATE: 04/24/2019
CASE JUDGE:	CASE SESSION: Civil B (New Bedford)

PARTIES

Plaintiff Kathleen Slavin, Individually 270 Myricks Street Taunton, MA 02780	Private Counsel 248130 Mark F Itzkowitz Mark F. Itzkowitz Esquire Mark F. Itzkowitz Esquire 33 Harrison Ave 7th Floor Boston, MA 02111 Work Phone (617) 695-1848 Added Date: 08/23/2021
	Private Counsel 276960 Kenneth I Kolpan Law Office of Kenneth I. Kolpan, P.C. Law Office of Kenneth I. Kolpan, P.C. 26 Lillian Way Wayland, MA 01778 Work Phone (617) 426-2558 Added Date: 01/29/2024
	Private Counsel 248130 Mark F Itzkowitz Mark F. Itzkowitz Esquire Mark F. Itzkowitz Esquire 33 Harrison Ave 7th Floor Boston, MA 02111 Work Phone (617) 695-1848 Added Date: 08/23/2021
	Private Counsel 276960 Kenneth I Kolpan Law Office of Kenneth I. Kolpan, P.C. Law Office of Kenneth I. Kolpan, P.C. 26 Lillian Way Wayland, MA 01778 Work Phone (617) 426-2558 Added Date: 04/24/2019



COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report

Defendant American Medical Response of Massachusetts, Inc. 6363 S. Fiddler's Green Circle Suite 1400 Englewood, CO 80111	Private Counsel 640139 Daniel J Buoniconti Foster and Eldridge, LLP Foster and Eldridge, LLP 300 Trade Center Suite 2610 Woburn, MA 01801 Work Phone (617) 252-3366 Added Date: 01/10/2024 Private Counsel 684671 John Michael Waldron Foster and Eldridge, LLP Foster and Eldridge, LLP 300 Trade Center Suite 2610 Woburn, MA 01801 Work Phone (617) 252-3366 Added Date: 01/10/2024 Private Counsel 705387 Daniel M Geary Foster and Eldridge LLP Foster and Eldridge LLP 300 Trade Center Woburn, MA 01801 Work Phone (617) 252-3366 Added Date: 05/23/2024
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**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

Defendant City of Taunton 141 Oak Street Taunton, MA 02780	City / Town Counsel 545191 Douglas I Louison Louison, Costello, Condon and Pfaff, LLP Louison, Costello, Condon and Pfaff, LLP Ten Post Off Square Suite 1330 Boston, MA 02109 Work Phone (617) 439-0305 Added Date: 11/28/2022
	City / Town Counsel 553057 Stephen C Pfaff Louison, Costello, Condon and Pfaff, LLP Louison, Costello, Condon and Pfaff, LLP Ten Post Off Square Suite 1330 Boston, MA 02109 Work Phone (617) 439-0305 Added Date: 10/27/2023
	City / Town Counsel 710670 Joseph A Mongiardo Louison, Costello, Condon, Pfaff Louison, Costello, Condon, Pfaff 10 Post Off Square Suite 1330 Boston, MA 02109 Work Phone (617) 307-5040 Added Date: 05/23/2023
Other interested party Shepard, Shatterria 90 McKinstry Avenue Apt. 217 Chicopee, MA 01013	

FINANCIAL DETAILS					
Date	Fees/Fines/Costs/Charge	Assessed	Paid	Dismissed	Balance
04/24/2019	Civil Filing Fee (per Plaintiff) Receipt: 21100 Date: 04/24/2019	480.00	480.00	0.00	0.00
04/24/2019	Civil Security Fee (G.L. c. 262, § 4A) Receipt: 21100 Date: 04/24/2019	20.00	20.00	0.00	0.00
04/24/2019	Civil Surcharge (G.L. c. 262, § 4C) Receipt: 21100 Date: 04/24/2019	15.00	15.00	0.00	0.00
11/19/2019	Fee for unattested copy of court documents, records, papers, G.L. c. 262 § 4b. Receipt: 22838 Date: 11/19/2019	0.15	0.15	0.00	0.00
Total		515.15	515.15	0.00	0.00



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

INFORMATIONAL DOCKET ENTRIES			
Date	Ref	Description	Judge
04/24/2019		Attorney appearance On this date Kenneth I Kolpan, Esq. added as Private Counsel for Plaintiff Kathleen Slavin	
04/24/2019		Case assigned to: DCM Track A - Average was added on 04/24/2019	
04/24/2019	1	Original civil complaint filed.	
04/24/2019	2	Civil action cover sheet filed.	
04/24/2019		Demand for jury trial entered.	
04/24/2019		One Trial case reviewed by Clerk, case to remain in the Superior Court. Judge: Vincent, Joseph T	Vincent
05/08/2019	3	Attorney appearance On this date Bradford Neal Louison, Esq. added as City / Town Counsel for Defendant City of Taunton	
05/17/2019	4	Defendant's Notice of intent to file motion to dismiss Applies To: City of Taunton (Defendant)	
05/23/2019	5	Service Returned for Defendant City of Taunton: Service accepted by counsel;	
06/11/2019	6	Defendant City of Taunton's Motion to dismiss Pursuant to M.R.C.P. 12(b)(6)	
06/11/2019	6.1	City of Taunton's Memorandum in support of Motion to Dismiss Pursuant to M.R.C.P. 12(b)(6)	
06/11/2019	6.2	Opposition to Defendant City of Taunton's Motion to Dismiss Pursuant to M.R.C.P. 12(b)(6) filed by Kathleen Slavin Personal Representative for the Estate of Patricia Slavin	
06/17/2019		The following form was generated: Notice to Appear Sent On: 06/17/2019 14:18:40	
06/20/2019		Event Result:: Rule 12 Hearing scheduled on: 08/13/2019 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Renee P Dupuis, Presiding	Dupuis
06/20/2019		The following form was generated: Notice to Appear Sent On: 06/20/2019 11:22:21	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

06/20/2019	7	Service Returned for Defendant American Medical Response of Massachusetts, Inc.: Service through person in charge / agent;	
06/27/2019	8	Defendants City of Taunton's Joint Motion to continue / reschedule an event 08/08/2019 02:00 PM Rule 12 Hearing	
06/28/2019		Endorsement on Motion to continue / reschedule an event (#8.0): ALLOWED by agreement. New date is September 12, 2019 at 2 pm. Judge: Fregault, Garrett R	Fregault
06/28/2019		Event Result:: Rule 12 Hearing scheduled on: 08/08/2019 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Renee P Dupuis, Presiding Staff: Garrett Fregault, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter	Dupuis
06/28/2019		The following form was generated: Notice to Appear Sent On: 06/28/2019 10:10:42	
07/18/2019		Attorney appearance On this date Barbara Hayes Buell, Esq. added as Private Counsel for Defendant American Medical Response of Massachusetts, Inc.	
07/18/2019		Attorney appearance On this date Melissa B Paradis, Esq. added as Private Counsel for Defendant American Medical Response of Massachusetts, Inc.	
07/18/2019	9	Defendant's Notice of intent to file motion to dismiss Applies To : American Medical Response of Massachusetts, Inc. (Defendant)	
09/06/2019	10	Defendant American Medical Response of Massachusetts, Inc.'s Motion to dismiss certain counts Counts I and III	
09/06/2019	10.1	American Medical Response of Massachusetts, Inc.'s Memorandum in support of Motion to Dismiss	
09/06/2019	10.2	Opposition to #10 AMR's Motion to Dismiss filed by Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, American Medical Response of Massachusetts, Inc.	
09/06/2019	10.3	Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Memorandum in opposition to AMR's Motion to Dismiss	
09/06/2019	10.4	Defendant American Medical Response of Massachusetts, Inc.'s Reply to Plaintiffs' Opposition to Motion to Dismiss	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

09/12/2019		Matter taken under advisement: Rule 12 Hearing scheduled on: 09/12/2019 02:00 PM Has been: Held - Under advisement Hon. Renee P Dupuis, Presiding Appeared: Plaintiff Kenneth I Kolpan, Esq., Private Counsel Defendant Melissa B Paradis, Esq., Private Counsel Defendant Bradford Neal Louison, Esq., City / Town Counsel Staff: Garrett Fregault, Assistant Clerk Magistrate 09/12/2019 02:00 PM Dina Swanson, Assistant Clerk Magistrate 09/12/2019 02:00 PM Digital Recording Device Bris CV B, Court Reporter 09/12/2019 02:00 PM	Dupuis
10/28/2019		Endorsement on Motion to dismiss (#6.0): DENIED See Memorandum filed this date Judge: Dupuis, Hon. Renee P	Dupuis
10/28/2019		Endorsement on Response to dismiss (#10.0): DENIED for reasons stated in the opposition Judge: Dupuis, Hon. Renee P	Dupuis
10/28/2019	11	ORDER: on the Defendant City of Taunton's Motion to Dismiss ORDER: It is ORDERED that the defendant City of Taunton's motion to dismiss is DENIED. Judge: Dupuis, Hon. Renee P	Dupuis
11/07/2019	12	Notice of appeal filed. Applies To: City of Taunton (Defendant)	
11/07/2019	13	Notice to Court RE: NO transcript ordered Applies To: Louison, Esq., Bradford Neal (Attorney) on behalf of City of Taunton (Defendant)	
11/12/2019		Docket Note: Notice of Filing of Appeal sent to Counsel	
12/10/2019	14	Appeal: Statement of the Case on Appeal (Cover Sheet), by e-filing to the Appeals Court.	
12/10/2019	15	Notice of assembly of record sent to Counsel	
12/10/2019	16	Notice to Clerk of the Appeals Court of Assembly of Record, by e-filing to the Appeals Court.	
12/10/2019	16.1	General correspondence regarding Assembly of Appeal sent to the Appeals Court.	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

12/13/2019	17	General correspondence regarding Corrected Assembly of Appeal sent to the Appeals Court	
12/16/2019	18	Notice of Entry of appeal received from the Appeals Court (2019-P-1762)	
01/15/2020	19	Defendant American Medical Response of Massachusetts, Inc.'s Motion to Stay Proceedings Pending Appeal	
01/15/2020	19.1	Opposition to Motion to Stay Proceedings Pending Appeal filed by Kathleen Slavin Personal Representative for the Estate of Patricia Slavin	
01/15/2020	19.2	Kathleen Slavin Personal Representative for the Estate of Patricia Slavin's Memorandum in support of of Their Opposition to Defendant AMR of Massachusetts, Inc.'s Motion to Stay Proceedings Pending Appeal	
01/23/2020		Endorsement on Memorandum of Law in Support of Opposition to Motion to Stay (#19.2): DENIED Upon review of all pleadings, memorandum and the controlling legal authority, the Court exercises its broad discretion and DENIES the Defendant AMR's Motion to Stay proceedings pending the outcome of the co-defendant's appeal of the denial of its motion to dismiss. In so ruling the Court finds there is a legitimate interest of the Plaintiff proceeding expeditiously with discovery especially in light of the fact that the events at issue occurred more than 4 years ago. As such, there is a possibility that if discovery is delayed pending appeal the Plaintiff could lose prospective witnesses or that witness memory may erode causing a significant prejudice to the Plaintiff. Further, while there may be some duplication of discovery depending on the outcome of the appeal, such is not a sufficient basis to enter a stay.	Buckley
03/02/2020	20	Received from Defendant American Medical Response of Massachusetts, Inc.: Answer with claim for trial by jury;	
07/20/2020	21	Notice of docket entry received from Appeals Court Please take note that, with respect to the RESPONSE filed for City of New Bedford by Attorney Stephen Pfaff. (Paper #3), on July 20, 2020, the following order was entered on the docket: RE#3: The assented to motion is allowed. Pursuant to Mass. R. A. P. 10(a)(3), 14(b), and Appeals Court Administrative Order 20-2(III)(C), the appeal is deemed timely docketed. The parties are to note that although the response states that the two cases had been consolidated in the trial court, they were separately assembled and entered in the Appeals Court as 2020-P-0731 and 2020-P-0778. At this time, the appeals are pending separately in the Appeals Court in the absence of a motion to consolidate or order of this court. See Mass. R. A. P. 10(a)(5). In the event that all parties seek consolidation, a joint motion signed by all parties may be filed under both docket numbers. (Shin, J.). *Notice/Attest.	
08/10/2020	22	Defendant American Medical Response of Massachusetts, Inc.'s Motion to Stay Depositions During Appeal	
08/10/2020	22.1	American Medical Response of Massachusetts, Inc.'s Memorandum in support of Motion to Stay Depositions During Appeal	
08/10/2020	22.2	Affidavit of Barbara Hayes Buell	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

08/10/2020	22.3	Opposition to #22 Defendant's Motion to Stay Depositions Pending Appeal filed by Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually	
08/10/2020	22.4	Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Memorandum in support of Opposition	
08/10/2020	22.5	Certificate of Compliance Superior Court Rule 9C Applies To: Buell, Esq., Barbara Hayes (Attorney) on behalf of American Medical Response of Massachusetts, Inc. (Defendant)	
08/10/2020	22.6	Affidavit of compliance with Superior Court Rule 9A Applies To: Buell, Esq., Barbara Hayes (Attorney) on behalf of American Medical Response of Massachusetts, Inc. (Defendant)	
09/02/2020		Endorsement on Motion to Stay Depositions During Appeal (#22.0): DENIED This motion is a reconsideration of the Court (Buckley, J.) denied AMR's motion to stay proceedings pending appeal. Judge Buckley wrote in her decision "...there is a possibility that if discovery is delayed pending appeal the Plaintiff could lose prospective witnesses or that witness memory may erode causing a significant prejudice to the Plaintiff. Further, while there may be some duplication of discovery depending on the outcome of the appeal, such is not a sufficient basis to enter a stay." For these reasons stated, this motion is denied. Judge: Hopkins, Hon. Merita A	Hopkins
12/10/2020	23	Attorney appearance On this date Elizabeth Scian, Esq. added as Private Counsel for Defendant City of Taunton	
02/08/2021	24	Rescript received from Appeals Court; judgment REVERSED The order denying the City of Taunton's motion to dismiss the tort claims against it is reversed..	
02/10/2021		The following form was generated: Notice to Appear Sent On: 02/10/2021 09:29:17 Notice Sent To: Kenneth I Kolpan, Esq. Law Office of Kenneth I. Kolpan, P.C. 26 Lillian Way, Wayland, MA 01778 Notice Sent To: Barbara Hayes Buell, Esq. Smith Duggan Buell & Rufo LLP 55 Old Bedford Rd Suite 300, Lincoln, MA 01773 Notice Sent To: Melissa B Paradis, Esq. Smith Duggan Buell & Rufo LLP 55 Old Bedford Rd Third Floor Suite 300, Lincoln, MA 01773 Notice Sent To: Bradford Neal Louison, Esq. Louison Costello Conoon & Pfaff 101 Summer St 4, Boston, MA 02110 Notice Sent To: Elizabeth Scian, Esq. Louison, Costello, Condon & Pfaff, LLP 101 Summer St 4th Floor, Boston, MA 02110	
02/22/2021	25	Plaintiffs Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Assented to Motion to continue / reschedule an event 03/01/2021 02:00 PM Conference to Review Status	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

02/24/2021		Event Result:: Conference to Review Status scheduled on: 03/01/2021 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Jennifer A Sullivan, Presiding	Sullivan
02/24/2021		Endorsement on Motion to continue / reschedule an event (#25.0): ALLOWED Conference shall be continued to Wednesday, March 10, 2021 at 2pm. Judge: Sullivan, Jennifer A	Sullivan
02/25/2021		The following form was generated: Notice to Appear Sent On: 02/25/2021 11:53:01 Notice Sent To: Kenneth I Kolpan, Esq. Law Office of Kenneth I. Kolpan, P.C. 26 Lillian Way, Wayland, MA 01778 Notice Sent To: Barbara Hayes Buell, Esq. Smith Duggan Buell & Rufo LLP 55 Old Bedford Rd Suite 300, Lincoln, MA 01773 Notice Sent To: Melissa B Paradis, Esq. Smith Duggan Buell & Rufo LLP 55 Old Bedford Rd Third Floor Suite 300, Lincoln, MA 01773 Notice Sent To: Bradford Neal Louison, Esq. Louison Costello Conoon & Pfaff 101 Summer St 4, Boston, MA 02110 Notice Sent To: Elizabeth Scian, Esq. Louison, Costello, Condon & Pfaff, LLP 101 Summer St 4th Floor, Boston, MA 02110	
03/08/2021	26	Plaintiffs Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Joint Submission of Joint Status Report	
03/10/2021		Event Result:: Conference to Review Status scheduled on: 03/10/2021 02:00 PM Has been: Held via Video/Teleconference Hon. Thomas F McGuire, Jr., Presiding Appeared: Plaintiff Kenneth I Kolpan, Esq., Private Counsel Defendant Barbara Hayes Buell, Esq., Private Counsel Melissa B Paradis, Esq., Private Counsel Defendant Bradford Neal Louison, Esq., City / Town Counsel Elizabeth Scian, Esq., Private Counsel Staff: Jennifer A Sullivan, Esq., Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter	McGuire
03/10/2021		Endorsement on Submission to Joint Status Report (#26.0): ALLOWED after hearing, the proposed deadline contained herein shall be adopted Judge: McGuire, Jr., Hon. Thomas F	McGuire



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

03/17/2021	27	Answer to original complaint with claim for trial by jury Applies To: City of Taunton (Defendant)
08/23/2021		Attorney appearance electronically filed.
08/23/2021	28	Attorney appearance On this date Mark F Itzkowitz, Esq. added as Private Counsel for Plaintiff Kathleen Slavin Personal Representative for the Estate of Patricia Slavin
08/23/2021	28	Attorney appearance On this date Mark F Itzkowitz, Esq. added as Private Counsel for Plaintiff Kathleen Slavin, Individually
11/01/2021	29	Plaintiffs Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Joint Motion to extend tracking deadline(s)
11/19/2021		The following form was generated: Notice to Appear Sent On: 11/19/2021 10:38:32 Notice Sent To: Kenneth I Kolpan, Esq. Law Office of Kenneth I. Kolpan, P.C. 26 Lillian Way, Wayland, MA 01778 Notice Sent To: Mark F Itzkowitz, Esq. Mark F. Itzkowitz Esquire 175 Federal St Suite 505, Boston, MA 02110-2211 Notice Sent To: Barbara Hayes Buell, Esq. Smith Duggan Buell and Rufo LLP 55 Old Bedford Rd Suite 300, Lincoln, MA 01773 Notice Sent To: Melissa B Paradis, Esq. Smith Duggan Buell and Rufo LLP 55 Old Bedford Rd Third Floor Suite 300, Lincoln, MA 01773 Notice Sent To: Bradford Neal Louison, Esq. Louison Costello Condon and Pfaff Ten Post Off Square 13th Floor, Boston, MA 02109 Notice Sent To: Elizabeth Scian, Esq. Louison, Costello, Condon and Pfaff, LLP Ten Post Off Square Suite 1330, Boston, MA 02109
12/08/2021		Event Result:: Motion Hearing to Amend Deadline scheduled on: 12/08/2021 03:00 PM Has been: Held as Scheduled Hon. Jackie Cowin, Presiding Appeared: Plaintiff Kenneth I Kolpan, Esq., Private Counsel Mark F Itzkowitz, Esq., Private Counsel Defendant Barbara Hayes Buell, Esq., Private Counsel Defendant Bradford Neal Louison, Esq., City / Town Counsel Staff: Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

12/08/2021		Endorsement on Motion to extend tracking deadline(s) (#29.0): ALLOWED after hearing as follows: Fact discovery: 3/31/22; plaintiff's disclosures: 5/31/22; defendants' disclosures: July 15, 2022; Rule 56 motions served by Sept. 15, 2022, oppositions due Oct. 14, 2022, motions filed by Oct. 21, 2022. Judge: Cowin, Hon. Jackie	Cowin
12/09/2021		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff, Attorney: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant, Attorney: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant, Attorney: Melissa B Paradis, Esq. mparadis@smithduggan.com Defendant, Attorney: Bradford Neal Louison, Esq. blouison@lccplaw.com Defendant, Attorney: Elizabeth Scian, Esq. lscian@lccplaw.com	
12/09/2021		EDocument sent: A Amended Tracking Order was generated and sent to : Plaintiff, Attorney: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff, Attorney: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant, Attorney: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant, Attorney: Melissa B Paradis, Esq. mparadis@smithduggan.com Defendant, Attorney: Bradford Neal Louison, Esq. blouison@lccplaw.com Defendant, Attorney: Elizabeth Scian, Esq. lscian@lccplaw.com	
03/03/2022	30	Defendant American Medical Response of Massachusetts, Inc.'s Joint Motion to extend tracking deadline(s)	
03/04/2022		Endorsement on Motion to amend tracking order (#30.0): ALLOWED by agreement. New tracking order to issue. Judge: White, Jr., Hon. William M	White
03/04/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff, Attorney: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant, Attorney: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant, Attorney: Melissa B Paradis, Esq. mparadis@smithduggan.com Defendant, Attorney: Bradford Neal Louison, Esq. blouison@lccplaw.com Defendant, Attorney: Elizabeth Scian, Esq. lscian@lccplaw.com	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

03/04/2022		EDocument sent: Amended Tracking Order was generated and sent to: Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant: Melissa B Paradis, Esq. mparadis@smithduggan.com Defendant: Bradford Neal Louison, Esq. blouison@lccplaw.com Defendant: Elizabeth Scian, Esq. lscian@lccplaw.com null: File Copy Sent On: 03/04/2022 15:51:16	
05/16/2022	31	Plaintiffs Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Joint Motion to extend tracking deadline(s) (amend)	
05/17/2022		Endorsement on Motion to amend tracking order (#31.0): ALLOWED by agreement. Judge: Yessayan, Hon. Raffi N	Yessayan
05/17/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff, Attorney: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant, Attorney: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant, Attorney: Melissa B Paradis, Esq. mparadis@smithduggan.com Defendant, Attorney: Bradford Neal Louison, Esq. blouison@lccplaw.com Defendant, Attorney: Elizabeth Scian, Esq. lscian@lccplaw.com	
05/17/2022		EDocument sent: Amended Tracking Order was generated and sent to: Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant: Melissa B Paradis, Esq. mparadis@smithduggan.com Defendant: Bradford Neal Louison, Esq. blouison@lccplaw.com Defendant: Elizabeth Scian, Esq. lscian@lccplaw.com null: File Copy Sent On: 05/17/2022 14:33:23	
05/17/2022	32	Plaintiffs(s) Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually motion filed to Enforce Deposition Subpoena and Compel Witness' Attendance at Deposition to Which She has Been Twice Subpoenaed but Failed to Appear	
05/17/2022	32.1	Opposition to #32 Plaintiff's Motion to Enforce Deposition Subpoena filed by City of Taunton (LIMITED OPPOSITION)	
05/17/2022	32.2	Opposition to #32 Plaintiffs' Motion to Enforce Deposition Subpoena filed by American Medical Response of Massachusetts, Inc.	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

05/17/2022	32.3	Reply/Sur-reply Plaintiffs' Reply Brief in Response to Defendants' Oppositions
05/17/2022	32.4	Certificate of Compliance Superior Court Rule 9A Applies To: Itzkowitz, Esq., Mark F (Attorney) on behalf of Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually (Plaintiff); Kolpan, Esq., Kenneth I (Attorney) on behalf of Kathleen Slavin Personal Representative for the Estate of Patricia Slavin (Plaintiff)
05/17/2022	32.5	Certificate of Compliance Superior Court Rule 9C Applies To: Itzkowitz, Esq., Mark F (Attorney) on behalf of Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually (Plaintiff); Kolpan, Esq., Kenneth I (Attorney) on behalf of Kathleen Slavin Personal Representative for the Estate of Patricia Slavin (Plaintiff)
05/23/2022	33	Defendant American Medical Response of Massachusetts, Inc.'s Assented to Motion for Hearing on Motion
05/24/2022		The following form was generated: Notice to Appear Sent On: 05/24/2022 14:30:08
05/27/2022		The following form was generated: Notice to Appear Sent On: 05/27/2022 16:04:00
05/27/2022		The following form was generated: Notice to Appear Sent On: 05/27/2022 16:04:13
06/15/2022		Event Result:: Motion Hearing scheduled on: 06/15/2022 02:00 PM Has been: Held as Scheduled Hon. Gregg J Pasquale, Presiding Appeared: Plaintiff Kenneth I Kolpan, Esq., Private Counsel Mark F Itzkowitz, Esq., Private Counsel Defendant Barbara Hayes Buell, Esq., Private Counsel Defendant Bradford Neal Louison, Esq., City / Town Counsel Staff: Kellee-Sue Milord, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter

Pasquale



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

06/15/2022		Endorsement on Motion to Enforce Deposition Subpoena and Compel Witness' Attendance at Deposition (#32.0): DENIED without prejudice. Counsel for the plaintiff shall notice the deposition of the witness within the next 30 days at a location within 15 miles of the witness's residence. Said notice shall be served in hand, or last and usual, to the witness. Counsel for the plaintiff shall inform the witness of the potential legal consequences of the witness not appearing. Counsel for the plaintiff shall inform the witness that reasonable accommodations as to the date, place and location of the deposition will be made and that the witness may bring someone with her to the deposition and that it will be limited to three hours. Judge: Pasquale, Hon. Gregg J	Pasquale
06/16/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff, Attorney: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant, Attorney: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant, Attorney: Melissa B Paradis, Esq. mparadis@smithduggan.com Defendant, Attorney: Bradford Neal Louison, Esq. blouison@lccplaw.com Defendant, Attorney: Elizabeth Scian, Esq. lscian@lccplaw.com Other interested party: Shatteria Shepard 90 McKinstry Avenue Apt. 217, Chicopee, MA 01013	
08/17/2022	34	Plaintiff(s) Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually motion filed to Enforce Deposition Subpoena and Compel Witness' Attendance at Deposition for Which she has been Thrice Subpoenaed but Failed to Appear.	
08/17/2022	34.1	Defendant American Medical Response of Massachusetts, Inc.'s Response to Limited Opposition to Plaintiffs' Motion to Enforce Deposition Subpoena and Compel Witness' Attendance at Deposition.	
08/17/2022	34.2	Reply/Sur-reply to Defendant, American Medical Response of Massachusetts, Inc.'s Limited Opposition to Plaintiffs' Motion Enforce Deposition Subpoena and Compel Witness' Attendance at Deposition for Which she has been Thrice Subpoenaed but Failed to Appear.	
08/17/2022	34.3	Certificate of Compliance Superior Court Rule 9A Applies To: Itzkowitz, Esq., Mark F (Attorney) on behalf of Kathleen Slavin, Individually (Plaintiff); Kolpan, Esq., Kenneth I (Attorney) on behalf of Kathleen Slavin Personal Representative for the Estate of Patricia Slavin (Plaintiff)	
08/17/2022	34.4	Certificate of service of attorney or Pro Se: Kenneth I Kolpan, Esq. under Superior Court Rule 9C. Applies To: Itzkowitz, Esq., Mark F (Attorney) on behalf of Kathleen Slavin, Individually (Plaintiff); Kolpan, Esq., Kenneth I (Attorney) on behalf of Kathleen Slavin Personal Representative for the Estate of Patricia Slavin (Plaintiff)	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

08/31/2022		Endorsement on Motion to enforce deposition subpoena and compel witness attendance at deposition for which she has been thrice subpoenaed but failed to appear (#34.0): Other action taken Order of Notice to issue returnable on 9/21/2022. Plaintiffs' shall make in hand service to witness, Shatterria Shepard. Failure to appear will result in the issuance of a capias. Judge: Dupuis, Hon. Renee P	Dupuis
09/01/2022	35	Upon Plaintiff's request for an order of notice to show cause why themotion to enforce deposition subpoena and compel witness attendance at deposition shall not be granted, returnable on 09/21/2022 02:00 PM Motion Hearing to Compel. The following party(s) is ordered to appear Shatterria Shepard. FAILURE TO APPEAR WILL RESULT IN THE ISSUANCE OF A CAPIAS FOR WITNESS, SHATTERRIA SHEPARD	Dupuis
09/01/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff, Attorney: Kenneth I Kolpan, Esq. kenkolpan@gmail.com	
09/16/2022	41	Plaintiffs Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin Personal Representative for the Estate of Patricia Slavin's Joint Motion to amend the Tracking Order.	
09/20/2022	42	Service Returned for Applies To: Shepard, Shatterria (Other interested party)	
09/21/2022		Event Result:: Motion Hearing to Compel scheduled on: 09/21/2022 02:00 PM Has been: Held as Scheduled Hon. Renee P Dupuis, Presiding Appeared: Plaintiff Kenneth I Kolpan, Esq., Private Counsel Mark F Itzkowitz, Esq., Private Counsel Staff: Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter	Dupuis
09/21/2022		Endorsement on Motion to amend tracking order (#41.0): ALLOWED Judge: Dupuis, Hon. Renee P	Dupuis
09/26/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff, Attorney: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant, Attorney: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant, Attorney: Melissa B Paradis, Esq. mparadis@smithduggan.com Defendant, Attorney: Bradford Neal Louison, Esq. blouison@lccplaw.com Defendant, Attorney: Elizabeth Scian, Esq. lscian@lccplaw.com	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

09/26/2022		EDocument sent: Amended Tracking Order was generated and sent to: Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant: Melissa B Paradis, Esq. mparadis@smithduggan.com Defendant: Bradford Neal Louison, Esq. blouison@lccplaw.com Defendant: Elizabeth Scian, Esq. lscian@lccplaw.com Sent On: 09/26/2022 09:07:46	
10/07/2022	43	Supplemental Affidavit of Service Returned for Shatterria Shepard	
11/04/2022	44	Defendant American Medical Response of Massachusetts, Inc.'s EMERGENCY Motion to Postpone the Issuance of a Capias or for Instruction that it not be Served Until the Court has Heard from All Parties	
11/04/2022	45	Opposition to #44 Defendant's Emergency Motion to Postpone the Issuance of a Capias or for Instruction that it not be Served Until the Court has Heard from All Parties filed by Kathleen Slavin Personal Representative for the Estate of Patricia Slavin	
11/07/2022		The following form was generated: Notice to Appear Sent On: 11/07/2022 09:34:47	
11/09/2022	46	Attorney appearance On this date Robert L Boston, Esq. added as Private Counsel for Defendant American Medical Response of Massachusetts, Inc.	
11/10/2022		Endorsement on Motion to Enforce Deposition Subpoena and Compel Witness' Attendance at Deposition (#34.0): ALLOWED after hearing. Capias to issue and to be served between 9am - 12pm for transport to the Fall River Superior Court by 2pm for hearing. Judge: Dupuis, Hon. Renee P	Dupuis
11/10/2022		Endorsement on Motion to Postpone the Issuance of a Capias (#44.0): DENIED after hearing. Judge: Dupuis, Hon. Renee P	Dupuis



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

11/10/2022		Event Result:: Hearing for Capias scheduled on: 11/10/2022 04:00 PM Has been: Held via Video/Teleconference Hon. Claudine Cloutier, Presiding Appeared: Plaintiff Kenneth I Kolpan, Esq., Private Counsel Mark F Itzkowitz, Esq., Private Counsel Defendant Barbara Hayes Buell, Esq., Private Counsel Staff: Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter	Cloutier
11/14/2022	47	Capias issued for failure to appear / perform. Judge: Dupuis, Hon. Renee P Applies To: Shepard, Shatterria (Other interested party)	Dupuis
11/28/2022		Attorney appearance electronically filed.	
11/28/2022	48	Attorney appearance On this date Douglas I Louison, Esq. added as City / Town Counsel for Defendant City of Taunton	
12/21/2022	49	Attorney appearance On this date Bradford Neal Louison, Esq. dismissed/withdrawn as City / Town Counsel for Defendant City of Taunton	
12/23/2022	50	Defendant American Medical Response of Massachusetts, Inc.'s Joint Motion to extend tracking deadline(s)	
12/27/2022		Endorsement on Motion to extend tracking deadline(s) (#50.0): ALLOWED Judge: Cloutier, Hon. Claudine	Cloutier
12/28/2022		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff, Attorney: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant, Attorney: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant, Attorney: Melissa B Paradis, Esq. mparadis@ballys.com Defendant, Attorney: Robert L Boston, Esq. robert.boston@smithduggan.com Defendant, Attorney: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant, Attorney: Elizabeth Scian, Esq. lscian@lccplaw.com	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

12/28/2022		EDocument sent: Amended Tracking Order was generated and sent to: Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant: Melissa B Paradis, Esq. mparadis@ballys.com Defendant: Robert L Boston, Esq. robert.boston@smithduggan.com Defendant: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant: Elizabeth Scian, Esq. lscian@lccplaw.com Sent On: 12/28/2022 09:53:58	
01/09/2023	51	Attorney appearance On this date Melissa B Paradis, Esq. dismissed/withdrawn as Private Counsel for Defendant American Medical Response of Massachusetts, Inc.	
03/13/2023	52	Defendant American Medical Response of Massachusetts, Inc.'s Joint Motion to extend tracking deadline(s)	
03/22/2023		Endorsement on Motion to amend tracking order (#52.0): ALLOWED The deadlines set forth on page 5 are adopted Judge: Cowin, Hon. Jackie	Cowin
03/22/2023		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff, Attorney: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant, Attorney: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant, Attorney: Robert L Boston, Esq. robert.boston@smithduggan.com Defendant, Attorney: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant, Attorney: Elizabeth Scian, Esq. lscian@lccplaw.com	
05/22/2023	53	Plaintiffs Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Joint Motion to extend tracking deadline(s)	
05/22/2023		Endorsement on Motion to amend tracking order (#53.0): ALLOWED Judge: McGuire, Jr., Hon. Thomas F	McGuire
05/23/2023		Attorney appearance electronically filed.	
05/23/2023	54	Attorney appearance On this date Joseph A Mongiardo, Esq. added as City / Town Counsel for Defendant City of Taunton	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

05/24/2023		EDocument sent: A Clerk's Notice (eDoc) was generated and sent to: Plaintiff, Attorney: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff, Attorney: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant, Attorney: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant, Attorney: Robert L Boston, Esq. robert.boston@smithduggan.com Defendant, Attorney: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant, Attorney: Elizabeth Scian, Esq. lscian@lccplaw.com	
05/24/2023		EDocument sent: Amended Tracking Order was generated and sent to: Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant: Robert L Boston, Esq. robert.boston@smithduggan.com Defendant: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant: Elizabeth Scian, Esq. lscian@lccplaw.com Sent On: 05/24/2023 08:25:10	
10/27/2023		Attorney appearance electronically filed.	
10/27/2023		Attorney appearance electronically filed.	
10/27/2023		Attorney appearance electronically filed.	
10/27/2023	55	Attorney appearance On this date Elizabeth Scian, Esq. dismissed/withdrawn as Private Counsel for Defendant City of Taunton	
10/27/2023	56	Attorney appearance On this date Stephen C Pfaff, Esq. added as City / Town Counsel for Defendant City of Taunton	
10/27/2023	57	Plaintiffs Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Joint Motion to Amend Tracking Order	
11/02/2023		Endorsement on Motion to extend tracking deadline(s) (#57.0): ALLOWED for reasons stated herein. Judge: Cloutier, Hon. Claudine	Cloutier
11/02/2023		EDocument sent: Clerk's Notice (eDoc) Sent On: 11/02/2023 11:39:44 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Notice Sent To: Robert L Boston, Esq. robert.boston@smithduggan.com Notice Sent To: Douglas I Louison, Esq. dlouison@lccplaw.com Notice Sent To: Stephen C Pfaff, Esq. spfaff@lccplaw.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

11/02/2023		EDocument sent: Amended Tracking Order was generated and sent to: Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant: Robert L Boston, Esq. robert.boston@smithduggan.com Defendant: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant: Stephen C Pfaff, Esq. spfaff@lccplaw.com Defendant: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com Sent On: 11/02/2023 11:44:05
01/10/2024	58	Attorney appearance On this date Daniel J Buoniconti, Esq. added as Private Counsel for Defendant American Medical Response of Massachusetts, Inc.
01/10/2024	59	Attorney appearance On this date John Michael Waldron, Esq. added as Private Counsel for Defendant American Medical Response of Massachusetts, Inc.
01/24/2024	60	Defendant American Medical Response of Massachusetts, Inc.'s Notice of Withdrawal of Robert L. Boston, Esq.
01/24/2024		Attorney appearance On this date Robert L Boston, Esq. dismissed/withdrawn as Private Counsel for Defendant American Medical Response of Massachusetts, Inc.
01/29/2024	61	Defendant American Medical Response of Massachusetts, Inc.'s Joint Motion to extend tracking deadline(s)
01/29/2024		Attorney appearance On this date Kenneth I Kolpan, Esq. added as Private Counsel for Plaintiff Kathleen Slavin, Individually
02/08/2024		EDocument sent: Notice to Appear was generated and sent to: Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Defendant: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Defendant: John Michael Waldron, Esq. jwaldron@fosteld.com Defendant: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com Defendant: Stephen C Pfaff, Esq. spfaff@lccplaw.com Sent On: 02/08/2024 10:45:19



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

03/06/2024		Event Result:: Rule 16 Conference scheduled on: 03/06/2024 02:00 PM Has been: Held as Scheduled Hon. Jackie Cowin, Presiding Appeared: Plaintiff Kenneth I Kolpan, Esq., Private Counsel Mark F Itzkowitz, Esq., Private Counsel Defendant John Michael Waldron, Esq., Private Counsel Defendant Joseph A Mongiardo, Esq., Staff: Kellee-Sue Milord, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter	Cowin
03/06/2024	62	ORDER: after Rule 16 Conference.	Cowin
03/07/2024		EDocument sent: Notice to Appear for Final Pre-Trial Conference was generated and sent to: Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Defendant: Barbara Hayes Buell, Esq. barbara.buell@smithduggan.com Defendant: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Defendant: John Michael Waldron, Esq. jwaldron@fosteld.com Defendant: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com Defendant: Stephen C Pfaff, Esq. spfaff@lccplaw.com Sent On: 03/07/2024 15:49:57	
03/18/2024	63	Defendant American Medical Response of Massachusetts, Inc.'s Notice of Withdrawal of Appearance of Barbara Hayes Buell, Esq.	
03/18/2024		Attorney appearance On this date Barbara Hayes Buell, Esq. dismissed/withdrawn as Private Counsel for Defendant American Medical Response of Massachusetts, Inc.	
03/19/2024	64	Defendant City of Taunton's Motion for judgment on the pleadings MRCP 12(c)	
03/19/2024	64.1	City of Taunton's Memorandum in support of its motion for judgment on the pleadings pursuant to Mass.R.Civ.P.12(c)	
03/19/2024	64.2	Opposition to Defendant City of Taunton's Motion for Judgment on the pleadings filed by Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually	
03/19/2024	64.3	Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Memorandum in opposition to Defendant, City of Taunton's Motion for judgment on the pleadings	
03/19/2024	64.4	Defendant City of Taunton's Reply to Plaintiff's opposition to its motion for judgment on the pleadings pursuant to Mass.R.Civ.P. 12(c)	
03/19/2024	64.5	Certificate of Compliance Superior Court Rule 9C	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

03/19/2024	64.6	Affidavit of compliance with Superior Court Rule 9A	
		Applies To: Mongiardo, Esq., Joseph A (Attorney) on behalf of City of Taunton (Defendant)	
03/20/2024		Endorsement on Motion for judgment on the pleadings MRCP 12(c) (#64.0): No Action Taken as the 9A Affidavit does not indicate whether Defendant American Medical Response of Massachusetts, Inc. was served a copy of this motion in compliance with Rule 9A. Judge: Milord, Kellee-Sue	Milord
03/20/2024		EDocument sent: Clerk's Notice (eDoc) Sent On: 03/20/2024 11:45:17 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Notice Sent To: John Michael Waldron, Esq. jwaldron@fosteld.com Notice Sent To: Douglas I Louison, Esq. dlouison@lccplaw.com Notice Sent To: Stephen C Pfaff, Esq. spfaff@lccplaw.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com	
03/20/2024	65	Certificate of Compliance Superior Court Rule 9C	
03/20/2024	66	Affidavit of compliance with Superior Court Rule 9A	
		Applies To: Mongiardo, Esq., Joseph A (Attorney) on behalf of City of Taunton (Defendant)	
03/25/2024		EDocument sent: Notice to Appear was generated and sent to: Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Defendant: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Defendant: John Michael Waldron, Esq. jwaldron@fosteld.com Defendant: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com Defendant: Stephen C Pfaff, Esq. spfaff@lccplaw.com Sent On: 03/25/2024 11:26:48	
04/09/2024	67	Defendant City of Taunton's Motion to continue / reschedule an event 05/16/2024 02:00 PM Hearing for Judgment on Pleading	
04/09/2024		Endorsement on Motion to reschedule hearing on motion for judgment on the pleadings (#67.0): ALLOWED Judge: McGuire, Jr., Hon. Thomas F	McGuire
04/10/2024		Event Result:: Hearing for Judgment on Pleading scheduled on: 05/16/2024 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Thomas F McGuire, Jr., Presiding	McGuire



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

04/10/2024		EDocument sent: Clerk's Notice (eDoc) Sent On: 04/10/2024 09:41:08 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Notice Sent To: John Michael Waldron, Esq. jwaldron@fosteld.com Notice Sent To: Douglas I Louison, Esq. dlouison@lccplaw.com Notice Sent To: Stephen C Pfaff, Esq. spfaff@lccplaw.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com
04/10/2024		EDocument sent: Notice to Appear was generated and sent to: Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Defendant: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Defendant: John Michael Waldron, Esq. jwaldron@fosteld.com Defendant: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com Defendant: Stephen C Pfaff, Esq. spfaff@lccplaw.com Sent On: 04/10/2024 09:43:40
05/23/2024		Attorney appearance On this date Daniel M Geary, Esq. added as Private Counsel for Defendant American Medical Response of Massachusetts, Inc.
05/23/2024		Matter taken under advisement: Hearing for Judgment on Pleading scheduled on: McGuire 05/23/2024 02:00 PM Has been: Held - Under advisement Hon. Thomas F McGuire, Jr., Presiding Appeared: Plaintiff Kenneth I Kolpan, Esq., Private Counsel Mark F Itzkowitz, Esq., Private Counsel Defendant Daniel M Geary, Esq., Defendant Joseph A Mongiardo, Esq., Stephen C Pfaff, Esq., Staff: Kellee-Sue Milord, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter
07/31/2024	68	Defendant City of Taunton's Motion to Stay its Expert Disclosures
07/31/2024	68.1	City of Taunton's Memorandum in support of Motion to Stay its Expert Disclosures
07/31/2024	68.2	Opposition to (#68) Defendant City of Taunton's Motion to Stay its Expert Disclosures filed by Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

07/31/2024	68.3	Reply/Sur-reply	
		Defendant City of Taunton's Reply in Support of its Motion to Stay its Expert Disclosures	
07/31/2024	68.4	Certificate of Compliance Superior Court Rule 9C	
		Applies To: Mongiardo, Esq., Joseph A (Attorney) on behalf of City of Taunton (Defendant)	
07/31/2024	68.5	Affidavit of Compliance with Superior Court Rule 9A	
		Applies To: Mongiardo, Esq., Joseph A (Attorney) on behalf of City of Taunton (Defendant)	
08/02/2024		Docket Note: Paper #68 sent to Judge McGuire	
08/21/2024	69	MEMORANDUM & ORDER:	McGuire
		on Motion of the Defendant City of Taunton , for Judgment on the Pleadings.	
		The motion of the defendant, the city of Taunton , for judgment on the pleadings (Paper #64) is Denied.	
		Judge: McGuire, Jr., Hon. Thomas F	
08/21/2024	70	ORDER: on Motion of the Defendant, City of Taunton , to Stay Expert Disclosures	McGuire
		The motion of the defendant, the city of Taunton , to stay the order of the court (Cowin, J.) to disclose its expert witnesses by August 21, 2024 (Paper No. 68) is Denied.	
08/22/2024	71	Joint Pre-Trial Memorandum filed:	
08/26/2024		Event Result:: Final Pre-Trial Conference scheduled on: 08/26/2024 02:00 PM Has been: Held as Scheduled Comments: Handled administratively. Kellee-Sue Milord, Presiding Appeared: Plaintiff Kenneth I Kolpan, Esq., Private Counsel Defendant John Michael Waldron, Esq., Private Counsel Daniel M Geary, Esq., Defendant Stephen C Pfaff, Esq., Staff: Kellee-Sue Milord, Assistant Clerk Magistrate	Milord



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

08/26/2024	72	Pre-Trial ORDER: Jury Trial on January 12, 2026 3-4 weeks All trial submissions are due on or before December 29, 2025 to be filed in compliance with Superior Court Rule 9A. Final Trial Conference on January 6, 2026 at 2:00pm. Judge: Milord, Kellee-Sue	Milord
08/26/2024		EDocument sent: Clerk's Notice (eDoc) Sent On: 08/26/2024 15:13:50 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Notice Sent To: John Michael Waldron, Esq. jwaldron@fosteld.com Notice Sent To: Daniel M Geary, Esq. dgeary@fosteld.com Notice Sent To: Douglas I Louison, Esq. dlouison@lccplaw.com Notice Sent To: Stephen C Pfaff, Esq. spfaff@lccplaw.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com	
08/26/2024		EDocument sent: Notice to Appear for Final Trial Conference was generated and sent to: Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Defendant: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Defendant: John Michael Waldron, Esq. jwaldron@fosteld.com Defendant: Daniel M Geary, Esq. dgeary@fosteld.com Defendant: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com Defendant: Stephen C Pfaff, Esq. spfaff@lccplaw.com Sent On: 08/26/2024 15:16:07	
08/26/2024		Scheduled: Event: Jury Trial Date: 01/12/2026 Time: 09:00 AM Result: Canceled Result: Rescheduled	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

08/26/2024		EDocument sent: Trial Order Jury was generated and sent to: Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Defendant: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Defendant: John Michael Waldron, Esq. jwaldron@fosteld.com Defendant: Daniel M Geary, Esq. dgeary@fosteld.com Defendant: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com Defendant: Stephen C Pfaff, Esq. spfaff@lccplaw.com Sent On: 08/26/2024 15:17:33
09/19/2024	73	Notice of appeal filed. Applies To: City of Taunton (Defendant)
09/20/2024	74	Notice of Filing Notice of Appeal sent to Counsel
09/23/2024	75	Plaintiff Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Notice of motion concerning Plaintiff's motion to strike Defendant City of Taunton's notice of appeal
09/26/2024	76	Notice to Court RE: NO transcript ordered
09/30/2024	77	Appeal: Statement of the Case on Appeal (Cover Sheet), by e-filing to the Appeals Court..
09/30/2024	78	Notice of assembly of record sent to Counsel
09/30/2024	79	Notice to Clerk of the Appeals Court of Assembly of Record, by e-filing to the Appeals Court.
09/30/2024	79.1	General correspondence regarding assembly of appeal sent to the Appeals Court
10/07/2024	80	Appeal entered in Appeals Court on 10/03/2024 docket number 2024-P-1146
10/24/2024	81	Defendant City of Taunton's Motion to amend tracking order deadlines
10/24/2024	81.1	Opposition to Defendant City of Taunton's motion to amend tracking order deadlines filed by Kathleen Slavin Personal Representative for the Estate of Patricia Slavin
10/24/2024	81.2	Reply/Sur-reply Defendant City of Taunton's reply to Plaintiff's Opposition to Defendants motion to amend tracking order deadlines
10/24/2024	81.3	Defendant City of Taunton's Certificate of Compliance with Superior Court Rule 9C
10/24/2024	81.4	Affidavit of Compliance with Superior Court rule 9A



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

10/29/2024		Endorsement on Motion to amend tracking order deadlines (#81.0): Other action taken See order of the Court of today's date Judge: O'Shea, Hon. Daniel J.	O'Shea
10/29/2024	82	ORDER: ORDER ON DEFENDANT CITY OF TAUNTON'S MOTION TO AMEND TRACKING ORDER DEADLINES: The court therefore ALLOWS the City's Motion, and issues the following Tracking Order deadlines: 1. March 31, 2025 for completion of outstanding fact and expert depositions; 2. May 30, 2025 for serving Rule 56 motions, with oppositions served by July 29, 2025; 3. August 28, 2025 for filing of Rule 56 complete 9A packages Judge: O'Shea, Hon. Daniel J.	O'Shea
10/30/2024		EDocument sent: Clerk's Notice (eDoc) Sent On: 10/30/2024 09:05:27 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Notice Sent To: John Michael Waldron, Esq. jwaldron@fosteld.com Notice Sent To: Daniel M Geary, Esq. dgeary@fosteld.com Notice Sent To: Douglas I Louison, Esq. dlouison@lccplaw.com Notice Sent To: Stephen C Pfaff, Esq. spfaff@lccplaw.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com	
10/30/2024		EDocument sent: Amended Tracking Order was generated and sent to: Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Defendant: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Defendant: John Michael Waldron, Esq. jwaldron@fosteld.com Defendant: Daniel M Geary, Esq. dgeary@fosteld.com Defendant: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant: Stephen C Pfaff, Esq. spfaff@lccplaw.com Defendant: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com Sent On: 10/30/2024 09:28:52	
11/18/2024	83	Notice of docket entry received from Appeals Court Please take note that, with respect to the MOTION to Dismiss under Rule 29(b) file for City of Taunton by Attorney Joseph Mongiardo . (Paper #7), on November 18, 2024, the following entry was made on the docket: RE#7: Allowed. Appeal to be dismissed without prejudice.	
07/14/2025	84	Plaintiffs Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Motion to Exceed 20 Page Limit	
07/15/2025		Endorsement on Motion to exceed 20 page limit (#84.0): ALLOWED Judge: Yessayan, Hon. Raffi N	Yessayan



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

07/15/2025		EDocument sent: Clerk's Notice (eDoc) Sent On: 07/15/2025 12:53:32 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Notice Sent To: John Michael Waldron, Esq. jwaldron@fosteld.com Notice Sent To: Daniel M Geary, Esq. dgeary@fosteld.com Notice Sent To: Douglas I Louison, Esq. dlouison@lccplaw.com Notice Sent To: Stephen C Pfaff, Esq. spfaff@lccplaw.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com	
07/16/2025		Event Result:: Final Trial Conference scheduled on: 01/06/2026 02:00 PM Has been: Canceled For the following reason: Case Settled Hon. Renee P Dupuis, Presiding Staff: Digital Recording Device Bris CV B, Court Reporter	Dupuis
07/16/2025		Event Result:: Jury Trial scheduled on: 01/12/2026 09:00 AM Has been: Canceled For the following reason: Case Settled Hon. Renee P Dupuis, Presiding Staff: Digital Recording Device Bris CV B, Court Reporter	Dupuis
07/16/2025	85	ORDER of dismissal nisi entered after action was reported settled; Agreement or Stipulation shall be filed in this court by 08/15/2025 Judge: Dupuis, Hon. Renee P	Dupuis
07/16/2025		EDocument sent: Order for Entry of Dismissal Nisi Sent On: 07/16/2025 08:11:05 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Notice Sent To: John Michael Waldron, Esq. jwaldron@fosteld.com Notice Sent To: Daniel M Geary, Esq. dgeary@fosteld.com Notice Sent To: Douglas I Louison, Esq. dlouison@lccplaw.com Notice Sent To: Stephen C Pfaff, Esq. spfaff@lccplaw.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com	
07/16/2025	86	ORDER: 60(a): vacating Nisi Order, as it was entered inadvertently due to clerical error. This matter remains scheduled for Final Trial Conference on January 6, 2026, at 2:00 p.m. and Jury Trial on January 12, 2026, as 9:00 a.m. Judge: Dupuis, Hon. Renee P	Dupuis
08/15/2025	87	Plaintiff Kathleen Slavin Personal Representative for the Estate of Patricia Slavin's Joint Motion to extend time to file summary judgment package	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

08/20/2025		Endorsement on Motion to extend time to file summary judgment package (#87.0): ALLOWED by agreement. (DMS/ACM) Judge: Dupuis, Hon. Renee P	Dupuis
08/20/2025		EDocument sent: Clerk's Notice (eDoc) Sent On: 08/20/2025 11:05:54 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Notice Sent To: John Michael Waldron, Esq. jwaldron@fosteld.com Notice Sent To: Daniel M Geary, Esq. dgeary@fosteld.com Notice Sent To: Douglas I Louison, Esq. dlouison@lccplaw.com Notice Sent To: Stephen C Pfaff, Esq. spfaff@lccplaw.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com	
09/08/2025	88	Defendant City of Taunton's Motion to Exceed 5 Page Limit	
09/12/2025	89	Defendant City of Taunton's Motion for summary judgment, MRCP 56	
09/12/2025	89.1	City of Taunton's Memorandum in support of its motion for summary judgment	
09/12/2025	89.2	Opposition to Defendant City of Taunton's motion for summary judgment filed by Kathleen Slavin Personal Representative for the Estate of Patricia Slavin	
09/12/2025	89.3	Kathleen Slavin Personal Representative for the Estate of Patricia Slavin's Memorandum in opposition to Defendant City of Taunton's motion for summary judgment	
09/12/2025	89.4	Defendant City of Taunton's Reply to Plaintiff's opposition to its motion for summary judgment leave to exceed 5 page limit	
09/12/2025	89.5	Defendant City of Taunton's Statement of material facts in support of motion for summary judgment	
09/12/2025	89.6	Exhibits/Appendix Joint Appendix	
09/12/2025	89.7	Certificate of Compliance with Superior Court Rule 9C	
09/12/2025	89.8	Affidavit of compliance with Superior Court Rule 9A Applies To: Mongiardo, Esq., Joseph A (Attorney) on behalf of City of Taunton (Defendant)	
09/15/2025		Endorsement on Motion to exceed 5 page limit (#88.0): ALLOWED (KTM/ACM) Judge: Yessayan, Hon. Raffi N	Yessayan



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

09/15/2025	EDocument sent: Clerk's Notice (eDoc) Sent On: 09/15/2025 16:14:43 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Notice Sent To: John Michael Waldron, Esq. jwaldron@fosteld.com Notice Sent To: Daniel M Geary, Esq. dgeary@fosteld.com Notice Sent To: Douglas I Louison, Esq. dlouison@lccplaw.com Notice Sent To: Stephen C Pfaff, Esq. spfaff@lccplaw.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com	
10/08/2025	EDocument sent: Notice to Appear was generated and sent to: Plaintiff: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Plaintiff: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Defendant: John Michael Waldron, Esq. jwaldron@fosteld.com Defendant: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Defendant: Daniel M Geary, Esq. dgeary@fosteld.com Defendant: Douglas I Louison, Esq. dlouison@lccplaw.com Defendant: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com Defendant: Stephen C Pfaff, Esq. spfaff@lccplaw.com Sent On: 10/08/2025 11:38:15	
10/30/2025	Matter taken under advisement: Rule 56 Hearing scheduled on: 10/30/2025 02:00 PM Has been: Held - Under advisement Hon. Brian Glenny, Presiding Appeared: Plaintiff Kenneth I Kolpan, Esq., Private Counsel Mark F Itzkowitz, Esq., Private Counsel Defendant John Michael Waldron, Esq., Private Counsel Staff: Dina Swanson, Assistant Clerk Magistrate Digital Recording Device Bris CV B, Court Reporter	Glenny
12/10/2025	Event Result:: Jury Trial scheduled on: 01/12/2026 09:00 AM Has been: Rescheduled For the following reason: Transferred to another session Comments: Matter originally scheduled to be tried in the New Bedford Superior Court's "B" session. The matter will now be tried in the New Bedford Superior Court's "A" session before the Honorable Susan Sullivan. All other event details to remain the same. Hon. Claudine Cloutier, Presiding	Cloutier



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

12/10/2025		Event Result:: Final Trial Conference scheduled on: 01/06/2026 02:00 PM Has been: Rescheduled For the following reason: Transferred to another session Comments: Conference to be heard in the New Bedford Superior Court's "A" session. Hon. Claudine Cloutier, Presiding Staff: Kellee-Sue Milord, Assistant Clerk Magistrate	Cloutier
12/17/2025	90	Defendant City of Taunton's Joint Motion to continue / reschedule an event 01/06/2026 02:00 PM Final Trial Conference	
12/31/2025	91	MEMORANDUM & ORDER: ON THE CITY OF TAUNTON'S MOTION FOR SUMMARY JUDGMENT: ORDER: For the aforementioned reasons, it is hereby ORDERED that the City's motion for summary judgment is ALLOWED. Judge: Glenn, Hon. Brian	Glenny
01/02/2026		Endorsement on Motion to reschedule final trial conference and trial (#90.0): DENIED The final trial conference and trial will proceed as scheduled.	Sullivan
01/02/2026		EDocument sent: Clerk's Notice (eDoc) Sent On: 01/02/2026 12:15:34 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Notice Sent To: John Michael Waldron, Esq. jwaldron@fosteld.com Notice Sent To: Daniel M Geary, Esq. dgeary@fosteld.com Notice Sent To: Douglas I Louison, Esq. dlouison@lccplaw.com Notice Sent To: Stephen C Pfaff, Esq. spfaff@lccplaw.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com	
01/02/2026	92	ORDER of dismissal nisi entered after action was reported settled; Agreement or Stipulation shall be filed in this court by 03/03/2026 Judge: Sullivan, Hon. Susan E	Sullivan
01/02/2026		EDocument sent: Order for Entry of Dismissal Nisi Sent On: 01/02/2026 12:53:44 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Notice Sent To: John Michael Waldron, Esq. jwaldron@fosteld.com Notice Sent To: Daniel M Geary, Esq. dgeary@fosteld.com Notice Sent To: Douglas I Louison, Esq. dlouison@lccplaw.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

01/02/2026		Event Result:: Final Trial Conference scheduled on: 01/06/2026 02:00 PM Has been: Canceled For the following reason: Case Settled Hon. Susan E Sullivan, Presiding Staff: Kellee-Sue Milord, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter	Sullivan
01/02/2026		Event Result:: Jury Trial scheduled on: 01/12/2026 09:00 AM Has been: Canceled For the following reason: Case Settled Hon. Susan E Sullivan, Presiding Staff: Kellee-Sue Milord, Assistant Clerk Magistrate Digital Recording Device Bris CV A, Court Reporter	Sullivan
01/05/2026		EDocument sent: Clerk's Notice (eDoc) Sent On: 01/05/2026 13:06:12 Notice Sent To: Mark F Itzkowitz, Esq. mfitzkowitz@hotmail.com Notice Sent To: Kenneth I Kolpan, Esq. kenkolpan@gmail.com Notice Sent To: Daniel J Buoniconti, Esq. dbuoniconti@fosteld.com Notice Sent To: John Michael Waldron, Esq. jwaldron@fosteld.com Notice Sent To: Daniel M Geary, Esq. dgeary@fosteld.com Notice Sent To: Joseph A Mongiardo, Esq. jmongiardo@lccplaw.com	
01/30/2026	93	Notice of appeal filed. Applies To: Kathleen Slavin Personal Representative for the Estate of Patricia Slavin (Plaintiff)	
02/13/2026	94	Plaintiffs Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Submission of Certification that Plaintiffs Have Not and Will Not Order Transcript	
03/03/2026	95	Party(s) file Stipulation of Dismissal with Prejudice as to Defendant, American Medical Response of Massachusetts, Inc. Only: Now come the parties in the above-captioned action, by and through counsel, and pursuant to Massachusetts Rules of Civil Procedure 41(a)(1)(ii), hereby stipulate, that the within action be dismissed with prejudice as to Defendant, American Medical Response of Massachusetts, Inc., only, without costs to any party, with all rights of appeal waived. Nothing about the execution of this Stipulation either allows or prevents the City of Taunton to potentially pursue claims for indemnification as to American Medical Response of Massachusetts, Inc. Applies To: Kathleen Slavin Personal Representative for the Estate of Patricia Slavin (Plaintiff); Kathleen Slavin, Individually (Plaintiff); American Medical Response of Massachusetts, Inc. (Defendant); City of Taunton (Defendant)	



**COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY
Docket Report**

03/05/2026	96	SUMMARY JUDGMENT for Defendant(s), City of Taunton against Plaintiffs (s), Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually, with statutory costs. It is ORDERED and ADJUDGED: that the complaint be and hereby is DISMISSED. Judge: Glenny, Hon. Brian	Glenny
03/05/2026		Disp for statistical purposes	
03/31/2026	97	Notice of appeal filed. eFiled Applies To : Kathleen Slavin Personal Representative for the Estate of Patricia Slavin (Plaintiff); Kathleen Slavin, Individually (Plaintiff)	
03/31/2026	98	Notice of Filing Notice of Appeal sent to Counsel	
04/14/2026	99	Plaintiffs Kathleen Slavin Personal Representative for the Estate of Patricia Slavin, Kathleen Slavin, Individually's Submission of Certification that Plaintiffs have not and will not Order Transcript	
04/23/2026	100	Appeal: Statement of the Case on Appeal (Cover Sheet), by e-filing to the Appeals Court.	
04/23/2026	101	Notice of assembly of record sent to Counsel	
04/23/2026	102	Notice to Clerk of the Appeals Court of Assembly of Record, by e-filing to the Appeals Court.	
04/23/2026	102.1	General correspondence regarding assembly of appeal sent to the Appeals Court.	
04/23/2026	102.2	General correspondence regarding assembly of appeal sent to counsel.	
05/07/2026	103	Appeal entered in Appeals Court on 05/06/2026 docket number 2026-P-0632	

A true copy Attest:

/s/ Kellee-Sue T. Milord, Esquire
Assistant Clerk/Magistrate

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS SUPERIOR COURT

BRISTOL, ss.

FILED

OCT 28 2019

SUPERIOR COURT
CIVIL ACTION
NO. 2019-00388MARC J SANTOS, ESQ.
CLERK/MAGISTRATEKATHLEEN SLAVIN, individually and as personal representative¹vs.AMERICAN MEDICAL RESPOSNE OF MASSACHUSETTS & another²ORDER ON THE DEFENDANT
CITY OF TAUNTON'S MOTION TO DISMISS

Kathleen Slavin, individually, and as personal representative of the Estate of Patricia Slavin and Kathleen Slavin (the “plaintiffs”), bring claims against the City of Taunton (the “defendant”) for wrongful death, negligent infliction of emotional distress (the “negligence claims”), and violations of the Massachusetts Declaration of Rights, based on allegations that the defendant negligently responded to a stabbing at the plaintiffs’ home. The defendant moves to dismiss the claims pursuant to Mass R. Civ. P. 12(b)(6). After hearing and review, the defendant’s motion to dismiss is **DENIED**.

First, the defendant argues that the plaintiffs’ presentment letter pursuant to G. L. c. 258, § 4 is insufficient. The Court disagrees. The presentment letter, which was attached to the complaint, see *Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000) (exhibits attached to complaint may be considered on motion to dismiss), provides factual details regarding the defendant’s alleged negligent response to the plaintiffs’ 911 call. The presentment letter’s failure to explicitly state specific negligence theories does not render it insufficient. Cf. *Murray v.*

¹ Of the Estate of Patricia Slavin and Kathleen Slavin

² City of Taunton

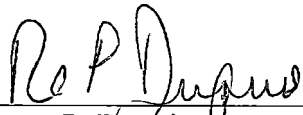
Hudson, 472 Mass. 376, 384-385 (2015) (presentment letter gave town adequate notice of negligence claim, without limitation to any specific negligence theory, as town could reasonably investigate circumstances and determine liability under tort claims act).

The defendant also argues that it is immune from liability under both G. L. c. 258, §§ 10(b) and 10(j) on the negligence claims. The Court disagrees. As to immunity under G. L. c. 258, § 10(b), the Court does not have an adequate record to determine whether dispatch services is a discretionary function of the defendant. See *Graham v. Worcester*, 2017 Mass. App. Unpub. LEXIS 957 at *2-*4 (Mass. App. Ct. 2017) (Rule 1:28 Decision) (complaint's allegations alone insufficient to determine Section 10(b) immunity). As to immunity under G. L. c. 258, § 10(j), the complaint's factual allegations show that the dispatcher "originally caused" the delay of emergency personnel to the plaintiffs' home by providing an incorrect address. The factual allegation that a third party committed the stabbing does not absolve the defendant of liability for acts affirmatively attributed to it. Cf. *Barley v. Auburn*, 19 Mass. L. Rep. 73, 73-74 (Mass. Super. Ct. 2005) (denying town's motion for summary judgment on Section 10(j) immunity where town caused ambulance's delay in responding to plaintiff's heart attack).

Additionally, the defendant seeks dismissal of the Declaration of Rights' claims because the SJC has not yet held such a right of action exists. However, "[t]here has been discussion of grounding a cause of action on the State Constitution for violation of its provisions where no statutory avenue for enforcement has been fashioned and made available." *Martino v. Hogan*, 37 Mass. App. Ct. 710, 720 (1994), and cases cited. Therefore, "since the law is unsettled as to whether a direct claim can be brought under the Declaration of Rights for money damages, it appears best to deny [the] motion at this time and allow a full record to be developed." See *Moore v. McManus*, 8 Mass. L. Rep. 263, 269 (Mass. Super. Ct. 1998).

ORDER

It is **ORDERED** that the Defendant City of Taunton's Motion to Dismiss is **DENIED**.



Renee P. Dupuis
Justice of the Superior Court

DATED: October 28, 2019

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69

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
SUPERIOR COURT DEPARTMENT

BRISTOL, ss.

Civil Action No. 1973CV00388

BRISTOL, SS SUPERIOR COURT

AUG 21 2024

JENNIFER A. SULLIVAN, ESQ.
CLERK / MAGISTRATE

KATHLEEN SLAVIN,
Individually and as
Personal Representative of the Estate of Patricia Slavin,
Plaintiff

v.

AMERICAN MEDICAL RESPONSE OF MASSACHUSETTS, INC., and
CITY OF TAUNTON,
Defendants

MEMORANDUM OF DECISION AND ORDER ON
MOTION OF THE DEFENDANT, CITY OF TAUNTON, FOR
JUDGMENT ON THE PLEADINGS

On May 10, 2016, an intruder entered the home of the plaintiff, Kathleen Slavin, and her mother, Patricia Slavin, and stabbed them multiple times.¹ Kathleen Slavin called the city of Taunton's Emergency 911 system for help. Slavin alleges the city wrongfully delayed arrival of medical assistance. Patricia Slavin died from her wounds. The plaintiff brought claims against the city for negligence and violation of the Massachusetts Declaration of Rights.

PRIOR PROCEEDINGS

On June 11, 2019, the city moved to dismiss the complaint, pursuant to rule 12 (b) (6) of the Massachusetts Rules of Civil Procedure, for failure to state claims upon which relief may be granted. The city argued it is immune from suit for negligence under the Massachusetts Tort

¹ The stabbing was part of a notorious case. After stabbing the Slavins, the intruder, Arthur DaRosa, went to a nearby shopping mall where he crashed the car he was driving and assaulted multiple patrons. He then entered a Bertucci's restaurant where he stabbed a waitress. A bystander intervened to save the waitress. DaRosa stabbed the bystander in the head, killing him. An off-duty deputy sheriff dining at the restaurant shot DaRosa dead.

Claims Act, G.L. 258, § 10 (j), and Slavin has no private right of action under the Massachusetts Constitution. This court (Dupuis, J.) denied the motion. On the constitutional claim, the court decided that, “since the law is unsettled as to whether a direct claim can be brought under the Declaration of Rights for money damages, it appears best to deny [the] motion at this time and allow a full record to be developed.” Order on Motion to Dismiss, p. 2 (Paper No. 11), quoting *Moore v. McManus*, 8 Mass. L. Rep., 263, 269 (Mass. Superior Court 1998).

The city appealed the decision on the negligence claim under the doctrine of present execution. The Appeals Court reversed, holding recovery for negligence was barred by section 10 (j) of the Massachusetts Tort Claims Act, G.L. c. 258, because the harms suffered “were ‘not originally caused by’ the city’s delayed response, but instead were caused by ‘the violent or tortious conduct of a third person’ -- the intruder....” *Slavin v. American Medical Response of Massachusetts, Inc.*, 99 Mass. App. Ct. 55, 56 (2021). The Appeals Court did not reach the issue of whether denial of the city’s motion to dismiss Slavin’s constitutional claim was proper.²

Ignoring the court’s order that a resolution of Slavin’s constitutional claim should await development of a “full record,” the city now moves for judgment on the pleadings on Slavin’s constitutional claim, Mass. R. Civ. P. 12 (c), arguing the same grounds it relied on in support of its motion to dismiss i.e., Slavin has no direct cause of action under the State Constitution. Slavin has filed an opposition improperly relying on facts outside the pleadings, developed through pretrial discovery. Plaintiff’s Opp. to Motion for Judgment on the Pleadings, pp. 2-4 (Paper No. 64.3.)

² The Appeals Court stated: “The judge also denied the city’s motion to dismiss other claims asserted against it for damages directly under the State Constitution. The city, while contending that that decision was erroneous, has disclaimed any argument that the decision on the constitutional claims denied the city an immunity from suit so as to make the decision appealable under the doctrine of present execution.... Although the constitutional claims may implicate such immunity, ... the city has not briefed the issue. Accordingly, the viability of the constitutional claims is not properly before us, and we do not discuss them further.” *Slavin* at 56 n. 4.

FACTS

“The effect of a motion for judgment on the pleadings is ‘to challenge the legal sufficiency of the complaint.’ ... ‘For purposes of the court’s consideration of the [rule 12(c)] motion, all of the well pleaded factual allegations in the adversary’s pleadings are assumed to be true and all contravening assertions in the movant’s pleadings are taken to be false.’” *Minaya v. Massachusetts Credit Union Share Insurance Corp.*, 392 Mass. 904, 905 (1984), quoting 5 C.A. Wright & A.R. Miller, *Federal Practice and Procedure* § 1368, at 691 (1969). The court must ignore facts not found in the pleadings. *Ridgeley Management Corp. v. Planning Board of Gosnold*, 82 Mass. App. Ct. 793, 801 (2012) (on motion for judgment on pleadings, court is limited to “the surface of the complaint and the answer.”) Slavin’s complaint alleges the following facts.

On May 10, 2016, Arthur DeRosa entered the home of Kathleen Slavin and her mother, Patricia Slavin, at 270 Myricks Street in Taunton, and stabbed them both multiple times. At 6:37 P.M., Kathleen Slavin called the city of Taunton’s emergency 911 system for help. She told the dispatcher the intruder had left the home. She remained on the telephone with the dispatcher.

At 6:38 P.M., the city’s dispatcher contacted American Medical Response of Massachusetts, Inc. (AMR), which provided emergency medical response services under contract with the city. The dispatcher reported the stabbings and location to AMR and requested an ambulance to provide medical care to the Slavins.

At 6:39 P.M., the city dispatcher sent firefighters (but not police) to the Slavins’ home. The firefighters did not go to the Slavins’ home immediately. Instead, they stopped at the scene of a motor vehicle crash (caused by DaRosa) outside the Slavins’ home.

Meanwhile, Scott Slavin (Kathleen's brother) arrived at the Slavins' home and learned of the stabbing. He requested help from the firefighters at the scene of the motor vehicle accident outside the Slavins' home. The firefighters entered the home twenty minutes after being dispatched to that location. They provided cardiopulmonary resuscitation to Patricia Slavin and emergency aid to Kathleen Slavin.

At 7:09 P.M., an AMR ambulance arrived at the Slavins' home.³ The emergency medical technicians with the ambulance provided emergency medical treatment to Kathleen and Patricia Slavin. They transported Patricia Slavin to Morton Hospital. At 7:52 P.M., Patricia Slavin died of cardiac arrest.

ANALYSIS

The city contends it is entitled to judgment on Slavin's claim for violation of her right and her mother's right to substantive due process under the Massachusetts Constitution.⁴ In its motion, the city does not contest Slavin's claim that its employees violated her and her mother's rights under the State Constitution. The city only contends that Slavin has no remedy for such a violation directly under the Massachusetts Declaration of Rights.

³ The allegations in the complaint are contradictory. In paragraph 11, Slavin alleges the dispatcher called for an AMR ambulance at 6:38 P.M. In paragraph 20, Slavin alleges the AMR ambulance arrived at the Slavins' home at 7:09 P.M., which was "approximately 30 minutes or more" after the dispatcher requested an ambulance. In paragraph 21, however, Slavin alleges the AMR ambulance arrived at the home at 7:01 P.M. Taking these contrary allegations as to the time of AMR's arrival in the light most favorable to Slavin, the court assumes the ambulance arrived "30 minutes or more" after being dispatched.

⁴ Slavin's complaint cites sections of the Massachusetts Constitution without specifying the right she claims the city violated. In her opposition to the city's motion for judgment on the pleadings, Slavin identifies the constitutional right at issue as substantive due process. Plaintiff's Opp. to Motion for Judgment on Pleadings, p. 6 (Paper No. 64.3). "Substantive due process is guaranteed by the Fourteenth Amendment to the United States Constitution, as well as by arts. 1, 10, and 12 of the Massachusetts Declaration of Rights.... 'Substantive due process prevents the government from engaging in conduct that shocks the conscience . . . ' or that 'unduly interfere[s] with rights that are deemed fundamental.' ... Where fundamental rights are involved, governmental conduct is 'subject to strict scrutiny, an exacting form of judicial review requiring that the statute be narrowly tailored to further a compelling and legitimate government interest....'" *Commonwealth v. DiBenedetto*, 491 Mass. 390, 401-402 (2023). "[T]he Massachusetts Declaration of Rights 'may demand broader protection for fundamental rights' than the Federal Constitution." *Kligler v. Attorney General*, 491 Mass. 38, 60 (2022).

In support of its motion, the city makes two contradictory arguments: (1) the Massachusetts Constitution provides no remedy to Slavin because her sole remedy is under the Massachusetts Civil Rights Act, G.L. c. 12, § 11I; and (2) the Massachusetts Civil Rights Act provides no remedy because it does not apply against governmental entities, such as the city.

According to the city, Slavin has no remedy under the Massachusetts Constitution because “a well-worn procedural path exists for Massachusetts Declaration of Rights claims under the Massachusetts Civil Rights Act (‘MRCA’)” Defendant’s Memo of Law, p. 5 (Paper No. 64.1). However, on the same page of its brief, the city denies that a “well-worn procedural path” exists for Slavin under the Massachusetts Civil Rights Act. “Municipalities are not persons under the MCRA and, therefore, cannot be sued under the statute.... Accordingly, any MCRA claim against the City of Taunton cannot survive.” *Id.* The city’s two arguments together lead to the conclusion that Massachusetts citizens have no legal remedy when a State governmental entity, such as a municipality, deprives them of their rights under the Massachusetts Constitution.⁵

The Supreme Judicial Court rejected the argument that the sole remedy for a violation of State constitutional rights is provided by the Massachusetts Civil Rights Act, G.L. c. 12, § 11I in a line of cases beginning over forty years ago. In *Batchelder v. Allied Stores International, Inc.*, 388 Mass. 83 (1983), the Court recognized a direct action under the Declaration of Rights for violation of the right to solicit signatures for ballot access on private property. Although the plaintiff relied on the State Civil Rights Act, G.L. c. 12, § 11I, the Court based its decision directly on the State Constitution.⁶

⁵ The Declaration of Rights itself guaranties a remedy for the violation of a person’s rights: “Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character....” Mass. Decl. of Rights, art. 11.

⁶ The Court granted declaratory relief, stating it “need not consider what, if any, rights are expressed in G.L. c. 12, § 11I, that are not otherwise available pursuant to art. 9 [of the State Constitution because] Batchelder makes no claim... for compensatory damages, costs, or attorney’s fees.” *Id.* at 84 n. 2.

That same year, in *Phillips v. Youth Development Program, Inc.*, 390 Mass. 652, 657-658 (1983), the Supreme Judicial Court considered an action for damages for termination of employment without due process. The Court stated that “a person whose [State] constitutional rights have been interfered with may be entitled to judicial relief even in the absence of a statute providing a procedural vehicle for obtaining relief.” See *Id.* at n. 4 (collecting cases).

Six years later, in *Layne v. Superintendent, MCI, Cedar Junction*, 406 Mass. 156 (1989) the Court considered an action for damages by handicapped prison inmates. The Supreme Judicial Court explicitly rejected the argument now advanced by the city i.e., redress for a violation of State constitutional rights is limited to statutory remedies:

If a violation of art. 114 rights [under the Massachusetts Constitution] can be redressed within the ambit of an existing statute, such as the State Civil Rights Act, there is a well-worn procedural path to relief for such a violation. We have noted, however, that “a person whose constitutional rights have been interfered with may be entitled to judicial relief even in the absence of a statute providing a procedural vehicle for obtaining relief.” ...Certainly a State may not violate a person’s constitutional rights and then fairly assert that no redress can be had because the State has not provided a statutory means of enforcing those rights.

Id. at 159-160, quoting *Phillips, supra* at 657-658.

The Court held the plaintiffs had no claim for damages under the State Civil Rights Act due to the lack of “threats, intimidation or coercion,” *Id.* at 158; but remanded the plaintiffs’ claim for damages, made directly under the State Constitution, for trial. *Id.* at 161.

The Supreme Judicial Court has not overruled any of these decisions. The city’s first argument – that Slavin’s only remedy is under the State Civil Rights Act, conflicts with these Supreme Judicial Court decisions. Under these precedents, a direct action under the State Constitution is available to Slavin and other litigants at least where no statute, including the State Civil Rights Act, provides a remedy.

The city relies primarily on two Appeals Court decisions to support its argument that Slavin has no remedy under the State Constitution. In *Martino v. Hogan*, 37 Mass. App. Ct. 710, 720 (1994), a former prison inmate sued State officials for violation of due process. The plaintiff brought his claim directly under the State Constitution rather than the State Civil Rights Act because the defendants did not violate his constitutional right through “threats, intimidation or coercion.” *Id.* at 714 n. 4. G.L. c. 12, §§ 11H & 11I. The Appeals Court noted “[t]here has been discussion of grounding a cause of action on the State Constitution for violation of its provisions where no statutory avenue for enforcement has been fashioned and made available,” citing *Phillips and Layne, supra*. The Court asserted that “no actual decision” held relief was available directly under the State Constitution in “the present situation or anything near it”⁷ and observed, in *dicta*, that the Federal and State Civil Rights Acts “may be thought, as it were, to occupy the field.” *Martino* at 720. The Court held the plaintiff had no remedy under the State Constitution.

In *Doe v. Sex Offender Registry Board*, 94 Mass. App. Ct. 52 (2018), sex offenders brought an action directly under the State Constitution against the State and State officials for violation of their right to due process. The Appeals Court held the plaintiffs had a viable claim under the State Constitution for declaratory and injunctive relief, but a claim for damages was barred by sovereign immunity. The Court asserted that “[n]o case... has yet recognized a claim for money damages, brought directly under the State Constitution....” *Id.* at 64. The Court held that any claim for damages must be brought under the State Civil Rights Act because, as stated in *Martino*, “the Civil Rights Act ‘occup[ies] the field’ in this area.” *Id.* at 65. The plaintiffs had no claim under the Civil Rights Act because the defendants did not engage in “threats, intimidation or coercion.” *Id.* at 64-65. Therefore, the plaintiffs had no claim for damages.

⁷ The Court also assumed that a direct constitutional claim would be barred by the doctrine of qualified immunity and “the doctrine limiting money recoveries against public officials to cases of actual participation.” *Id.*

The city reads the *dictum* that the State Civil Rights Act “may be thought, as it were, to occupy the field,” *Martino* at 720, too broadly. The Supreme Judicial Court clearly held in *Batchelder, Phillips, and Layne* that the judiciary must provide a remedy for violation of State constitutional rights directly under the State Constitution if no remedy is provided by statute. In *Doe*, the Appeals Court held that declaratory and injunctive relief are available under the State Constitution. The issue addressed by the Appeals Court in *Martino* and *Doe* is not whether a person whose State constitutional rights are violated may obtain relief under the State Constitution, but whether the relief available under the State Constitution includes money damages. The Supreme Judicial Court left that question open in *Batchelder* and appeared to answer it in the affirmative in *Layne*. In *Martino* and *Doe*, the Appeals Court applied restrictions on damage awards under the State Civil Rights Act and common law to damage awards under the State Constitution.

Whether or not Slavin is entitled to money damages, there is no question she is entitled to some relief, either under the State Civil Rights Act or the State Constitution, if she proves the city violated her and her mother’s right to substantive due process. Because Slavin would be entitled to some form of relief, the city is not entitled to judgment on the pleadings. “A defendant’s rule 12(c) motion is ‘actually a motion to dismiss ... [that] argues that the complaint fails to state a claim upon which relief can be granted.’” *Jarosz v. Palmer*, 436 Mass. 526, 529 (2002), quoting J.W. Smith & H.B. Zobel, Rules Practice § 12.16 (1974). “[T]he complaint will survive if it appears that the plaintiff may be entitled to relief, ‘even though the particular relief he has demanded and the theory on which he seems to rely may not be appropriate.’” *Eigerman v. Putnam Investments, Inc.*, 450 Mass. 281, 285 (2007), quoting *Nader v. Citron*, 372 Mass. 96, 104 (1977).

The city's second argument is that the State Civil Rights Act, G.L. c. 12, § 11I, does not provide a remedy against governmental bodies, including municipalities, for violations of State Constitutional rights. In *Howcroft v. Peabody*, 51 Mass. App. Ct. 573, 591-592 (2001) the Appeals Court held that "a municipality is not a 'person' covered by the Massachusetts Civil Rights Act (MCRA), G.L. c. 12, §§ 11H, 11I." However, five years later, the Supreme Judicial Court stated, "It is not resolved whether the Civil Rights Act applies to municipalities."

American Lithuanian Naturalization Club, Athol, Mass., Inc. v. Board of Health of Athol, 446 Mass. 310, 325 (2006). It is therefore unclear whether the State Civil Rights Act provides Slavin with a remedy against the city.⁸ If not, her only remedy is directly under the State Constitution.

As this court (Dupuis, J.) noted nearly five years ago in this case, "the law is unsettled as to whether a direct claim can be brought under the Declaration of Rights for money damages...." See generally, C.J.S., Civil Rights, § 774 (collecting cases) and "Implied Cause of Action for Damages for Violation of Provisions of State Constitutions," 75 A.L.R. 5th 619 (2000). The law is also unclear as to whether the State Civil Rights Act, G.L. c. 12, § 11I, provides any remedy against governmental bodies that violate State constitutional rights.

The unsettled state of the law makes it preferable to decide Slavin's constitutional claim on a full factual record. The parties report they have conducted discovery that is nearly complete. The city therefore could have moved for summary judgment, supported by affidavits and other materials gathered through pretrial discovery, thereby allowing the court to decide the constitutional claim on an expanded factual record. The city decided not to do that and instead requested permission from the court (Cowin, J.) to file a motion for judgment on the pleadings. The city's motion for judgment on the pleadings merely repeats the factual allegations and

⁸ The State Civil Rights Act may not afford a remedy to Slavin due to the absence of "threats, intimidation or coercion," but the city has not relied on that defense.

conclusory legal arguments that resulted in the denial of its prior motion to dismiss for failure to state a claim. The city's motion for judgment on the pleadings meets the same fate as its motion to dismiss, for the same reasons.

ORDER

The motion of the defendant, the city of Taunton, for judgment on the pleadings (Paper No. 64) is **DENIED**.

August 21, 2024

/s/ Thomas F. McGuire, Jr.
Justice of the Superior Court

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

BRISTOL SUPERIOR COURT
FILED

DEC 31 2025

JENNIFER A. SULLIVAN, ESQ.
CLERK/MAGISTRATE

NEW BEDFORD DIVISION SUPERIOR COURT
CIVIL ACTION NUMBER 1973CV00388

KATHLEEN SLAVIN¹

vs.

AMERICAN MEDICAL RESPONSE OF MASSACHUSETTS, INC. & another²

**MEMORANDUM OF DECISION AND ORDER ON THE
CITY OF TAUNTON'S MOTION FOR SUMMARY JUDGMENT**

The case is before the court on a motion for summary judgment by the City of Taunton (“the City”) on the remaining claims against it brought by Kathleen Slavin (“Kathleen”), individually and as personal representative of the estate of Patricia Slavin (“Patricia”) (collectively “plaintiffs”). The City argues that it is entitled to judgment as a matter of law on Counts V and VI of the Complaint where the plaintiffs’ seek damages under articles 1, 10, 11, 12, and 106 of the Declaration of Rights and the Preamble, arguing that no direct claim for monetary damages exists, and even if such claims existed, the record fails to show the City’s conduct amounted to a substantive due process violation. The court held a hearing on the City’s motion on October 30, 2025, and took the matter under advisement. After hearing and review, and for the reasons that follow, the City’s motion for summary judgment is **ALLOWED**.

BACKGROUND

The following undisputed facts, and facts taken in the light most favorable to the plaintiffs as the non-moving party, see *Edwards v. Commonwealth*, 488 Mass. 555, 556 (2021), are as follows:

¹ Individually and as personal representative of the estate of Patricia Slavin

² City of Taunton

On May 10, 2016, Arthur Darosa (“Darosa”) crashed his car near the Slavins’ home at 270 Myricks Street in Taunton and ran to the front door of the home. Kathleen answered the door. Darosa entered the home, pushed both Kathleen and Patricia to the ground, and demanded a firearm. He then grabbed a large kitchen knife from a drawer, and stabbed both women several times. Darosa eventually left the home, got into his damaged vehicle, and drove it through the front door of the Macy’s Department Store at the Silver City Galleria Mall.³

At 6:37:59 p.m., Kathleen called the Taunton Fire Department (“TFD”), stating that she and Patricia had been stabbed. Kathleen stated Patricia was not moving, but she was breathing. TFD also received a call concerning an accident “at the top of Claire Terrace and Myricks Street.” Officers arrived in the vicinity of the Slavins’ home to respond to the car accident. Emergency personnel, however, did not respond to the stabbing inside the residence until Kathleen’s brother Michael Slavin (“Michael”), who had arrived at the home in the meantime, ran outside the home yelling for assistance.⁴ At that point, officers entered the residence where they found Patricia and Kathleen with stab wounds. At 6:57 p.m., additional ambulances were requested. Taking the evidence in the light most favorable to the plaintiffs as the non-moving party, had the City arrived in compliance with the standard of care for emergency medical technician response time to a 911 stabbing, and immediately assessed Patricia, she would have survived.

³ Darosa proceeded to stab more people prior to being shot by an off-duty county sheriff.

⁴ Some emergency vehicles were rerouted to the mall or otherwise did not arrive at the Slavins’ residence to assess the situation before Michael arrived.

DISCUSSION

I. Standard of Review

The court allows a motion for summary judgment where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *HSBC Bank USA, N.A. v. Morris*, 490 Mass. 322, 326 (2022); Mass R. Civ. P. 56(c).

The moving party bears the initial burden of showing that no genuine issue of material fact exists, *Pederson v. Time, Inc.*, 404 Mass. 14, 17 (1989), satisfying its burden by providing affirmative evidence negating an essential element of the non-moving party's claim or showing that the non-moving party has no reasonable expectation of proving an essential element at trial. See *Flesner v. Technical Commc'ns. Corp.* 410 Mass. 805, 809 (1991). If the moving party successfully shows that no genuine issue of material fact exists, the non-moving party then "must set forth specific facts showing that there is a genuine issue for trial." Mass. R. Civ. P. 56(e). See *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 714 (1991). The non-moving party, however, cannot rest merely upon "conclusory allegations, improbable inferences, and unsupported speculation." *Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo*, 474 Mass. 382, 403-404 (2016). Accord Mass. R. Civ. P. 56(e) ("an adverse party may not rest upon the mere allegations or denials of his pleading").

II. Massachusetts Declaration of Rights

The parties agree that no claim pursuant to the Massachusetts Civil Rights Act ("MCRA"), under G. L. c. 12, §§ 11H, 11I, exists because there is no evidence in the summary judgment record suggesting that the City's actions amounted to "threats, intimidation, or coercion." *Roman v. Trustees of Tufts Coll.*, 461 Mass. 707, 711 (2012). Moreover, the Appeals Court has already dismissed the plaintiffs' claims under the Massachusetts Tort Claims Act

(“MTCA”). See *Slavin v. American Med. Response of Mass., Inc.*, 99 Mass. App. Ct. 55, 57-58 (2021). The plaintiffs’ remaining claims against the City seek monetary damages under articles 1⁵, 10⁶, 11⁷, 12⁸, and 106⁹ of the Declaration of Rights, and the Preamble.¹⁰ The City argues that no such claim exists. The court agrees.

The Supreme Judicial Court (“SJC”) addressed the issue of whether a direct action under the Declaration of Rights exists in three instances: *Batchelder v. Allied Stores, Int’l, Inc.*, 388 Mass. 83 (1983); *Phillips v. Youth Dev. Prog., Inc.*, 390 Mass. 652 (1983); and *Layne v. Superintendent, Mass. Corr. Inst.*, 406 Mass. 156 (1989). In *Batchelder*, the SJC concluded that the plaintiff “had a right under art. 9 to solicit nominating signatures in a reasonable and unobtrusive manner[.]” *Batchelder*, 388 Mass. at 84. The Court noted that the claim did not seek damages, costs, or fees, and only issued a declaration of the plaintiff’s rights. *Id.* at 84 n.2, 93. Here, the plaintiffs do not seek declaratory relief, only monetary damages.

⁵ Article 1, in relevant part, provides that “[a]ll people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness.”

⁶ Article 10 provides, in pertinent part, that, “[e]ach individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws.”

⁷ Article 11 states that, “[e]very subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.”

⁸ Article 12 states that, “[n]o subject shall be held to answer for any crimes or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.”

⁹ Article 106 annulled the original language in article 1.

¹⁰ In relevant part, the Preamble of the Declaration of Rights states, “[t]he end of the institution, maintenance, and administration of government is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness. . . .”

In *Phillips*, the SJC indicated that “a person whose constitutional rights have been interfered with may be entitled to judicial relief even in the absence of a statute providing a procedural vehicle for obtaining relief.” *Phillips*, 390 Mass. at 657-658. At the time the plaintiff’s claim arose, the MCRA was not in effect. *Id.* at 657. The SJC further stated that “[t]he absence of a statutory remedy for the violation of constitutional rights cannot absolutely and in all cases bar judicial protection of those rights.” *Id.* at 658 n.4. In *Layne*, the SJC reversed an award for summary judgment for the plaintiff on a claim under article 114¹¹ of the Massachusetts Declaration of Rights and remanded the case for further proceedings as to damages. *Layne*, 406 Mass. at 158, 161. The SJC noted, however, that “[i]f a violation of art. 114 rights can be redressed within the ambit of an existing statute, such as the [MCRA], there is a well-worn procedural path for such a violation.” *Id.* at 159-160.

Since *Layne*, no SJC decision has explicitly stated that a monetary claim for damages exists under the Declaration of Rights. In *Martino v. Hogan*, 37 Mass. App. Ct. 710, 720 (1994), the Appeals Court acknowledged the absence of such precedent:

[t]here has been discussion of grounding a cause of action on the State Constitution for violation of its provisions where no statutory avenue for enforcement has been fashioned and made available. No actual decision on that line has reached the present situation or anything near it (citations omitted).

The Appeals Court has subsequently concluded that no direct cause of action for monetary damages exists under the Massachusetts Declaration of Rights. See *Doe, Sex Offender Registry Bd. No. 474362 v. Sex Offender Registry Bd.*, 94 Mass. App. Ct. 52, 64-65 (2018) (declining to recognize direct claim for monetary damages based on sovereign immunity). See, e.g., *Ali v. Turco*, 101 Mass. App. Ct. 1122, 2022 WL 15527642 at *2 n.8 (2022) (Rule 23.0) (“a court

¹¹ Article 114 states that, “[n]o otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth.”

should be cautious about implying the existence of [an MCRA] claim outside of the MCRA's bounds"); *Skandha v. Abbe*, 101 Mass. App. Ct. 1114, 2022 WL 2976162 at *1 n.4 (2022) (Rule 23.0) ("... there is ... no direct cause of action under the Massachusetts Declaration of Rights."); *Levin v. University of Mass., Amherst*, 88 Mass. App. Ct. 1115, 2015 WL 7879301 at *3 (2015) (Rule 1:28) (where MCRA claim waived by plaintiff, claim could not proceed directly under Declaration of Rights on sovereign immunity).

Certainly, the SJC in *Phillips* and *Layne* suggested the existence of a direct claim for monetary damages under the Declaration of Rights.¹² However, "[s]ince those decisions over [thirty-five] years ago, ... neither the Supreme Judicial Court nor the Appeals Court has ever recognized and held that a right of action for monetary damages directly under the Declaration of Rights exists." *Lattanzio v. Massachusetts Dep't. of Pub. Health*, BACV23-00053, slip op. at 3 (Mass. Super. Ct. Nov. 22, 2024) (Hogan, J.). The cases relied upon by the plaintiffs that predate the MCRA and the MTCA showing the existence of claims for monetary damages for violations of substantive due process rights, see *Fisher v. McGirr*, 67 Mass. (1 Gray) 1 (1854), and *Grinnell v. Phillips*, 1 Mass. (1 Tyng) 529 (1805), are not persuasive where the MCRA and MTCA have been found to occupy their respective fields with respect to piercing the proverbial veil of sovereign immunity. See, e.g., *Magliacane v. Gardner*, 483 Mass. 842, 850 (2020) (MTCA is "exclusive remedy for bringing tort claims against the Commonwealth and its municipalities[.]"); *Martino*, 37 Mass. App. Ct. at 720 (MCRA "may be thought, as it were, to occupy the field" in actions concerning monetary damages under the Declaration of Rights). For these reasons, this court concludes that the plaintiffs do not have a viable claim under the Massachusetts Declaration of Rights.

¹² Other judges in earlier stages of this litigation, without the benefit of having a full record or briefing of the issue, have concluded similarly. See Paper Nos. 11, 69.

Even if such a claim existed under the Declaration of Rights, the City would still be entitled to summary judgment. The plaintiffs suggest that their rights to “life,” protection,” and “safety” under the Declaration of Rights were violated based upon a total collapse of the City’s emergency response system in responding to the stabbing at the residence. See Paper 89.3 at 27. The court disagrees.

Articles 1, 10, and 12 of the Declaration of Rights, along with the Fourteenth Amendment to the U.S. Constitution, guarantee substantive due process rights. *Commonwealth v. DiBenedetto*, 491 Mass. 390, 401 (2023). “Substantive due process prevents the government from engaging in conduct that shocks the conscience . . . or that unduly interferes with the rights that are deemed fundamental” (modifiers, citations, and quotations omitted). *Id.* at 401. See *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998) (“the threshold question is whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience”). “Fundamental rights are those rights that are explicitly or implicitly guaranteed by the Constitution[,]” and the Declaration of Rights may require “broader protection” than the U.S. Constitution. *Kliger v. Attorney Gen.*, 491 Mass. 38, 55, 60 (2022). In assessing fundamental rights under the Declaration of Rights, the court uses a “comprehensive approach” using “reasoned judgment to identify interests of the person so fundamental that the State must accord them its respect” (quotations and citations omitted). *DiBenedetto*, 491 Mass. at 402.

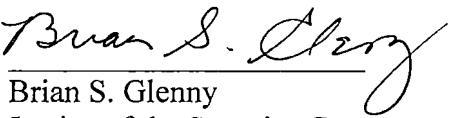
Here, viewing the facts in the light most favorable to the plaintiffs, no rational jury could conclude that the City’s conduct “shock[ed] the conscience.” See, e.g., *Gotay v. Creen*, 495 Mass. 537, 547-551 (2025) (no substantive due process claim for failure of DCF employees to fulfill their duty in placing children in reasonably safe foster home as risks posed were not

reasonably foreseeable); *Vega v. Commonwealth*, 490 Mass. 226, 231-237 (2022) (unlicensed firearm possession statute did not violate substantive due process as statute was narrowly tailored to Commonwealth's legitimate interest in preventing extremely serious crime by arrestees); *Commonwealth v. G.F.*, 479 Mass. 180, 192 (2018) (decision to retry sexually dangerous individual did not rise to substantive due process violation). Contrast *Moe v. Sex Offender Registry Bd.*, 467 Mass. 598, 599, 615-616 (2014) (retroactive application of internet publishing of sex offender information violated substantive due process rights); *Nordberg v. Massachusetts Dep't of Educ.*, 76 Mass. App. Ct. 216, 219 (2010) (allegations that licensing statute circumvented so friend of benefactors could be rewarded was conduct that shocked conscience and would be actionable).

The City did not unduly interfere with the plaintiffs' rights to life, protection, and safety, or otherwise engage in conduct that shocks the conscience. Instead, the City's emergency personnel, with the assistance of emergency personnel from surrounding communities, attempted to preserve those fundamental interests after Darosa committed the horrendous attack at the Slavins' home. While the City did not respond timely, their failure to do so did not constitute a violation of the plaintiffs' substantive due process rights. Moreover, no claim against the City can exist based on a failure to diminish the harmful consequences of a situation, including the violent conduct of a third person where the public employer was not the original cause. See G. L. c. 258, § 10(j); *Slavin*, 99 Mass. App. Ct. at 57-58. Thus, even if a viable claim under the Declaration of Rights existed, viewing the evidence in the light most favorable to the plaintiffs as the non-moving party, the City is entitled to judgment as a matter of law.

ORDER

For the aforementioned reasons, it is hereby **ORDERED** that the City's motion for summary judgment is **ALLOWED**.


Brian S. Glenny
Justice of the Superior Court

DATED: December 31, 2025

#96

SUMMARY JUDGMENT MASS. R. CIV. P. 56		Trial Court of Massachusetts The Superior Court 
DOCKET NUMBER	1973CV00388	Jennifer A Sullivan Bristol County
CASE NAME Kathleen Slavin Personal Representative for the Estate of Patricia Slavin et al vs. American Medical Response of Massachusetts, Inc. et al		COURT NAME & ADDRESS Bristol County Superior Court - New Bedford 441 County Street, 1st floor New Bedford, MA 02740
JUDGMENT FOR THE FOLLOWING DEFENDANT(S) City of Taunton BRISTOL SUPERIOR COURT MAR - 5 2026 JENNIFER A. SULLIVAN, ESQ CLERK/MAGISTRATE		
JUDGMENT AGAINST THE FOLLOWING PLAINTIFFS(S) Kathleen Slavin Personal Representative for the Estate of Patricia Slavin Kathleen Slavin, Individually		
This action came before the Court, Hon. Brian Glenny, presiding, upon Motion for Summary Judgment of the named above, pursuant to Mass. R. Civ. P. 56. The parties having been heard, and/or the Court having considered the pleadings and submissions, finds there is no genuine issue as to material fact and that the defendant is entitled to a judgment as a matter of law. It is ORDERED and ADJUDGED: that the complaint be and hereby is DISMISSED.		
DATE JUDGMENT ENTERED	CLERK OF COURTS/ ASST. CLERK	
03/05/2026	X 