

IN THE DISTRICT COURT FOR THE  
EASTERN DISTRICT OF HOFSTRA

----- X  
AVERY GIRON, INDIVIDUALLY AND AS :  
ADMINISTRATOR OF THE :  
ESTATE OF MAX GIRON, :

Plaintiff :

v. :

Civil Action No. HOF-CV-001-23

TINMAN TRIATHLON, :  
CORPORATION :

Defendant. :  
----- X

**2023 HOFSTRA TRIAL ADVOCACY  
ASSOCIATION  
INTRAMURAL COMPETITION**



Prepared by: Kathleen DeWitt and Brian O’Regan  
Hofstra Trial Advocacy Association

This case file was prepared for use in the 2023 Intramural Trial  
Advocacy Competition, hosted by the Hofstra Trial Advocacy Association at the  
Maurice A. Deane School of Law at Hofstra University

**Hofstra Fall 2023 Intramural Competition Agenda:**

**Monday, September 11<sup>th</sup>**

6:30 P.M. – 8:30 P.M. Trial Lecture: Openings & Closings – Room 230

**Thursday, September 21<sup>st</sup>**

6:30 P.M. – 8:30 P.M. Trial Lecture: Direct and Cross Examination – Room 230

**Wednesday, September 27<sup>th</sup>**

6:30 P.M. – 8:30 P.M. Trial Lecture: Evidence – Room 308<sup>1</sup>

**Friday, September 29<sup>th</sup>**

6:30 P.M. – 10:00 P.M. Preliminary Rounds (Round 1) – Rooms 202, 205, 206, 227, 230

**Saturday, September 30<sup>th</sup>**

10:30 A.M. – 8:00 P.M. Preliminary Rounds (Round 1) – Rooms 205, 206, 227, 230, 238

**Sunday, October 1<sup>st</sup>**

10:30 A.M. – 8:00 P.M. Preliminary Rounds (Round 1) – Rooms 205, 206, 227, 230, 238

**Wednesday, October 11<sup>th</sup>**

6:00 P.M. – 10:00 P.M. Semi-Final Rounds (Round 2) – Room 202

**Wednesday, October 18<sup>th</sup>**

6:00 P.M. – 10:00 P.M. Finals (Round 3) – Rooms 303, 308

---

<sup>1</sup> Trial Lectures will be taught by the interscholastic coaches covering topics of Openings & Closings, Direct and Cross examinations, and Evidence. Attendance is not mandatory, but you are **strongly** encouraged to be there, and attendance will be taken. These lectures are to help you prepare for the intramural and have the opportunity to ask questions to practicing attorneys.

Case Summary:

*Avery Giron, Individually and as Administrator of the Estate of Max Giron v. Tinman Triathlon Corporation*

TinMan Triathlon Corporation (Corp.) is a national organization located in the District of Hofstra. They organize and manage multiple races throughout the nation. TinMan is famous for their Independence Day Triathlon, which is hosted each year in the Town of Amity Island. The Independence Day Triathlon is a well-recognized event, bringing in athletes and media attention from all over the world.

One competitor of note was Max Giron, a longtime Triathlon competitor, but a rookie to the Independence Day Race. Max Giron is a 31-year-old loving husband and father of twins.

The Triathlon consisted of three events. Competitors swam 2 miles along the Weiss Bay, then cycled 8 miles through the Flynn Trail, and lastly, ran 6 miles down Charles Street. The event was organized and managed by Ryan Schmidt, the Director of Safety at TinMan Corp.

July 4<sup>th</sup>, 2023 was the perfect day to begin the race. The weather conditions were clear, not a cloud in the sky; the water conditions were just as smooth, no riptide warnings in sight, and little wind. All competitors lined up along the shoreline and awaited the starting gun.

At 9:00 a.m. sharp, the gun fired in the air and the racers were off. Max Giron quickly took the lead, and was nearly 25 yards ahead of his competitors. Giron's spouse, Avery Giron (Plaintiff), watched nervously as Max glided along the water towards the finish line buoys. However, Plaintiff saw something moving quickly towards Giron in the distance. The next moments were a blur for Plaintiff.

Sawyer DeWitt, a resident of Amity Island, excited about the beautiful weather, decided to take a ride on their jet ski. Traveling their normal route through the sea, they noticed that the water did not have nearly as much boat traffic as one would expect on a holiday weekend. With few boats in their path, DeWitt was driving 50 mph and passed under the Schiedo Bridge, intending to drive around a smaller cove in Weiss Bay. Moments after passing under the bridge, Max Giron came into DeWitt's sight. At that point it was too late.

DeWitt struck Max Giron, and he was knocked unconscious. Rescue boats, manned by TinMan employees, along the shoreline and by the bridge attempted to drive out and save Giron, however it was too late and Giron drowned. They pulled him up to the shore, and Plaintiff ran over and saw Max's dislocated shoulder. His head was bleeding uncontrollably from a long gash across his forehead.

In September 2023, Plaintiff brought the instant suit against Defendant-Corporation (TinMan Triathlon). TinMan Triathlon Corporation is headed by Austin Sperl, the CEO of the TinMan. Sperl delegated Ryan Schmidt to meet with Waterfront Patrol Officer, Taylor O'Regan, to organize the swim event of the Independence Day Triathlon. O'Regan discussed the necessary safety protocol needed to host a recreational event in Weiss Bay. They explained that they provided Sperl and Schmidt with the buoys, flags, and ropes in accordance with those guidelines. They reported that Schmidt set everything up.

Schmidt has worked for TinMan Triathlon for over 30 years. Schmidt has been the designated safety officer to set up for the corporation's various racing events. Schmidt has planned and organized the Independence Day Triathlon since working for the Corp. Schmidt met with O'Regan, a long time friend, and discussed the equipment and procedures required to host the event. After reading the SAFETY RULES & REGS, Schmidt collected the buoys, rescue boats, ropes, flags, and proper signs to set up for the swim event. However, on the day of the race, Schmidt only set up some of the recommended safety equipment.

---

PLAINTIFF'S ORIGINAL COMPLAINT

---

TO THE HONORABLE JUDGE OF THIS COURT:

NOW COMES AVERY GIRON, Plaintiff herein, complaining of TINMAN TRIATHLON CORP., Defendant herein, and for cause of action would respectfully show the Court and jury the following:

I.

PARTIES

1. Plaintiff is an individual residing in the District of Hofstra and is suing, in their individual capacity as the surviving spouse, wrongful death beneficiary, and Personal Representative of the Estate of the deceased, Max Giron.
2. Defendant TinMan Triathlon Corp. is a national organization located in the District of Hofstra and has been hosting the Town of Amity Island's annual Independence Day Triathlon for the last 25 years.

II.

FACTUAL BACKGROUND

3. TinMan Triathlon Corp. is a company that has been hosting the annual Independence Day Triathlon in the Town of Amity Island for the last 25 years. The 2023 race began at 9 a.m. with competitors beginning with the first of three events, the swim. The swim was 2 miles through a historically busy section of Weiss Bay, followed by an 8 mile cycle along the Flynn Trail, and lastly, a 6 mile run down Charles mainstreet.
4. On the sunny morning of July 4th, 2023, the residents of the Town of Amity Island gathered at the local Weiss Bay for the annual Independence Day Triathlon. This year's competition was set to be the most competitive yet, with Burton Curtis, the winner of the event for the last three years, set to take on rising superstar Max Giron, and 98 other talented and accomplished competitors.
5. At 9:06 a.m., disaster struck. After the starting gun went off at 9 a.m., all 100 racers surged toward the water and entered the poorly marked race course. The course was marked by four brightly colored floating buoys, each being 200 meters apart from one another.
6. It was well known in the town that the race course was in the busiest area of the bay. That area saw a large amount of boat and jetski traffic throughout the summer, with the busiest days of the year being Memorial Day Weekend, the 4th of July and the second weekend of August when the town would hold its annual festival.

7. To conduct the race, the proposed course had to meet certain Town-imposed safety requirements. The proposed course had remained unchanged for the last five years of the competition. For the last 15 years, TinMan Triathlon employee Ryan Schmidt was responsible for ensuring that those criteria were met. Every year, the swimming portion of the event was monitored by the local Waterfront Patrol, who had recently changed their guidelines concerning marked swim areas.
8. Following the surge onto the course, Giron had taken a commanding lead of a full 25 yards ahead of the nearest competitor. Despite his strong swimming ability, Giron could not avoid being hit by Sawyer DeWitt, a local and experienced jet skier, who drove his jetski directly onto the race course. DeWitt struck Giron and killed him.

### III.

#### SURVIVAL ACTION

9. Plaintiff adopts and incorporates by reference all previous paragraphs of the complaint as if set forth in their entirety.
10. At the time of MAX GIRON's death, MAX GIRON was competing in the swimming portion of the annual Independence Day Triathlon, organized by TinMan Triathlon Corp. for the purpose of competing and acting as a competitor.
11. At all times relevant and material hereto, TinMan Triathlon, acting individually by and/or through its actual and/or apparent agents, servants, and/or employees, was negligent and breached applicable standards of care in a number of ways, including, but not limited to, the following:
  - a. Failing to properly establish a safe racecourse for the swimming portion of the competition.
  - b. Failing to properly mark and delineate, in a way reasonably recognizable to boaters and operators of all other watercraft, that the two mile portion of the Bay was closed to watercraft.
  - c. Failing to erect proper signage a safe distance away from the race course to notify boaters of the race course, while still providing sufficient space to stop vehicles and avoid entering the course.
  - d. Failing to advertise the swimming race course location at local marinas, boat launches, and in local media so as to notify boaters in advance of July 4th, 2023, that the area of the Weiss Bay used for the race course was closed to all watercraft.
12. As a direct and proximate result of the aforementioned negligent acts by TinMan Triathlon, Plaintiff's decedent, MAX GIRON, suffered conscious pain and suffering,

mental and emotional distress and anguish, severe bodily injuries, stress, discomfort, shock, and death.

IV.

WRONGFUL DEATH

13. Plaintiff adopts and incorporates by reference all previous paragraphs of the complaint as if set forth in their entirety.
14. As a direct and proximate result of the negligence of TinMan Triathlon, as laid out above, Plaintiff has suffered and will continue to suffer mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, guidance, attention, care, advice, and counsel, as well as pecuniary damages, amongst other things, in connection with the sudden, tragic, and untimely death of their spouse, MAX GIRON.
15. All injuries, losses, and damages complained of herein were directly and proximately caused by the severe negligence and lack of due care by TinMan Triathlon with no negligence or want of due care on the part of Plaintiff or MAX GIRON contributing thereto.

---

DEFENDANT'S ORIGINAL ANSWER

---

TO THE HONORABLE JUDGE OF THIS COURT:

Defendant, TINMAN TRIATHLON CORPORATION, files this Original Answer to Plaintiff's Original Complaint:

1. Admitted.
2. Admitted that Defendant TinMan Triathlon Corp. is a national organization in the District of Hofstra and has been hosting the Town of Amity Island's annual Independence Day Triathlon for the last 25 years.
3. Admitted.
4. Admitted only that Burton Curtis, Max Giron, and 98 other individuals participated in the 2023 Independence Day Triathlon.
5. Denied as to the race course being poorly marked. Defendants contend that the race course was properly marked to ensure the safety of all competitors. We otherwise admit that the buoys were brightly colored and approximately 200 meters apart.
6. Admitted only that the specific area relevant to this case did see a large amount of boat and jetski traffic throughout the summer, including Independence Day. Denied as to what is contended by Plaintiffs to be well known to members of the town.
7. Admitted.
8. Admitted.
9. Admitted as to the factual background surrounding TinMan Triathlon. Any and all allegations of wrongful conduct by Defendants are expressly denied.
10. Admitted as to Max Giron's participation. Any and all allegations of wrongful conduct by Defendants are expressly denied.
11. Denied. Defendants maintain: (i) a safe racecourse was properly established for the swimming portion of the competition; (ii) the two mile portion of the Bay was properly marked and delineated in a way that was reasonable recognizable to boaters and operators of watercraft, that the Bay was closed to watercraft; (iii) proper signage was erected a safe distance away from the course to notify watercraft operators while maintaining



sufficient space to stop vehicles from entering the course; and (iv) all necessary advertising for the Triathlon was proper and sufficient.

12. Denied. Tinman Triathlon Corp. maintains that it was not the proximate cause of Max Giron's death. Any and all allegations of wrongful conduct and damages alleged by Plaintiffs are expressly denied.
13. Admitted as to the factual background surrounding TinMan Triathlon. Any and all allegations of wrongful conduct by Defendants are expressly denied.
14. Denied. Tinman Triathlon Corp. maintains that it was not the proximate cause of Max Giron's death. Any and all allegations of wrongful conduct and damages alleged by Plaintiffs are expressly denied.
15. Denied. Tinman Triathlon Corp. maintains that it was not the proximate cause of Max Giron's death. Any and all allegations of wrongful conduct and damages alleged by Plaintiffs are expressly denied.

#### AFFIRMATIVE AND OTHER DEFENSES

1. Defendant is not liable to the Plaintiff because SAWYER DEWITT was legally responsible for the accident and designated SAWYER DEWITT as a responsible third-party.
2. Defendant is not liable to the Plaintiff because MAX GIRON's own acts and/or omissions proximately caused or contributed to MAX GIRON's own injury.

Respectfully submitted,  
/s/ Gerard McCloskey  
Attorney for Defendant  
August 1, 2023

## RULES OF THE COMPETITION/PRETRIAL ORDER

### A. Time Limits

Each team, plaintiff and defense, has a total of 30 minutes within which to: (i) present its opening statement; (ii) present direct testimony of its two witnesses; (iii) cross-examine the two witnesses presented by the opposing side; (iv) read into the record any relevant stipulations, including convictions; and (v) give its closing argument.

Each team is allowed five minutes to present and argue no more than two pre-trial motions. The five minutes will not count against the team's total of 30 minutes. The clock will stop for arguments of objections. It is within the discretion of the presiding judge to allow or deny lengthy arguments. If a team appears to be making frivolous objections or extended argument in an attempt to run the clock against its opponent, judges may take this into account when scoring and may award additional time to an aggrieved team. A team need not use all its allocated time. No rebuttal case is permitted.

### B. Scope of Examinations

It is left to the discretion of the presiding judge to determine the scope of cross examination pursuant to Federal Rule of Evidence 611. The scope of cross-examination should not be strictly limited to the matters to which the witness testified in direct if it would curtail impeachment or other reasonable inquiry. The re-direct examination cannot go beyond the scope of cross-examination, assuming the cross-examiner makes an appropriate objection. Re-cross is not allowed unless the party seeking re-cross contends that the witness has invented one or more material fact(s) on re-direct examination. In that event, the party should ask the judge for leave to re-cross for the purpose of impeachment. Re-cross must be strictly limited to impeaching the witness about the alleged invented fact(s). The presiding judge will make the initial determination as to whether re-cross is permitted. All scoring evaluators will independently determine whether, based upon the impeachment, the fact is invented and/or material. Each evaluator will then independently determine what, if any, score adjustments ought to be made based upon the gravity of the rule violation, if any (this includes potential deduction from the advocate who invoked the re-cross procedure if the evaluator deems the challenge to be meritless). All scoring evaluators will be instructed consistent with this rule.

### C. Objections

Objections during the direct and cross-examination of a witness must be made and argued only by the advocate who is responsible for the direct or cross-examination of the particular witness. Objections during the other side's opening statement and closing argument must be made only by the advocate who is responsible for handling his or her team's opening or

closing. This rule does not prohibit advocates from the same team from conferring with each other regarding any matter during the course of trial. The defendant may confer with the advocates during the trial. As a matter of courtesy, counsel should request permission to approach the bench for side-bar conferences with the judge, although sidebars will be constructive so that the scoring members in the jury box may hear the arguments of counsel.

#### D. Order of Trial

The presiding judge and the scoring evaluators will enter the room. There will be no housekeeping matters. All parties are allowed to move about the well, must ask to approach witnesses on cross examination, but not on direct examination, and must ask permission to have a constructive side-bar. Next, the presiding judge will entertain motions in limine, if any. Opening statements will then be presented: plaintiff, then defense. The plaintiff will present its case in chief first, then the defense. There is no rebuttal case for the plaintiff. After both sides have rested, each side will present closing arguments. The order of closing argument is: defense, then plaintiff. After the scoring ballots and comments are finished, the students will get brief feedback from the evaluators.

#### E. Presiding Judge to Rule on Motions in Limine & Objections

1. During the course of the trial, motion and objection arguments are matters exclusively decided by the presiding judge. At the judge's discretion, the clock may be stopped for such matters, but please keep in mind that the competition is on a tight schedule and trials cannot be permitted to exceed the designated time frames. The presiding judge shall cut off the competitors' arguments if appropriate.
2. The current Federal Rules of Evidence, the Federal Rules of Civil Procedure, and the U.S. Constitution applies.
3. Each side may present no more than two pre-trial motions in limine and has five minutes to argue such motions. These motions may be in writing, but they may not be any longer than one page, double-spaced, exclusive of caption and signature.
4. Given the time constraints, outside case law may not be used in arguing motions or objections.

#### F. Witnesses

The witnesses shall testify, as best as possible, in a manner consistent with the trial materials. Witnesses may be impeached by omission. If a witness makes a statement inconsistent

with a statement the witness has signed, the witness must admit that the document in the case file is authentic, that he or she read the statement before signing it, and that the signature belongs to the witness. If a statement is a “sworn” statement, the witness must admit to making such a statement under oath. The witness must admit, if questioned, to fabricating a statement of material fact that is not in the file. Where the trial materials are inconsistent, the witness must make a choice as to which scenario to follow. In some instances, this choice will expose the 4 witnesses to the possibility of being impeached. Otherwise, the witness is free to make reasonable assumptions about the background and personality of the character the witness is portraying. A witness may not invent facts not provided in the fact pattern. Nor, while testifying, may a witness invent an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that invented individual.

#### G. Exhibits

Competitors should assume that the exhibits in the file are reasonably accurate and fair representations of the matters they purport to represent. If asked, the witnesses must admit that the photographs, maps, and/or diagrams of the locale are fair and accurate representations of that which they purport to represent. There is no requirement that the teams use every exhibit, and no adverse inference may be drawn from a failure to use every exhibit.

## SUBSTANTIVE STIPULATIONS

The parties stipulate to the following facts and points of law. These stipulations may be raised in support of legal arguments, and stipulated facts may be read into the record at each side's discretion, with permission of the Court:

1. This is a closed universe fact pattern. All motions in limine and objections shall be limited to the Federal Rules of Evidence.
2. All exhibits are fair and accurate representations of the matters they purport to represent. All exhibits included within the problem are what the proponents claim them to be for the purposes of authentication, and the Court will not exclude any exhibit on the basis that it has not been properly authenticated.
3. All physical evidence, statements, and identifications were constitutionally obtained and the admissions of them as evidence at trial cannot be objected to on those grounds.
4. All signatures that appear on any admissible document are genuine and all documents are originals unless otherwise stated.
5. Parties may not bring any additional evidence for the trial. Any demonstrative exhibits, other than enlargements of the materials in the file, must be created during the trial. All demonstrative exhibits created during trial are subject to the Federal Rules of Evidence. Parties may not raise the argument that the opposing party has failed to call a particular witness or witnesses to testify at trial.
6. All photographs are fair and accurate representations of the people or things depicted therein.
7. All depositions taken in this case are signed and sworn by each representative deponent as being accurate and authentic. None of the witnesses made changes or corrections to their deposition testimony.
8. This case has been bifurcated into a liability phase and damages phase. For purposes of this trial, the parties will try the liability phase only.
9. Defendant may pursue all, some, or none of its affirmative defenses listed in its Answer to Plaintiff's Complaint.

10. Any potential claims against the Waterfront Patrol in question for the use of the public river/lake/bay/ocean, and use of their safety equipment have been severed from this action and there will be no arguments made regarding the liability of the governmental agency.
11. All witnesses have personally seen and reviewed all Exhibits contained in the case file.
12. The trial court has determined that Ryan Schmidt was working within the scope of their employment during all times relevant to the case.
13. Exhibit 1, Certificate of Death of Max Giron, is a Self-Authenticating Record pursuant to Federal Rule of Evidence 803(8) and is therefore not subject to a hearsay objection. Exhibit 1 was in the possession of Avery Giron, and is admissible.
14. Exhibits 3-6 were captured on the morning of July 4, 2023 by a Tinman Triathlon Employee. They are a fair and accurate depiction of the Tinman Triathlon Swim Course and safety materials as they appeared on July 4, 2023.
15. Exhibit 7, Tinman Triathlon Flyer is non-hearsay and is admissible pursuant to Federal Rules of Evidence 1001.
16. Sawyer DeWitt was brought before a Grand Jury on August 4, 2023. The grand jury determined that there was not enough evidence to indict Mx. DeWitt. All charges against Sawyer DeWitt were dismissed.
17. Sawyer DeWitt was initially named as a Defendant in this case. DeWitt settled with Plaintiff early in the litigation for a confidential sum with no admission of liability.

## WITNESS LIST

### Plaintiff:

1. Avery Giron
2. Sawyer DeWitt

### Defendant

1. Ryan Schmidt
2. Taylor O'Regan

NOTE: All characters in the fact pattern can be either female or male. Any discrepancy between the gender stated and the physical appearance of the competitor shall be ignored for the purposes of this competition. The team calling the witness decides the gender of the witness based upon the gender identity of the competitor playing the witness.

The Plaintiff and Defendant must call the two witnesses listed on each party's witness list. Each Party may determine the order of witnesses, but may not recall witnesses or call witnesses for the other party.

## EXHIBIT LIST

1. Official Certificate of Death
2. Waterfront Rules and Regulations Handbook
3. Weiss Bay Speed Limit Sign
4. Tinman Triathlon Swim Course
5. Rescue Boat
6. Safety Buoys
7. Tinman Triathlon Flyer
8. Tinman Triathlon Letter

**Deposition of Avery Giron**

**1**

**2**

**3** Q: Good morning, please state your name for the record.

**4** A: Good morning, my name is AVERY GIRON.

**5** Q: How old are you?

**6** A: I'm 29 years old.

**7** Q: Are you married?

**8** A: Yes, I am - I mean, I was. My husband, Max Giron, drowned last year while swimming in the  
**9** Independence Day Triathlon.

**10** Q: When did you and Max meet?

**11** A: We met in college. We both ran cross country and shared a mutual love for running. We ran  
**12** almost a dozen races together. He proposed to me at the finish line of the Jared Rosenblatt  
**13** Nassau County Kaitlyn Flynn Memorial Celebrity Cavity Prevention Awareness Fun Run 5K, 5  
**14** years ago, and we got married about 2 years later. It was Max's first time participating in the  
**15** Independence Day Triathlon. I was actually supposed to run the race with him, but we didn't  
**16** have anyone to watch the twins, so I had to back out. The twins and I planned to cheer from the  
**17** sidelines.

**18** Q: How old are your children?

**19** A: They are 3 years old now.

**20** Q: And how old was Max on the date of the incident?

**21** A: He was 31 years old, just a few days shy of his 32nd birthday.

**22** Q: And besides being a former cross country runner, what else did Max do to prepare for the  
**23** race?

**24** A: Well, since it was his first time running this race Max used the same racing strategy he did in  
**25** all of his previous triathlons. He loved to swim just as much as he loved to run. Cycling wasn't  
**26** his strong suit, so he always made sure to get out fast on the swim, either hold or stretch the lead  
**27** on the run, and do his best not to lose too much ground during the bike portion. At least, that was  
**28** always the race strategy.

**29** Q: You said he really loved to swim. How did he train for that particular leg of this race?

**30** A: He does the same training routine for all of his summer triathlons. In February, he starts  
**31** running to build up his lung capacity. Then, in March, he starts swimming indoors and cycling



1 every other day. In April and May is when training really picks up: Max will swim indoors  
2 during the week, but as long as the air temperature goes above 60° on the weekend, Max will  
3 swim in Weiss Bay. I always accompanied Max in a kayak when he went for his pre-race swims  
4 in Weiss Bay because of all the boat traffic and lack of buoys. Those don't usually go out until  
5 the week before the race. Unfortunately, this year we were only able to get out for two pre-race  
6 bay swims because Weiss Bay is always heavily boat trafficked and they only close it off the day  
7 of the race. So, we went out on Weiss Bay, once two weeks before the Independence Day  
8 Triathlon, and once the week of the race.

9 Q: On the weekend before the race, you followed Max while in a kayak?

10 A: Yes, I was free that weekend and I wanted to be out there with him whenever possible.

11 Q: When you followed him in the kayak, where did you leave from?

12 A: I rented the kayak from the Malfi Marina on Weiss Bay and I left from their docks.

13 Q: Do you remember seeing any signs about the upcoming race in the week prior?

14 A: I remember seeing a sign posted near the launching dock, but I never really looked to see  
15 what it said. I don't really know if it had anything to do with the race.

16 Q: You said the buoys don't go out until the week before the race, do you remember the buoys  
17 being out there during Max's last practice swim the weekend before the race?

18 A: Yeah, I think they were out there. To be honest, I don't really remember. I was focused on  
19 Max's pace and getting home to put the twins down for their nap.

20 Q: Do you remember the buoys being out on race day?

21 A: They were tough to see from shore. I saw at least three of them, but from what I saw, they  
22 looked pretty tiny. It's a little hard to look for the buoys when you have two toddlers to take care  
23 of. Especially when you assume the buoys are already there since they were always out there on  
24 race day in years past.

25 Q: Besides watching your children and seeing the buoys in the distance, what else do you  
26 remember from the day of the race?

27 A: You mean aside from Max dying? Well, I remember it was a bright sunny day, it was already  
28 75° with a nice breeze. I don't know why I remember the weather so clearly ... but oh, where  
29 was I? Oh yeah, so the twins and I lined up between the race's starting and finish lines with a  
30 clear view of the water. Anyway, the starting gun went off and Max executed his strategy: get in

31

**1** the water and get out to ensure an early lead. He must have been 25 yards ahead of the closest  
**2** competitor when I saw the jet ski pass under Schiedo Bridge out of nowhere.

**3** Q: What about the rescue boats?

**4** A: I remember seeing three rescue boats. One was close to the shoreline, the other was by the  
**5** end of the swim portion on the other side of the bay, and there was one by the bridge, which  
**6** spanned over the middle of the race area.

**7** Q: Competitors didn't have to swim underneath Schiedo Bridge, right?

**8** A: No, they were instructed to not swim near it, but it was sort of impossible to not get close to  
**9** Schiedo Bridge. TinMan tried to make a swim lane with the buoys, I remember Max talking  
**10** about it. He said that I should look for him by the yellow buoys that ran parallel to the bridge. He  
**11** said that he wouldn't be near the orange buoys because competitors were instructed before the  
**12** start of the race to stay away from those. The rescue boats were supposed to prevent any boat  
**13** traffic from crossing under the bridge, and keep the swimmers from swimming too far out on  
**14** their way to the other side. But they didn't do that, the rescue boats just let the jet ski fly right by.

**15** Q: Can you describe for us what you saw when Max was hit?

**16** A: I can, but I may be a little emotional, so please forgive me ahead of time. I was watching all  
**17** the swimmers looking for Max. I finally spotted him, he was swimming near the orange buoy by  
**18** Schiedo Bridge. I lost sight of him for about a minute because he went around the outside of the  
**19** buoy near the bridge. I saw him again when he started swimming back towards the yellow buoys.  
**20** But then an orange flash came from under Schiedo Bridge and just ran right into him. He  
**21** disappeared under the water and the next thing I knew, I heard yelling and sirens as the rescue  
**22** boats raced from across Weiss Bay towards Max. I saw them pull his body from the water and  
**23** my heart sank. I already knew. I couldn't see it then, but when the boat got to the shore, I saw  
**24** Max's shoulder was out of his socket. His forearm was shredded and I saw a bone protruding out  
**25** by where his elbow would be. He was bleeding all over, there was a massive gash across his face  
**26** and chest. His face was turning a stone gray color while the gash looked like it was purple and  
**27** blue as the blood drained out. I watched as they performed CPR to no avail. The only thing that  
**28** happened was that Max spit up a little bit of water and rolled over onto his stomach. Then, I was  
**29** in the ambulance with Max on the ride to the hospital where the paramedics told me that my  
**30** husband was dead. Our twins were right there next to me on the shore. I don't think they even  
**31** recognized their dad, he was mangled so badly I could barely recognize him myself. We did a

1 closed casket at the funeral - I didn't want to remember him that way. After we got to the  
2 hospital Max's face had somehow become infected and the gash was never able to heal so his  
3 face is forever left cut open. Our children could not even see their father to say goodbye because  
4 of how deformed and terrifying he looked.

5 Q: I am so sorry for your loss. I just have one more question for you. After Max's death, did the  
6 Defendant Tinman Triathlon Corporation ever reach out to you?

7 A: Yes, they sent a nice bouquet for the funeral with a letter that looked like ChatGPT wrote it.

8 Q: Have you understood all of my questions?

9 A: Yes.

10 Q: Do you have anything to add regarding this matter that you haven't already shared?

11 A: No, I've shared everything I know.

12 Q: Have you given complete answers to every question without leaving anything out?

13 A: Yes.

14 Q: Thank you, no further questions.

15 A: Thank you.

16

17 Dated:

18 Amity Island, Hofstra

19

20

21

22

23

24

25

26

27

28

29

30

31

*Avery Giron*

---

Avery Giron

**Grand Jury Transcript of Sawyer DeWitt**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

MS. CACCIOPPOLI: Good morning, everyone. My name is Dorothy Caccioppoli. I'm an Assistant District Attorney here in the District of Hofstra. Let the record reflect that there's no one in the room aside from the court reporter and myself, who is not a Grand Juror.

Mr. Foreperson, is there a quorum present today?

GRAND JURY FOREPERSON: Yes, ma'am.

MS. CACCIOPPOLI: Okay, I'll go get the witness.

Whereupon,

SAWYER DEWITT

was called upon as a witness and, after first being duly sworn by the foreperson of the grand jury, was examined and testified as follows:

EXAMINATION

SAWYER DEWITT

Hello all. My name is Sawyer DeWitt, and I am sorry. I know you may not believe me or think I am saying that only because I have to or so you won't indict me, but it's true. I am sorry. One month ago, I ended a man's life, and not a day has gone by where I do not think about it. The image of my jet ski hitting his head is the last thing I see before I fall asleep every night, that is, if I can sleep. But I take responsibility for my actions. I know that I was driving my jet ski and that I hit Mr. Giron. But that's all I knew. I did not know that the Triathlon was happening in Weiss Bay, I did not know that there were swimmers that far out in the bay, I did not know that I should have turned around at the bridge, because no one ever told me. I grew up in Amity Island, so I've attended the Triathlon since I was a kid. It was always held at Harris Lake for as long as I can remember. I didn't know anything had changed. No one told me anything had changed. When I was on my jet ski that day, I saw buoys, and I saw signs, but I saw those every day I was out there and I still see them from shore when I look out at the water. I don't use my jet ski anymore because I'm terrified of another accident like the one that took Mr. Giron's life. But that's what it was; a freak accident that I couldn't have prevented because I didn't know the Triathlon was happening in Weiss Bay. I may have been the one driving the jet ski, but TinMan

1 Triathlon was the one with the duty to Mr. Giron, to every other swimmer in that race, and to all  
2 possible boaters in the area. The duty to keep the swimmers safe and the duty to keep everybody  
3 else informed. So that no one has to live through the nightmare Mr. Giron's family and I have to  
4 live through every day. I have accepted my role in the events that occurred on July 4, 2023, but  
5 trust me when I say it was a preventable accident.

6 BY MS. CACCIOPPOLI

7 Q: You were involved in an accident in Weiss Bay in Amity Island?

8 A: Yes, I was.

9 Q: Max Giron died in that accident, right?

10 A: Yes, but it wasn't my fault.

11 Q: You are the person who was driving the jet ski that struck Max Giron?

12 A: I was, but again it was not my fault. Waterfront Patrol and TinMan should have blocked off  
13 the entrance to Weiss Bay. There was no way for any boater to know that people were swimming  
14 in the Bay on July 4th. That's one of the busiest boating days of the summer. And he was  
15 swimming right next to the underpass of the Schiedo Bridge, where the Bay opens up. I couldn't  
16 even see him until I had already gone under the bridge. No one warned me he would be there. I  
17 never meant to hit him; I never meant to hit anything. If that stupid safety boat driver was doing  
18 his job and got my attention, none of this would have ever happened. They should be the one  
19 sitting here, not me.

20 Q: You are licensed to drive a jet ski?

21 A: Yes, I took a class about ten years ago which went over all sorts of safety requirements and  
22 how to operate a jet ski safely.

23 Q: During that class you learned about buoys?

24 A: It was so long ago, but the instructor said something about different colored buoys meaning  
25 different things.

26 Q: There were buoys in the water in the Santana Sea leading up to the bridge?

27 A: Yes, but there are buoys all over the Sea. Some tell you to slow down, others indicate shallow  
28 waters, and some just show you the direction toward the beaches or bays in the area. When I saw  
29 the buoys, they were just yellow and orange. I couldn't see any writing on them, and nothing  
30 warned me that a man would be swimming only 50 feet ahead.

31

**1** Q: Let's talk about what you were doing prior to riding your jet ski. Where were you coming  
**2** from?

**3** A: I am an early riser, so I woke up around 7:00 a.m. and met some friends for coffee. When I  
**4** got home, I looked at the weather forecast and saw that it was going to be a clear and sunny day.  
**5** I figured I would get out on the water early before the boat and beach traffic started increasing  
**6** for the holiday. Amity Island has a massive firework show each year over Weiss Bay. People  
**7** come from all over, set up on the beach, anchor their boats and wait all day for the best view. I  
**8** wanted to get out before the water got too crowded, but boats were already starting to anchor  
**9** when I left the docks, so I decided to drive around Weiss Bay for a bit, then stop at the Malfi  
**10** Marina for lunch. That was before the accident.

**11** Q: Where do you dock your jet ski when you aren't using it?

**12** A: I keep it on a ramp at the Malfi Marina.

**13** Q: Is that where you launched from on the morning of July 4th, 2023?

**14** A: Yes, I left from the Malfi Marina and went out into the Santana Sea for a few miles before  
**15** heading back towards Weiss Bay to drive around.

**16** Q: I am showing the witness Grand Jury Exhibit 7. Do you recognize this?

**17** A: Yes.

**18** Q: Tell the members of the Grand Jury what this is.

**19** A: This is a sign that was posted above my jet ski ramp back in July 2023.

**20** Q: What does the sign read?

**21** A: It reads, "Watch for Independence Day Swimmers." I didn't know that meant not to drive  
**22** through Weiss Bay. It didn't say anything about the Bay being closed off or that it wasn't safe to  
**23** drive through it. If the sign had said, "Hey, if you drive into Weiss Bay, there's going to be over  
**24** 50 people swimming across the Bay," I would have never traveled over there. I'm being blamed  
**25** for something that could have been prevented if TinMan did their job. All they did was put up a  
**26** vague sign and a few buoys. There are signs all over the Marina and buoys everywhere in the  
**27** Sea. None of this would have happened had they been clear and given real directions.

**28** Q: But there was another sign wasn't there?

**29** A: Yes.

**30** Q: A sign over Scheido Bridge?

**31** A: Yes.

**1** Q: And that sign faced out towards Santana Sea?

**2** A: Yes.

**3** Q: You passed directly under that sign?

**4** A: Yes.

**5** Q: That sign had a symbol on it?

**6** A: All I saw on that sign was a red circle with a line through it, but I didn't see what was in the

**7** circle.

**8** Q: The sign also had words on it?

**9** A: All I could make out was "Watch Out Swimmers Ahead."

**10** Q: You are aware that Amity Island hosts the TinMan Independence Day Triathlon?

**11** A: Yes, I know we host the race. Before the fireworks show, there is an Independence Day

**12** Parade down Main Street with the Mayor and the winner of the triathlon on a giant American

**13** Flag float. I used to go with my family every year and watch the events, parade, and fireworks.

**14** Q: Isn't it true that the swimming portion of the triathlon takes place in Weiss Bay?

**15** A: It was for the 2023 race. It wasn't always set there, though. It used to be held on Harris Lake,

**16** which was about ten miles from Weiss Bay. I moved away for college, and last I knew, they were

**17** still hosting the swim event on the Lake. I didn't know the Lake was home to an endangered

**18** algae species and could no longer be used recreationally. How was I supposed to know that they

**19** stopped using the Lake and switched to the Bay? The Independence Day Triathlon is well known

**20** around Amity Island, but it's not like there is constant media attention around the whole event.

**21** Q: Isn't it true that the local newspaper interviewed TinMan CEO Austin Sperl about the 25th

**22** anniversary of the race?

**23** A: I remember seeing a picture of him on a paper at the grocery store, but I'll be honest with you,

**24** I don't know the last time I picked up a newspaper. So I don't know what it said about him or the

**25** race. But I saw nothing saying that Weiss Bay was closed on July 4th.

**26** Q: You mentioned that you saw the buoys anchored by the bridge. You also saw rescue boats as

**27** you drove under Schiedo Bridge, right?

**28** A: I saw a red boat anchored underneath Schiedo Bridge. It didn't say "rescue" or anything like

**29** that, so I thought it was just someone fishing or something.

**30** Q: Isn't it true that you were driving around 65 miles per hour?

**31**

**1** A: No, that's wrong. My jet ski goes up to 65 mph. I was going around 50 mph when I was  
**2** driving towards Weiss Bay. But when I got under the bridge and saw someone swimming in the  
**3** water, I took my hand off the clutch. Jet skis don't have brakes like a car; the right clutch is the  
**4** gas, and the left is to put it into reverse. So, when I saw Mr. Giron in the water, I took my hand  
**5** off the gas and started to grab the left clutch and try to reverse, but it was too late. But I was not  
**6** driving over 60 mph. I don't know where you got that information.

**7** Q: Are you aware that the speed limit around the Schiedo Bridge is 20 mph?

**8** A: No one ever drives that slow over there. Boats constantly fly in and out of Weiss Bay. It's a  
**9** popular tubing and waterskiing area out here because there are rarely any waves. And that's just  
**10** some rule that the Waterfront Patrol guys made up. They're not even cops; I don't think they're  
**11** even allowed to make a speed limit on the water like that. And it's not like there are many speed  
**12** limit signs posted.

**13** Q: When you drove by the rescue boat, the person in the boat was waving you down?

**14** A: I mean, they were waving at me. But I thought they were just being polite. It's common boat  
**15** etiquette to wave to other boaters on the water. So, I waved back and kept on driving.

**16** Q: When you were approaching Scheido Bridge you saw no other boats?

**17** A: No, I only saw what I now know were the three rescue boats. Like I said, I am an early riser  
**18** and not seeing other boats out at that time isn't unusual, even for a holiday.

**19** Q: Despite all of the warnings you saw that day, you never stopped and you still hit Mr. Giron?

**20** A: Yes, I did not stop my jetski, but that's because I didn't think there was a reason to. Like I  
**21** said, it's not unusual for no one to be out on the water at that time. There are always buoys out  
**22** on the water and their meaning isn't always clear just by looking at them. Also, the sign was so  
**23** vague, I just thought it meant "look out," because it was a holiday. Finally, the color of the boat  
**24** shouldn't matter. There are plenty of people with red boats. Why would that be a sign of  
**25** anything?

**26** Q: Okay. Thank you for your testimony. I'll now ask you to leave the Grand Jury chamber.

**27** A: Okay.

**28**

**29**

**30**

**31**



CERTIFICATE

I, BROOKE MODICA, certify that this is an accurate transcript of the notes and digital audio recording by KARSON GOGGANS, Court Reporter, of the testimony taken

And

The proceedings held in the case of People of the District of Hofstra v. Sawyer DeWitt before the

Grand Jury

Held in

District Court of the District of Hofstra on August 4, 2023.

*Brooke Modica*

Dated: August 18, 2023

Brooke Modica

Amity Island, Hofstra

Transcriber

*Karson Goggan*

Karson Goggans

Official Reporter

**Deposition of Ryan Schmidt**

**1**  
**2**  
**3**  
**4**  
**5**  
**6**  
**7**  
**8**  
**9**  
**10**  
**11**  
**12**  
**13**  
**14**  
**15**  
**16**  
**17**  
**18**  
**19**  
**20**  
**21**  
**22**  
**23**  
**24**  
**25**  
**26**  
**27**  
**28**  
**29**  
**30**  
**31**

Q: Good Afternoon, please state your name for the record.

A: Hello, my name is Ryan Schmidt.

Q: How old are you?

A: I'm 52 years old.

Q: What do you do for a living?

A: I'm the Director of Safety for TinMan Triathlon Corporation.

Q: What kind of business does TinMan Triathlon Corporation conduct?

A: We organize and host various racing events throughout the nation. To do that, we work with local governments and find locations to host each event. We also coordinate with certain agencies, such as the Waterfront Patrol Office, to make sure that our race goes off without a hitch. That includes setting up each event, whether it's the run, swim, or bike portion. For example, we have to shut down and rope off the surrounding area of the event. We also ensure that our employees are redirecting traffic. But before all of that, we typically post signs throughout the town to inform the public about the TinMan Triathlon and any area shutdowns.

Q: What does it mean to be the Director of Safety?

A: It's my responsibility to ensure that any location we host is a safe place for our competitors to participate. So, I'm basically in charge of setting up the area of the event with any safety equipment necessary to close off the location to the general public and checking that it's just competitors and TinMan personnel on the day of the event.

Q: How long have you been with the corporation?

A: I joined a little after graduating college, so I was about 22. I first started on the Safety Committee, where I assisted the prior director with setting up the event locations and contacting agencies to assist in providing safety equipment. TinMan Triathlon Corp., doesn't have a warehouse to store safety equipment, so we try our best to borrow from local organizations whenever we host an event. After about 10 years, I was promoted to Safety Director and have been in that position ever since.

Q: How long has the corporation been hosting the Independence Day Triathlon in Weiss Bay, in Amity Island?

**1** A: Well we've been hosting the event in Amity Island for 25 years. For 20 of those years it was  
**2** held in Harris Lake, just outside of town. We moved it to Weiss Bay five years ago, after a rare  
**3** algae was discovered in Harris Lake.

**4** Q: How does TinMan determine what equipment to use when setting up an event?

**5** A: Like I said, we meet with local governments to determine if we can use a specific location for  
**6** an event. Sometimes the community gives us pushback for 'environmental reasons' or other  
**7** nonsense, but we usually secure the location we want. Once we know where we are able to host a  
**8** particular event, I find the people who oversee those areas, whether it be a park ranger for the  
**9** run/bike portions or the waterfront patrol for the swim portion, to decide the best way to situate  
**10** the event.

**11** Q: What do you do when you get in contact with these officials?

**12** A: Essentially, we sit down and discuss how we expect our event to go, how many participants  
**13** we need to accommodate, and any safety precautions we believe are necessary. Some officials  
**14** have recreational safety rule books in their offices, and we try to follow those as best we can  
**15** when hosting an event.

**16** Q: Were you given a safety rule book before hosting an event in the Weiss Bay?

**17** A: Yes, Taylor O'Regan gave us a section of the Waterfront Rules and Regulations Book. The  
**18** section included the kind of equipment needed to secure the section of Weiss Bay we planned on  
**19** using. It also recommended additional safety equipment we could use to redirect boat traffic.  
**20** Lastly, it had a map of the Weiss Bay, Schiedo Bridge, and the Santana Sea. We have hosted our  
**21** Independence Day Triathlon in Amity Island for years. I never really bother with following the  
**22** Rules & Regulations book. I have organized this race without so much as a hiccup for over 25  
**23** years. I know what is needed to set up and secure Weiss Bay for our swim events. But Taylor  
**24** said they have to inform me of the rules so I took the book.

**25** Q: Did you know Taylor O'Regan before hosting the Independence Day Triathlon in Amity  
**26** Island?

**27** A: Yes, they and I go way back. We grew up on the same street and went to school together all  
**28** the way through college. We were even roommates for some time. They are one of my best  
**29** friends. They actually recommended we use the Weiss Bay for the swim, because it is known for  
**30** calm waters.

**31** Q: Okay I am showing you Exhibit 2, do you recognize this?

**1** A: Yes. That is Section 1.16 of the Waterfront Rules and Regulations book given to me by  
**2** Taylor.

**3** Q: Is Exhibit 2 a true and correct copy of that page from the safety rule book you received?

**4** A: Yes, it is.

**5** Q: And you read this rule book in order to collect all the necessary safety equipment to set up  
**6** Weiss Bay for the swim event on July 4th?

**7** A: Yes, that's right.

**8** Q: What equipment did you use to secure Weiss Bay?

**9** A: We were able to borrow rescue boats from the Waterfront Patrol Office, so we set up three  
**10** boats at different points of the race. We set up the first rescue boat at the starting line near the  
**11** Waterfront Patrol Office Building. We then set the second rescue boat at the halfway mark of the  
**12** race, right by the Schiedo Bridge, as that area of the bay connects to the Sea. So, we definitely  
**13** did not want any of the competitors to swim by the bridge. The last rescue boat was set up by the  
**14** end of the swim portion. We then set up two buoys on the Santana Sea side of the Schiedo  
**15** Bridge to let boaters know that Weiss Bay was closed for the day and couldn't be used as a  
**16** passthrough.

**17** Q: Was there anything else you set up for the race?

**18** A: Yes, we wrote up signs and posted them at the local marina launching docks to let boaters  
**19** know that they wouldn't be able to anchor in or pass through Weiss Bay on July 4th. We also set  
**20** up a large sign on the Santana Sea side of Scheido Bridge. The sign read "Watch Out For  
**21** Swimmers Ahead - Boating Limited" and had a large image of a boat in a red circle with a line  
**22** through it.

**23** Q: Was there any equipment that you were provided but did not use?

**24** A: Yes, we were given a rope with small buoys attached to it so it would float and be visible in  
**25** the water. We also received several flags that read "NO CROSSING". We went out on Weiss Bay  
**26** to anchor the large yellow and orange buoys a week before the event. I didn't think it was a  
**27** smart idea to set up the rope under Schiedo Bridge that far in advance of the triathlon because I  
**28** didn't want a boat to hit it. We didn't set up the flags that week since the forecast predicted bad  
**29** weather leading up to the race, and I didn't want the flags to be blown away or get damaged.  
**30** Ultimately, I didn't have our staff put the rope and flags out the morning of the race and I didn't  
**31** think we needed either this year because we've never had a problem in years past.

**1** Q: Did you give any instructions to the competitors before the event began?

**2** A: Yes, we drove one of the rescue boats around the swim area to show competitors where the  
**3** swimming lanes were. We instructed all swimmers to remain within the bounds of the orange  
**4** buoys, and that if they swam outside the swim lane they could face disqualification.

**5** Q: When did the swim event begin?

**6** A: At 8:30 a.m. I drove the rescue boat to my designated location underneath the Schiedo  
**7** Bridge. I dropped off a small anchor so the boat would stay steady and I could watch the event.  
**8** Then, around 8:45 a.m., all the competitors lined up along the Weiss Bay shoreline as they  
**9** waited for the starting gun. The starting gun went off about 9:00 a.m., and after that, all of the  
**10** swimmers dove into Weiss Bay and started swimming towards the finish line.

**11** Q: Did you think it was safe to anchor a rescue boat?

**12** A: I didn't see a problem in anchoring the boat. We have never needed to use the rescue boat to  
**13** save a competitor before. Having the rescue boats on the water was more for show. Usually we  
**14** send out local lifeguards on the rescue boats but there weren't any available since it was 4th of  
**15** July. The Waterfront Patrol Office needed more guards on the waterfront that morning because  
**16** the beach was so busy. I can't really swim, but I figured it wouldn't be a big deal for me to go out  
**17** there. I mean, all I had to do was sit there until the race ended, and drive back to shore. If that  
**18** maniac on the jet ski hadn't driven under the bridge, this whole mess would have never  
**19** happened.

**20** Q: Were there any other TinMan employees or Waterfront Safety employees on the rescue boat  
**21** with you during the race?

**22** A: No, each rescue boat only had one person aboard. I mean, I wasn't even supposed to be on a  
**23** rescue boat, but Waterfront Patrol was short-staffed, and so was my usual waterfront staff. Since  
**24** I'm licensed to drive a boat, I decided to step in.

**25** Q: At what point did you see the individual driving the jet ski headed towards the Schiedo  
**26** Bridge?

**27** A: I don't remember seeing them drive by the warning buoys, but they must have seen the buoys  
**28** and rescue boats. I saw them drive by the rescue boat and pass under Schiedo Bridge. They were  
**29** flying, and I tried to wave my arms to stop them, but by that time they had already passed me  
**30** and were heading straight into the racing lane. When I turned to face the swimmers, I noticed  
**31** that Max Giron was swimming outside the swim lane that we created. He was basically

1 swimming right next to the bridge, and way outside the orange buoys, which was against the  
2 competition rules. I tried to yell out to Max, but the jet ski struck Max Giron and I saw Max slip  
3 underwater.

4 Q: Did you call out to the jet ski driver?

5 A: No, I didn't think they would even hear me, and what was I supposed to say? At that point it  
6 was too late.

7 Q: What did you do after Max went underwater?

8 A: Well, I had to quickly pull up the anchor, and then I drove over to where Max had gone  
9 underwater. By the time I made my way over, the water surrounding Max had turned red from all  
10 the blood. I couldn't see him below the surface. I called out to the other rescue boats. Like I said,  
11 I'm not a strong swimmer. One of the other rescue boats drove over shortly after me and pulled  
12 Max onto the boat and brought him to shore. He was not moving. One of the lifeguards  
13 attempted CPR and Max spit up some water but never regained consciousness. It was a terrible  
14 accident.

15 Q: Did you ever speak to Max's spouse after the incident?

16 A: I had one of our interns send her a flower arrangement with a card sending our condolences  
17 from TinMan. But other than that, no.

18 Q: Have you understood all my questions?

19 A: Yes.

20 Q: Do you have anything to add regarding this matter that you haven't already said?

21 A: No.

22 Q: And have you given complete answers to every question without leaving anything out?

23 A: Yes.

24 Q: Thank you, no further questions.

25 A: Thank you.

26

27

28 Dated:

29 Amity Island, Hofstra

30

31

*Ryan Schmidt*

Ryan Schmidt

**Deposition of Taylor O'Regan**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

Q: Good Afternoon; please state your name for the record.

A: Hello, my name is Taylor O'Regan.

Q: How old are you?

A: I'm 54 years old.

Q: What do you do for a living?

A: I am the Director of the Waterfront Safety Patrol Office for the Town of Amity Island.

Q: What are some of your responsibilities as director of waterfront safety?

A: I am responsible for supervising, staffing, and ensuring all events and activities that occur on Weiss Bay, the entrance to the Bay, and the Santana Sea beaches in Amity Island run smoothly and safely. My office is responsible for the seven safety boats that the Town owns. We also employ the lifeguards, EMTS, and all Bay Constables the Town employs during the summer.

Q: How long have you been the Director of Waterfront Safety?

A: I have been the Director of Waterfront Safety for the last 25 years. Before that, I started with the Town as a lifeguard in high school and college, and became a part-time and then full-time Bay Constable before being promoted to my current position.

Q: You said that your office is responsible for staffing and ensuring the safety of all events on Weiss Bay. Does that extend to events run by third parties, such as the TinMan Triathlon Corporation?

A: At least three individuals from my office attend all third-party operated events on the Bay. Even though the Town may not be running the event, we want to ensure that both spectators and participants know we are there to help keep them safe. We have had a great relationship with TinMan Triathlon Corp. over the past few years. They have always been great at following our guidelines, and our citizens absolutely love participating in the race every year.

Q: Does your office's relationship with TinMan Triathlon have anything to do with your personal relationship with Ryan Schmidt?

A: Not directly, no. Just because I've known Schmidty forever doesn't mean we favor their company over any other corporation that puts on events using Amity Island waters. The goal of my office since I took my current position has been to enrich the lives of Amity Island residents by allowing them to safely enjoy the great waterfront we have to offer. Part of that does include

1 partnering with TinMan Triathlon because of the great opportunities they have provided our  
2 residents for 25 years.

3 Q: When you met with Ryan Schmidt, in preparation for the 2023 competition, what did you  
4 discuss with respect to the swim event?

5 A: Much like our other recreational events in Weiss Bay, I explain that certain safety equipment  
6 must be used to deter unwanted boat traffic, and certain procedures must be followed to ensure  
7 that no one gets hurt.

8 Q: What is the safety equipment you require?

9 A: I wouldn't necessarily call it required; it's more of a "strongly recommended" policy. But for  
10 an event shutting down the Bay, we explain to third-party personnel that they need to anchor a  
11 yellow or orange buoy about 30 feet from the bridge on the Seaside. These buoys signal to boats  
12 that it is a no-wake zone, which means that they have to slow down, so the boat does not create a  
13 wake behind it. The color and meaning of buoys is something that is taught to all licensed boat  
14 and jetski operators in their required licensing course. The no-wake zones indicated by the buoys  
15 are placed in locations where there is typically a lot of boat traffic or a lot of swimmers. I then  
16 explained that hosts should hang flags from the buoys that read "NO CROSSING," which would  
17 signal boats not to pass under the bridge into the Bay. Then we recommend that they attach a red  
18 rope along the passthrough of the bridge since boats should already be going slow, so it's not a  
19 danger to the drivers to have the rope. We also provide rescue boats for the day of an event so  
20 that hosts can position employees around the Bay in case of an emergency.

21 Q: Did you discuss this with Ryan Schmidt?

22 A: Yes, we went through everything, and I even gave them a copy of the "Waterfront Rules and  
23 Regulations Handbook" packet.

24 Q: Does your office supervise TinMan when placing the buoys and boats in the water prior to the  
25 race?

26 A: No, after instructing whoever is hosting an event, they are responsible for meeting all the  
27 safety rules. TinMan always has the same crew working the event every year, so they know  
28 where everything goes, and if they had any questions, they could have called myself or one of  
29 my employees to help them out. As for the boats, they are usually used by my office up until the  
30 morning of the race when we pick up any TinMan employees from the boat launch next to the  
31 race's starting line. This year was a little different. Some of the constables were sick, and I had to



1 take care of a washed-up submarine over in the Sea, so Schmidty had to pick up one of the boats  
2 from Waterfront headquarters and bring it to the race.

3 Q: Did your office ever check that the buoys TinMan put out were adequately placed?

4 A: Yes, I think one of my Constables said she went under the bridge into the Sea, and she saw  
5 that the buoys were out, and they looked to be in a clearly visible place. She didn't see the flags  
6 or the rope, but it was still a couple of days out from the race, so we assumed they would put  
7 them out later on.

8 Q: Are you aware that Ryan Schmidt can't swim?

9 A: Did Schmidty tell you that? They've always been selling themselves short. They may not be  
10 able to swim like Phelps, but in my opinion, they are a strong enough swimmer to make it work  
11 if there's an emergency. Which there hasn't been in 25 years.

12 Q: Does that violate your office's requirements for all Bay Constables or individual's temporarily  
13 operating in that position?

14 A: Like I said, Ryan can swim well enough that if they needed to go into the water to save  
15 someone, they could. If you're asking if I was confident in Ryan, the answer is yes. They know  
16 exactly what to do on a boat. I mean, I taught them myself, and they've accompanied me on a  
17 boat for this events like this tons of times.

18

19

20

21 Dated:

22 Amity Island, Hofstra

23

24

25

26

27

28

29

30

31

Taylor O'Regan

Taylor O'Regan

**Medical certificate of cause of death**

**Name of deceased**

---

Date of death

Day	Month	Year			
0 4	0 7	2	0	2	3

Time of death

Hour	Min
1 0	1 4

Place of death

---

**Cause of death**

I hereby certify that to the best of my knowledge and belief, the cause of death was as stated below:

1. Disease or condition directly leading to death

**Antecedent causes**  
Morbid conditions, if any, giving rise to above cause, stating the underlying condition last

a.) Drowning

b.)

c.)

d.)

Approximate interval between onset and death		
Years	Months	Days
0	0	1

2. Other significant conditions contributing to the death, but not related to the disease or condition causing it

Blunt force trauma to head, neck and torso

0	0	1
---	---	---

Cerebral hypoxia

0	0	1
---	---	---

Please tick the relevant box

**Post mortem**

PM1  Post mortem has been done and information is included above

PM2  Post mortem information may be available later

PM3  No post mortem is being done

**Procurator fiscal/Coroner**

PF  This death has been reported to the procurator fiscal/coroner

**Attendance on deceased**

A1  I was in attendance upon the deceased during last illness

A2  I was not in attendance upon the deceased during last illness: the doctor who was is unable to provide the certificate

A3  No doctor was in attendance on the deceased

Signature Isaiah Harris Date: 07/06/2023

Name in BLOCK CAPITALS ISAIAH HARRIS

Official address

**For a death in hospital**

Name of the consultant responsible Dr. Isaiah Harris

**Counterfoil – Medical certificate of cause of death**

**Name of deceased** Max Giron

**Date of death** July 4, 2023

**Place of death** 124 Conch St., Amity Island, Hofstra

Please circle as appropriate	PM1	PM2	PM3
Post mortem			
Procurator fiscal/Coroner	PF		
Attendance on deceased	A1	A2	A3

**Cause of death**

I (a) Drowning

(b)

(c)

(d)

II

**Date of certificate** July 6, 2023

AMITY ISLAND WATERFRONT PATROL OFFICE

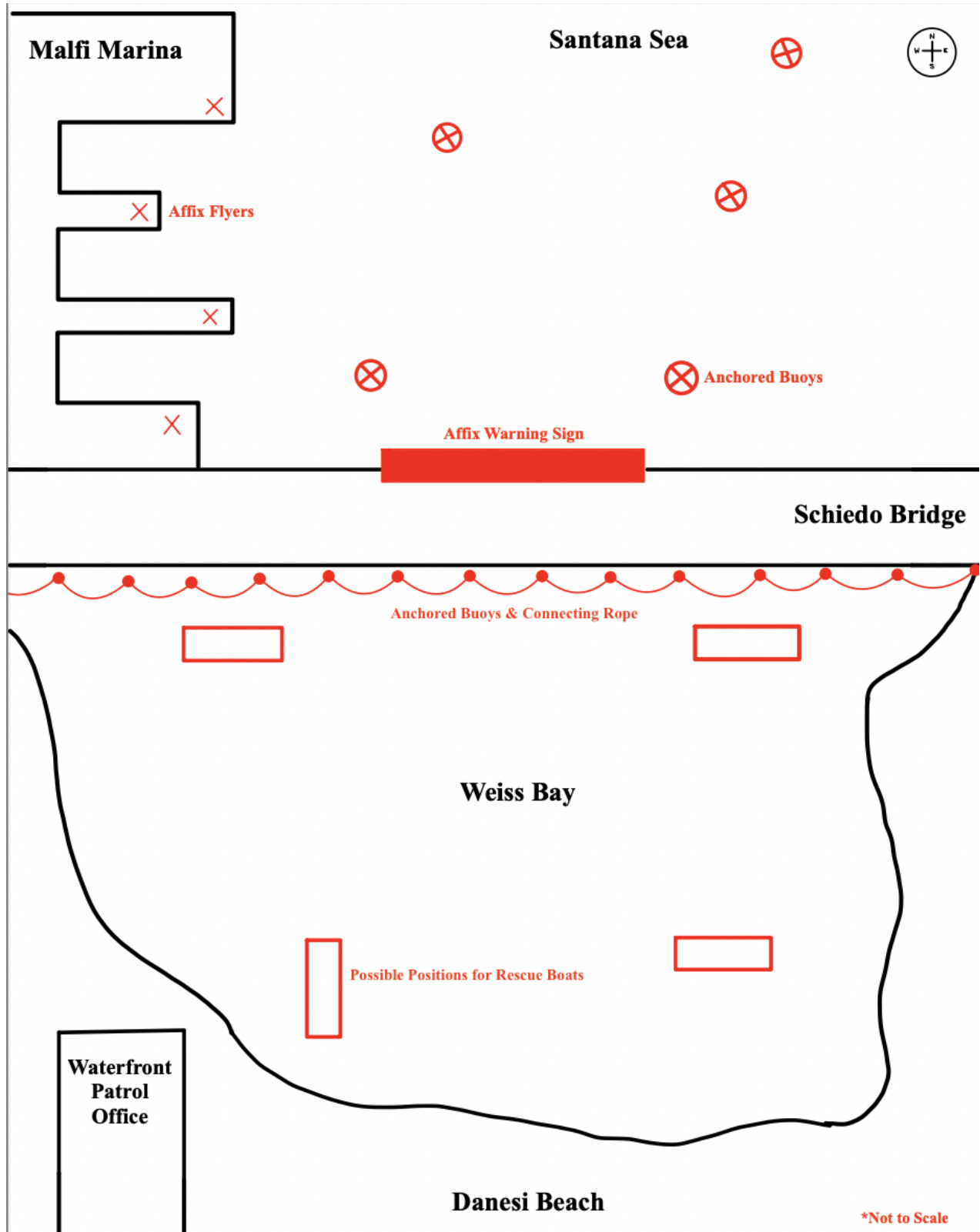


WATERFRONT RULES  
AND REGULATIONS  
HANDBOOK

## Section 1.16 - Recreational Waterfront Events

- A. A third party company, corporation, or business entity, as defined in City of Amity Island Civic Code, may form a partnership with the City of Amity Island to host a recreational waterfront event including: Swimming Races, Triathlons, Kayak Racing, Canoe Racing, Scuba Diving Tutorials, Paddle Board Yoga, and Fishing Seminars.
  1. Recreational Waterfront Events may be held at/in: Weiss Bay, Santana Sea, Harris Lake, Danesi Beach, and Malfi Marina. It is strongly recommended for a partnering company/corporation/business to follow the guidelines laid out in Section 1.16(b), when hosting any of the above listed events.
- B. When hosting a Recreational Waterfront Event, as defined in Section 1.16(a), it is strongly recommended for the partnering company/corporation/business to abide by the following safety guidelines:
  1. When hosting an event spanning the width of a body of water, it is recommended that the company/corporation/business utilize buoys, ropes, flags, or other floatation devices to notify and deter boaters from crossing through the area used by the event. The above listed notification devices should be placed in the locations marked on the map found in Appendix A of this Handbook.
  2. For events occurring near, at, or under the Scheido Bridge, it is strongly recommended that the sponsoring company/corporation/business affix signs no smaller than 4-feet in width and 4-feet in height to the side of the bridge where boat traffic is most anticipated. The sign should be affixed at the bridge's highest point of 15 feet.
  3. For events occurring on all major holidays, including, but not limited to, St. Patrick's Day, Memorial Day, Fourth of July, and Labor Day, the sponsoring company/corporation/business is required to post signage at all marinas, boat launches, and watercraft rental facilities within a 5-mile radius of the event's location.
    - i. The location of an event includes both the event's finishing and starting lines for races, and the meeting point of all participants for all other kinds of events.
  4. It is required that the sponsoring company/corporation/business request rescue boats, to be provided by the Amity Island Waterfront Patrol office.
    - i. The company/corporation/business should request the boats for the duration of the event, as well as for two additional hours: the hour prior to the event commencing and the hour after the event's completion.
    - ii. The office recommends that for events occurring on non-holidays, one (1) rescue boat be requested for every 50 event participants, while on holidays one (1) rescue boat should be requested for every 25 participants

APPENDIX A













TINMAN TRIATHLON CORPORATION



**WATCH FOR  
INDEPENDENCE  
DAY  
SWIMMERS**

**July 4, 2023 @ Weiss Bay: 8:00-11:00 a.m.**

PLEASE PLAN  
YOUR BOATING &  
BEACH-GOING  
ACCORDINGLY



Mrs. Avery Giron  
24 Kelly Road  
Amity Island, HU 01738

Dear Mrs. Giron

The entire TinMan family grieves the loss of your husband and we feel for you and your children. Your husband's death was a tragedy and it is something we never thought would happen at one of our events. When I founded TinMan, I never anticipated writing a letter like this one, and I hope I never will again. Max was a great competitor and a beloved member of the TinMan community of strong and dedicated athletes. He truly demonstrated the qualities of compassion, commitment and sense of community that we as a corporation promote and support.

Although he will be missed, and our lives will never be the same, we at TinMan wish to honor Max and his legacy as a fierce competitor, a kind soul, and loving father. Starting with our next event and for as long as we host triathlons, every TinMan event will be held in Max's honor and include a moment of silence. In order to make sure that Max's memory lasts, we will also present an award at every event to the competitor who best demonstrates the qualities of leadership, sportsmanship, commitment, and dedication to community service. The award will be named the "Max Giron Legacy Cup." We ask that when you and your children are ready, that you present this award to its winner.

While Max may no longer be here with us, his legacy will live on forever and he will never be forgotten.

Sorry for your loss,

X *Austin Sperl*

Austin Sperl

CEO TinMan Triathlon Corp.

12 Oren Way

Amity Island, HU 01738

## JURY INSTRUCTIONS

Here are the instructions for answering the questions:

The Plaintiff's claim is for negligence. "Negligence" means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

"Ordinary care" means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

"Proximate cause" means a cause, unbroken by any new and independent cause, that was a substantial factor in bringing about an injury, and without which cause such injury would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the injury, or some similar injury, might reasonably result therefrom. There may be more than one proximate cause of an injury.

"New and independent cause" means the act or omission of a separate and independent agency, not reasonably foreseeable, that destroys the causal connection, if any, between the act or omission inquired about and the injury in question and thereby becomes the immediate cause of such injury.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

The Plaintiff has the burden of proof on their claim of negligence. That is, the Plaintiff must prove the Defendant was negligent by a preponderance of the evidence. Plaintiff says that they were harmed by Defendant's negligence.

### CREDIBILITY OF WITNESSES

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. To decide whether you believe any witness, I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling you the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of this case?
- Did the witness's testimony differ from other testimony or other evidence?

Avery GIRON, INDIVIDUALLY AND AS )  
ADMINISTRATOR OF THE )  
ESTATE OF MAX GIRON, )  
 )  
PLAINTIFF, )  
 )  
V. )  
 )  
TINMAN TRIATHLON CORP. )  
 )  
DEFENDANT. )  
 )

---

Civil Action No. HOF-CV-001-23

VERDICT FORM – QUESTION ONE

QUESTION NO. 1:

For purposes of this question, did the negligence, if any, of the person named below proximately cause the incident in question?

Answer “Yes” or “No” for of the following:

TINMAN TRIATHLON CORP: \_\_\_\_\_

\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE