

## JOHN MASTERSON AND JUSTIN ACKERMAN OBTAIN SUMMARY JUDGMENT

August 17, 2017 | Case Summaries, News



*Cleo Daily, et al., v. City of Phoenix, et al* – Jones, Skelton & Hochuli Attorneys

[John Masterson](#) and [Justin Ackerman](#) obtained a summary judgment on behalf of their client in a case involving a police shooting. On April 20, 2013, a man living in the complex, later identified as Zachariah Pithan, threatened a neighbor by waving a bat and threatened to strike her. The neighbor called 911. At approximately 9:00 p.m., several officers arrived on scene, including Officer Clinton Brookins. Officer Brookins spoke with a female resident who stated that someone just chased her with a baseball bat and tried to hit her and her child. She stated that the person was in the apartment upstairs. Brookins spoke with a few other residents, who also stated the suspect was upstairs.

Upon approaching the upstairs apartment, the officers heard yelling and noticed the door to the apartment was kicked in and hanging by a hinge. They could hear a male voice yelling inside the apartment. The officers directed Pithan to come out of the apartment. At some point, Pithan came to the door and extended his arm beyond the doorway. One of the officers grabbed Pithan's arm and Pithan retreated into the apartment pulling that officer into the apartment with him. The officers followed Pithan into the apartment and a physical altercation ensued. As a result of the struggle, Pithan was restrained on the by officers on the floor. While on the floor, the other officers tried to control Pithan. At that time, Pithan grabbed a wooden table leg and was going to strike or stab another officer in the face with the object. Upon seeing this, Officer Brookins fired his gun twice, hitting Pithan in the chest and killing him.

On April 18, 2014, Cleo Daily ("Daily"), on her own behalf and as surviving mother and Personal Representative of the Estate of Zachariah Pithan, and Tracy Pithan, on his own behalf and as surviving father of Zachariah Pithan, brought this action against the City of Phoenix, Officer Clinton Brookins, and other Phoenix Police Department personnel. Plaintiffs asserted a 42 U.S.C. § 1983 claim for excessive force and unreasonable seizure, as well as a § 1983 claim for Brookins' interference with their right to familial association, and a wrongful death claim for gross negligence.

On behalf of Officer Brookins, John Masterson and Justin Ackerman moved for summary judgment on all of Plaintiffs' claims arguing that Officer Brookins' use of force was entirely justified under the Fourth Amendment, and that it was not grossly negligent under Arizona law. On August 8, 2017, Arizona District Court Judge Steven P. Logan agreed and granted Officer Brookins' summary judgment on all of Plaintiffs' claims.

John Masterson practices in the areas of civil rights law, government and constitutional law, police defense, prison matters, insurance defense, wrongful death and personal injury law, general civil litigation and appeals.

Justin Ackerman is an associate in our Appellate Department. After graduating as the Valedictorian of his class from Arizona Summit Law School, Mr. Ackerman worked as a Law Clerk for the Honorable Michael J. Brown in Division One of the Arizona Court of Appeals.