

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

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Case No. 08-CP-40-8854

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Phillip D. Grimsley, Sr., and  
Roger M. Jowers, on behalf of  
themselves and others similarly situated,

**RECEIVED**

JUN 12 2013

**SC Court of Appeals**

Appellants,

vs.

South Carolina Law Enforcement Division  
and the State of South Carolina,

Respondents.

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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2008CP4008854

Phillip D Grimsley

South Carolina Law Enforcement Division

Roger M Jowers

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 7 August 2012 to attorneys of record or to parties (when appearing pro se) as follows:

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Court Reporter \_\_\_\_\_

Clerk of Court \_\_\_\_\_

*Jeanette W. McBride*

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated, )

Plaintiffs, )

v. )

South Carolina Law Enforcement Division and the State of South Carolina, )

Defendants. )

IN THE COURT OF COMMON PLEAS

Civil Action Number: 08-CP-40-8854

ORDER

JEANETTE W. McBRIDE  
C. C. P. & G. S.  
2012 AUG - 3 PM 2:22

FROM THE CLERK  
SLED

This case was heard on June 7, 2012, by this Court on the parties' cross motions for summary judgment. For the reasons set forth herein, the Court grants SLED's Motion for Summary Judgment, and denies Plaintiffs' Motion for Summary Judgment, and dismisses this action.

#### Introduction and Summary

This action was filed on December 16, 2008, by Plaintiffs Grimsley and Jowers against the South Carolina Law Enforcement Division (SLED) and the State of South Carolina.<sup>1</sup> Plaintiffs, both of whom retired unconditionally from SLED in 2004 and then agreed to be rehired at slightly reduced salaries, claim that § 9-11-90(4)(b) created certain rights in them with respect to the employer contribution to be paid by SLED on their salary upon their rehire. In the parlance of the cases in this area, they came back to work as "working retirees." *See, e.g., Ahrens v. State*, 392 S.C. 340, 709 S.E.2d 54 (2011). In *Ahrens*, the Supreme Court noted that the return

<sup>1</sup> After the hearing, the State was dismissed without objection. The Court would also note that Plaintiffs filed a motion for class certification on December 1, 2009, but that motion was not before the Court at the June 7, 2012 hearing. Given that the case is being dismissed pursuant to this Order, the motion for class certification has been rendered moot.

of a retired employee to the employment from which he retired "was conditioned on whether an employer in the system chose to hire that employee." 392 S.C. at 351-352, 709 S.E.2d at 60.

All parties have filed motions for summary judgment with affidavits and other evidence. The facts are undisputed, and this matter is now in a posture appropriate for resolution on the merits.<sup>2</sup>

### FACTS

The facts of this case are not in dispute, and are as set forth below.

#### A. Background.

In 2002, several major changes were made to the statutes governing the ability of South Carolina state employees to retire and return to work. The most dramatic of these was the removal of the earnings limitation, or salary cap, that had always been in place in the past to a greater or lesser degree. Act No. 356 of 2002, §12. This removal of the salary caps applied both to members of the Police Officers Retirement System (PORS) such as Plaintiffs and also to non-police officer state employees. It meant that for the first time ever, it was possible for state employees and PORS members to take full retirement, collect full retirement benefits, and also

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<sup>2</sup> This case has been to the Supreme Court on issues raised in a motion to dismiss filed by the State of South Carolina. *Grimsley v. South Carolina Law Enforcement Div.* 396 S.C. 276, 721 S.E.2d 423 (2012). The Supreme Court held, contrary to the State's assertion, that exhaustion of remedies was not required under the South Carolina Retirement Contribution Procedures Act, S.C. Code Ann. §§ 9-21-10, et seq. The Court also held that the Complaint "asserted a cognizable property interest rooted in state law sufficient to survive the motion to dismiss." 396 S.C. at 285, 721 S.E.2d at 428 (emphasis added). As discussed in more detail below, the full record now before that Court makes it clear that the facts as proven are substantially different from those alleged in the Complaint, and that Plaintiffs have no property interest in the matters to which they assert a claim.

return to their former state jobs at salaries that could have been, but were not required to be, the same as their salaries when they retired.<sup>3</sup>

Prior to 2002, there had always been a salary cap or earnings limitation upon the amount that a retired PORS member could earn while still remaining a retiree. Until the late 1990's, the amount that a working retiree could earn was quite low. For instance, from 1989 until 1999, it was only \$9,500 annually. *See* Act No. 189 of 1989, Part II, §50B. However, in 1999, the earning limitation rose from \$9,500 to \$25,000. Act No. 100, of 1999, Part II, § 27. This was increased to \$50,000 in 2001. Act No. 25 of 2001, § 2. The salary cap was removed altogether in the following year, 2002. *See* Act No. 356 of 2002, § 12, which is captioned "Earnings limitation removed under certain conditions." (As an aside, the Court would note that in Section 12 of Act No. 278 of 2012, signed by the Governor on July 9, 2012, the General Assembly provided prospectively that there would be an earnings cap of \$10,000 annually for virtually all PORS retirees who retired at an age younger than fifty-seven years of age.)

Until 1999, there had been no requirement that the employer contribution should be paid for working retirees, as is now the case. It can be inferred that until the salary cap was raised in 1999 from \$9,500 to \$25,000, the available salaries were so low that most working retirees

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<sup>3</sup> There are several significant differences between this "working retiree" program created by § 9-11-40(4) and the well-known Teacher and Employee Retention Incentive ("TERI") program. First, the TERI program has never applied to PORS members. The TERI program instead has always applied only to members of the South Carolina State Retirement System, § 9-1-10, et seq. (hereinafter "State System"). Secondly, the working retiree program does apply to PORS members (as well as others). Thirdly, under the TERI program, there was a contract between the employee and the employer. *See Layman v. State*, 368 S.C. 631, 642, 630 S.E.2d 265, 271 (2006). Fourthly, there is no contractual relationship between working retirees and their employers. *Ahrens v. State, supra*. Fifthly, TERI employees do not collect retirement benefits while working, instead receiving them upon termination of employment. *Lyman, supra*. Finally, TERI employees retain all grievance rights, § 9-1-2210(E), which in practice means that their postretirement salaries remain unchanged from the time of retirement. As set forth in n.6 below, working retirees do not have grievance rights.

would not have filled a fulltime job when they returned to work. However, once the salary cap was raised from \$9,500 to \$25,000 in 1999, the amount of salary earnable by a working retiree had started to become high enough to cover the salaries of at least some fulltime positions. Accordingly, in 1999, the General Assembly added the requirement in § 9-11-90(4)(b) (and § 9-1-1790(B), for the State system) that employers must pay an employer contribution to the Retirement System on the salaries of working retirees who returned to employment. Without this requirement for the employer to pay the employer contribution on the salaries of working retirees, there would soon have been a fairly sizable number of working retirees in the PORS and in the State system who would be filling fulltime positions, or at least positions with substantial salaries, but with no employer contribution being paid to the PORS or the State Retirement System on the salaries for those positions. Such a development would have been detrimental to those two Systems, and to state retirees generally, by carving out a class of employees who were filling positions that were effectively full-time positions, but for which positions the Retirement Systems would have received no employer contribution.

In practice, the working retiree provisions of the PORS statute, § 9-11-90(4), require that the individual retire fully, and leave state employment for at least fifteen consecutive calendar days prior to returning to work. The ability to return to work was not conferred by § 9-11-90 or any other statute. Instead, as the Supreme Court has held, the ability of a retired employee to return to work "was conditioned on whether an employer in the system chose to hire that employee." *Ahrens v. State, supra*, 392 S.C. at 351-352, 709 S.E.2d at 60 (2011).

Section 9-11-90 likewise contains no provision pertaining to the salary to be paid upon the retiree's return to employment as a working retiree. That section instead simply states that the retiree "may be hired and return to employment covered by this system or any system provided

in this title without affecting the monthly retirement allowance he is receiving from this system.”  
(Emphasis added.)

The elimination of the salary caps in 2002, coupled with the absence of a TERI program for PORS members, led then-Chief Stewart to see whether a plan could be created that would make it attractive for SLED employees who had reached retirement age to retire and take “working retiree” status if they so chose. Stewart Aff. Par. 5. As Chief Stewart’s Affidavit also notes, “During that time of substantial budget cuts, such a program would also benefit SLED by cost savings, mostly in the area of salaries. This assisted SLED in avoiding layoffs of any agents and in maintaining a basic level of law enforcement services to the citizens of South Carolina.” Stewart Aff. Par. 6. Chief Stewart consulted with the Budget and Control Board’s Office of Human Resources and also with Vance Bettis, Esq., among others. *Id.*, Par. 8. The result was that Chief Stewart and SLED created the program known as the Retirement/Rehire program. Chief Stewart and SLED then created a uniform series of forms that could be used by persons who were interested in becoming working retirees. Stewart Aff. Par. 11.<sup>4</sup>

**B. The Retirement/Rehire program for SLED working retirees, starting after July 1, 2002.**

The Affidavit of former SLED Chief Robert M. Stewart sets forth in detail the entire process under which Plaintiffs retired and rehired. Stewart Aff. Par. 13. In summary, what happened was that starting in the late summer or fall of 2002 (shortly after the salary caps were eliminated), if a SLED agent wished to retire and seek to become a working retiree, he would first advise Chief Stewart that would be retiring on a date specified in the retirement notice form.

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<sup>4</sup> In the prior fiscal year, 2001, the General Assembly had provided for agencies to offer certain voluntary retirement incentives. As discussed below, this option was similar in some ways to the SLED Retirement/Rehire program, but it applied only to persons who applied for it in 2001. Plaintiffs were not among that group.

Exhibit 1 to Stewart Affidavit.<sup>5</sup> The individual, in signing the form, noted the existence of certain conditions "if I wish to apply to be rehired," and "if I am selected to be rehired. . . ." *Id.* (Emphases added). At that point, the individual was completely retired and separated from employment with SLED, which had no obligation to rehire the individual. Stewart Aff., Par. 22. *Ahrens, supra*. Indeed, Chief Stewart advised each person considering retirement and rehire not to do so "unless they were ready to retire immediately and permanently." Stewart Aff., Par. 15.

If a retired employee sought to be rehired, he would then would fill out a form in which he requested Chief Stewart to rehire him. Exhibit 2 to Stewart Affidavit. The form expressed the agent's understanding that that if rehired,

. . . . the following provisions apply and I agree to them:

**Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).<sup>6</sup>**

Accrual of annual and sick leave at current rate.

**Salary: 13.6% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.**

Employment not to exceed 48 months.

No lump sum payment for annual leave upon second separation.

Review date: twelve months after date of rehire.

No probationary period.

Must apply to this agency and receive permission to reenter retirement system as an active member.

Exhibit 2 to Stewart Affidavit (emphases added).<sup>7</sup>

<sup>5</sup> Exhibits 1 through 4 to the Stewart Affidavit are the forms for Plaintiff Grimsley. Exhibits 5 through 8 are the corresponding forms for Plaintiff Jowers.

<sup>6</sup> *S.C. Code Ann.* § 8-17-370(16) exempts PORS working retirees such as Plaintiffs from coverage under the state personnel grievance process. That section was enacted as part of Act No. 356 of 2002, the same statute that removed the earnings limitation for PORS working retirees.

The third step in the process was that the SLED Director of Human Resources advised the employee that his request to return to employment had been approved, "based on your written acceptance of the following provisions." Exhibit 3 to Stewart Affidavit. Among the conditions stated in that form was the following:

Your salary will be \$45,702 (previous base salary less 13.6%), no longevity pay, additional reduction by cost of health insurance to agency if elected.<sup>8</sup>

(Emphasis added.) As the then-Director of Human Resources, Lynn Hutto, testified at her deposition, "They came back at a brand new salary. . . ." Hutto deposition, 43: 12.

The fourth and final form was informational. It was labeled "Employee Orientation for Re-Employment under the PORS Retirement Provisions." Exhibit 4 to Stewart Affidavit. This form contained a statement by SLED to the employee that

As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed of your benefits and employment status.

Plaintiffs each signed this form at the bottom. *Id.* The form there stated "My signature below indicates that the above checked items were discussed with me during orientation." *Id.* This sentence was followed by a signature line.

The items listed in the informational form were essentially the same as those quoted above. The "Salary" bullet point referenced the same "reduction of 13.6% in your salary," noting that that reduction was "to cover the amount it will cost SLED to pay the employer portion of retirement." (This recitation did not appear in the previous two forms that referenced the salary

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<sup>7</sup> The employer contribution for PORS members had been 10.3% of salary prior to July 1, 2004, at which time it increased to 13.6%.

<sup>8</sup> The salary figure in the quoted exhibit is the specific number applicable to Plaintiff Grimsley. This figure varied by employee.

reduction of 13.6%, instead only appearing in the fourth form, an informational document.) The employees had already agreed, by executing the second form, to accept a 13.6% salary reduction, with no reason given by SLED for that specific percentage (nor any need for one). Finally, the fourth form mentioned that the employee contribution of 6.5% would no longer be deducted from the salary check. The reason for this was that the employee, as a retiree, was no longer required at the time to pay the employee contribution.<sup>9</sup>

Once all four forms had been executed, the employees returned to work, collecting their both their new salaries (13.6% less than before retiring) from SLED and their full retirement from the PORs. In the case of Plaintiff Grimsley, his pre-retirement salary had been \$52,896. In 2005, the first full year after his retirement, his SLED salary was \$48,318.00, and his PORs retirement benefit was \$33,158.04, for a total of \$81,472.04. Stewart Affidavit, Paragraph 20 and Exhibit 9.<sup>10</sup> In other words, his combined income as a working retiree was more than half again the amount of his preretirement income.

**C. Payment Of The Employer Contribution By SLED And Absence Of A Deduction Of The Employer Contribution From The Employees' Salaries.**

Because Plaintiffs' claims pertain to the employer contribution, it is appropriate to provide some brief amount of background concerning the nature of the employer contribution and the mechanics of how it operates. This information is found primarily in the Affidavit of Donald R. Royal.

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<sup>9</sup> This changed effective July 1, 2005, when the General Assembly amended §9-11-90(4)(c) to require working retirees to pay the employee contribution even though they were retired. This amendment was upheld in *Layman v. State*, 368 S.C. 631, 630 S.E.2d 265 (2006) as to employees generally, and in *Ahrens, supra*, as to certain employees who claimed that the State had created rights in them by contract or estoppel.

<sup>10</sup> Plaintiff Jowers did not produce his tax forms for 2005, but he also unquestionably would also have had a greater total take-home amount after retirement and rehire.

At the outset, it should be reiterated that there is no doubt that SLED did pay the employer contribution for these Plaintiffs, just as it has done for all of its employees at all times. Stewart Aff. Par. 17; Royal Aff. Par. 16; Kitchens Aff. Par. 6 & 7. Plaintiffs do not contend otherwise, nor could they reasonably do so.

The employer contribution, as its name would indicate, is paid by the employer, not by the employee. In fact, the PORS statute requires that it be paid by the employer. Section 9-11-220(1) provides that

(1) Commencing as of July 1, 1974, each employer shall contribute to the System seven and one-half percent of the compensation of Class One members in its employ and ten percent of compensation of Class Two members in its employ. Such rates of contribution shall be subject to adjustment from time to time on the basis of the annual actuarial valuations of the System.<sup>11</sup>

(Emphasis added.)

The employer contribution is paid periodically in a lump sum that is equal to the appropriate percentage (13.6% in 2004) of the total salary amount actually paid. The remittance is a periodic lump sum payment of the appropriate employer contribution percentage (13.6% in 2004) of that total salary amount. It is not itemized on an employee-by-employee basis.<sup>12</sup> Royal Aff. Par. 12.

In addition, as set forth in more detail in the Royal Affidavit, the employer contribution to the Police Officers' Retirement System, like all fringe benefits in state government, is not

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<sup>11</sup> In 2004, when Plaintiffs retired, the rate for the employer contribution had been adjusted upward from the 7.5% in the statute to the 13.6% referenced earlier. As noted earlier, the 13.6% figure took effect on July 1, 2004. Immediately prior to that it had been 10.3%.

<sup>12</sup> At the time of the Hutto deposition in 2009, and earlier, SLED made this lump sum remittance on a quarterly basis. See Exhibit 20 to Hutto Dep. Beginning in 2010, the lump sum payment of the employer contribution was made automatically at each semimonthly pay period. There was no change in the nature of the lump sum payment as a specific percentage of payroll, which was over and above the amount paid as salary to the employees.

included within the salary of the employee, and therefore is not deducted from the salary of the employee. Royal Aff. Par. 8. Instead, it is paid from the fringe benefit amount appropriated to the agency. Royal Aff. Par. 8. For SLED, the fringe benefit amount for the employees is approximately 35% over and above the employees' salary amounts. *Id.*, Par. 7. The employees never see this amount reflected in their salary information, because it is not part of their salaries. In addition to the employer contribution to the Retirement System, the total amount of fringe benefits includes such things as employer contributions for workers' compensation, health insurance, and for other similar fringe benefits. *Id.*, Par. 9. Most state employees probably have no idea how much is paid by their employers for these various employer contributions, nor are these specific amounts really a matter of concern for the employees, because these amounts are governed by law and are over and above the figure that actually is of concern to the employees, that is, their salaries.

As might be expected from the nature of the employer contribution and the manner in which it is remitted by the employer, there is simply no such thing as "having the employer contribution deducted from [employees'] salaries," as Plaintiffs allege. *See* Royal Aff. Par. 8. In fact, again as might be expected, the postretirement pay stubs of the Plaintiffs reflect no deduction at all for retirement, given that (a) in 2004, retirees did not pay an employee contribution, and (b) the pay stub would never reflect a deduction for the employer contribution, since that amount was never deducted from salary, but rather was paid by the employer as part of benefits over and above salary. *See* Kitchens Aff. Par. 6 and 7. SLED simply decided to use the percentage figure of the preretirement employer contribution as a uniform measure of the salary

reduction and of the amount of cost savings as a result of the rehire process. See Stewart Aff., Par. 18.<sup>13</sup>

**D. Specific Facts Pertaining to Plaintiffs Grimsley and Jowers.**

Plaintiffs Jowers and Grimsley retired on June 1, 2004 and June 30, 2004, respectively. The financial advantage to them of the terms of their retirement was substantial, as the numbers above for Plaintiff Grimsley would indicate.

While Plaintiffs, after being rehired, were at-will employees who could have been terminated at any time in SLED's sole discretion, both of them were in fact permitted to continue in their employment for the entire 48-month period mentioned in the documents above. Kitchens Aff., Par. 8. (Section 9-11-90(4)(a) provided that the 48-month period was the maximum period for which a working retiree could work without his status changing.) On April 29, 2008 and June 2, 2008, when Plaintiffs Jowers and Grimsley were nearing the completion of 48 months of employment as working retirees, they each were informed in letters from then-Director Lloyd that their employee status would terminate on July 1, 2008 and June 16, 2008, respectively, that is, at the end of 48 months. Kitchens Aff., Par. 8 and Ex. 2 and 3. They were informed about opportunities for part-time work. *Id.*

In December 2008, four and a half years after they were rehired as working retirees, Plaintiffs Grimsley and Jowers filed the present action.

**CONCLUSIONS OF LAW**

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<sup>13</sup> By way of illustration, the employer contribution for Plaintiff Grimsley of 13.6% of his preretirement salary of \$52,896 would have been approximately \$7,200. The employer contribution on his reduced salary upon rehire (13.6% of \$48,318) was about \$6,600, just \$600 less than it had been for the preretirement salary. The total salary reduction had been about \$4,600. SLED therefore saved all of the salary reduction of \$4,600, as well as an additional \$600 in benefits, i.e., the amount by which the employer contribution was reduced. The \$4,600 accordingly was available for salaries for other employees. See, Royal Aff. Par. 8; Stewart Aff. Par. 21.

1. **Plaintiffs' claims have no basis in fact, because the employer contribution was never deducted from their salaries, as they claim, nor were they required to pay the employer contribution themselves.**

In light of the undisputed facts set forth above, it is clear that Plaintiffs' claims are lacking in merit. Their claim that SLED violated § 9-11-90 by "having the employer contribution deducted from [their post-retirement] salaries," Complaint, Par. 27, is simply not factual. There can be no reasonable dispute that there was no salary DEduction for the employer contribution. Plaintiffs instead agreed to a salary REduction. This claim as stated in the Complaint is therefore incorrect as a matter of fact.

The claim of Plaintiffs that SLED violated § 9-11-90 by "having the [Plaintiffs] pay the employer contribution" is also not factual. SLED, and not the Plaintiffs, unquestionably paid the employer contribution. *See, e.g., Royal Aff. Par. 16.*

Plaintiffs' claim fares no better if viewed as one that the employees were wrongfully required, as a condition of their employment, to have the amount of the employee contribution "deducted" from their salaries. Complaint, Par. 27. They did agree to come back as working retirees at reduced salaries, but the fact that this occurred does not state a legal claim. There is nothing in § 9-11-90 that requires them to be rehired at all. To reiterate once again what was held in *Ahrens, supra*, the return of a working retiree to the employment from which he retired "was conditioned on whether an employer in the system chose to hire that employee." 392 S.C. at 351-352, 709 S.E.2d at 60. Given that there was no right at all to return to work after retirement, there was obviously no violation of any right of Plaintiffs by requiring them to agree to a reduction in salary as a condition of returning to work. SLED could have conditioned Plaintiffs' return to work on their taking a salary reduction of between 0% and 100%. If Plaintiffs found the rehire salary unacceptable, which they obviously did not, they could have

declined to return to work. The fact that the relatively small percentage chosen by SLED was 13.6%, the same as the employer contribution on their old salary, was of no significance to any right of the Plaintiffs.<sup>14</sup>

Plaintiffs have effectively already conceded this. As the Supreme Court held in the appeal from the grant of the State's motion to dismiss, "[Plaintiffs] do not claim they are entitled to a particular salary level." 396 S.C. at 284, 721 S.E.2d at 427. Instead, the Court held, Plaintiffs "have asserted a cognizable property interest rooted in state law sufficient to survive the motion to dismiss." 396 S.C. at 285, 721 S.E.2d at 428 (emphases added). In so holding, the Court cited *Rydde v. Morris*, 381 S.C. 643, 646 675 S.E.2d 431, 431 (2009), which held that in reviewing a dismissal of a case on a Rule 12(b)(6) motion to dismiss, the court is "required to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiffs to relief on any theory of the case." (Emphasis added.) However, as already shown, the "facts alleged" and the actual facts are entirely different. There was no deduction from the Plaintiffs' salaries, only a reduction. As a result, now that the facts have been shown to be substantially different from those alleged in the Complaint, it is apparent that Plaintiffs' claim based on an alleged violation of § 9-11-90 is without merit.

The primary contention of Plaintiffs, set forth at pp. 4-6 of their Memorandum submitted to the Court, is based on a complaint about what they claim SLED did with the money that had

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<sup>14</sup> As noted above, Plaintiffs' agreement to accept the 13.6% figure was made in the second of the four documents that were part of the process. Exhibits 2 and 6 to Stewart Affidavit. Those documents did not state a reason for using the 13.6% figure, nor did they need to. Plaintiffs were obviously agreeable to being rehired with a 13.6% salary reduction and full retirement benefits. The only reference to that percentage as covering the employer contribution did not come until the fourth document in the series, which was merely informational. Exhibits 4 and 8 to Stewart Affidavit.

been part of their salary prior to their entirely voluntary retirement. Clearly, however, once Plaintiffs unconditionally retired, they no longer had a legally protected right or interest with regard to what SLED did with the money that had funded their former salaries during their original period of employment. Their post-retirement salaries were completely unrelated, as a matter of law, to their pre-retirement salaries. As the former SLED Director of Human Resources, Lynn Hutto, testified at her deposition, "They came back at a brand new salary. . . ." Hutto deposition, 43: 12.

Plaintiffs make the factually unsupported claim that SLED "misappropriates monies due the retirement system. . . ." Pl. Br. at 2. While the Court concludes below that SLED properly complied with pertinent provisions of law that govern appropriations, the first reason why Plaintiffs' claim lacks merit is that once they left their SLED employment, their departure eliminated any legal standing they may have had to make claims pertaining to the appropriations process as applied to the disposition of the funds that in the past had paid their salaries and benefits. As the Supreme Court very recently held in *Freemantle v. Preston*, \_\_\_ S. C. \_\_\_, 2012 WL 2412040 (2012), reiterating general principles pertaining to standing, "[A] private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom." 2012 WL 2412040 at \*2. When Plaintiffs retired, they completely separated themselves from state employment, with no right to be rehired at all. Under these circumstances, Plaintiffs simply no longer had any interest at all in the manner in which SLED spent the funds that had previously been part of their salaries or fringe benefits during their pre-retirement period of employment. In the language of *Freemantle, supra*, they "sustained . . . no prejudice" from any SLED actions

pertaining to their former salaries after they had retired and then voluntarily returned to work with different salaries.

While Plaintiffs clearly have no standing to assert any claims regarding SLED's use of their former salaries, the Court would note that based on the undisputed facts set forth in affidavits and the applicable law, Plaintiff's claims are without factual or legal merit in any event. Plaintiffs assert that "SLED gets money for a specific purpose and then spends it for another purpose." Pl. Br. at 5. Factually, this is incorrect. As set forth in Paragraph 8 of the Royal Affidavit, money appropriated for benefits was used at all times to pay benefits, including the employer contribution, and money appropriated for salaries was used at all times to pay salaries. Plaintiffs have not provided any evidence to the contrary.<sup>15</sup>

Even if this claim by Plaintiffs had been factually supported, which it was not, it appears to be based only on *S.C. Code Ann.* § 11-9-10, which provides that

It shall be unlawful for any monies to be expended for any purpose or activity except that for which it is specifically appropriated, and no transfer from one appropriation account to another shall be made unless such transfer be provided for in the annual appropriation act.

(Emphasis added.) The short answer to Plaintiffs' conclusory claim in this regard is that the Appropriations Acts in the pertinent fiscal years contained a provision permitting agencies to transfer appropriations. *See, e.g.*, 2004-2005 Appropriations Act, Part 1B, § 72.10 (agencies and authorized to transfer appropriations of up to 20% of program budget within programs and

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<sup>15</sup> Plaintiffs assert that § 9-11-90 "requires the employer to 'pay to the system the employer contribution for active members prescribed by law with respect to any retired member. . . and that "working retirees such as Plaintiffs must be treated the same way as other employees with regard to employer retirement contributions." Pl. Br. at 5. As indicated above, to the extent that this could possibly matter to these Plaintiffs, the answer to it is that SLED paid the employer contribution for them from the appropriation for benefits, just as in the case of employees who are not working retirees.

within the agency). While no such transfers occurred in fact, they would have been authorized had they occurred.

Plaintiffs once again misapprehend the facts when they state that SLED is paying the employer contribution from "the withheld wages of Plaintiff[s]." Pl. Br. at 6. Again, however, as has been made clear above, there simply is not any "withholding of wages" from the Plaintiffs for the employer contribution. There was only a reduction in salaries after rehire.

**2. The facts of this case show that Plaintiffs lack a property interest.**

In *Grimsley*, the Supreme Court noted that Plaintiffs "assert a violation of S.C. Code Ann. section 9-11-90." 396 S.C. at 284, 721 S.E.2d at 427. The Court then noted that Plaintiffs "contend that they have a cognizable property interest in the percentage of their salary that was deducted in violation of section 9-11-90," *Id.* The Court concluded that "section 9-11-90 provides a basis to assert a property interest. Specifically, Appellants' takings claim is predicated on their entitlement to retain the percentage of their salary—13.6%—that was used to pay the employer portion of the retirement contributions. It follows that Appellants are able to point to a property interest rooted in state law." 396 SC at 285, 721 S.E.2d at 428.

As already mentioned above, this discussion by the Court was couched in terms of review of the granting of a motion to dismiss, accepting all factual assertions in the complaint as true. However, as the facts show, no "percentage of their salary was deducted." For the same reason, their salary upon rehire was not "used to pay the employer portion of the retirement contributions." As a result, even if the facts as pled had been sufficient to show that a property interest existed, the facts as proven have shown otherwise. The Court would also reiterate that *Ahrens, supra*, held that there was no right to return to work as a working retiree.

3. **Even if § 9-11-90 created a property interest in Plaintiffs in the amount of the employer contribution, Plaintiffs voluntarily waived and relinquished any such interests when they voluntarily returned to work at reduced salaries.**

It is axiomatic that constitutional rights may be voluntarily waived, as indicated, for instance, by every case upholding a guilty plea. *See, e.g., Hyman v. State*, 397 S.C. 35, 723 S.E.2d 375, 379 (2012)(by pleading guilty, “accused . . . waives the right to trial and the incidents thereof and the constitutional guarantees with respect to criminal prosecutions”). The permissibility of a waiver applies all the more strongly in a situation involving the lesser alleged right to a fraction of a public salary.

The documents submitted to the Court show that Plaintiffs freely, and one may assume, enthusiastically, agreed to retire and be rehired at a salary that was 13.6% less than their pre-retirement salary. Again, the “Request to be Rehired” form stated in part as follows:

I understand that if [rehire] does occur, the following provisions apply and I agree to them:

\* \* \*

Salary: 13.6% less than previous base salary. . . .

Exhibits 2, 6 (Emphases added). It is difficult to see how one could more clearly agree to be rehired at a reduced salary. Accordingly, even assuming Plaintiffs had some kind of property interest, it was waived, and as already indicated above, the waiver was to their great advantage.

Plaintiffs attempt to argue that their voluntary retirement and subsequent rehire at a different salary constituted an agreement “in violation of statutory or constitutional law.” Pl. Br. at 9. Again, however, even if a constitutionally-protected property interest had been present, Plaintiffs have suggested no reason why such interest could not be validly waived by them, especially when the resultant change in total money received after retirement was so clearly to their benefit. Nor is there any violation of statutory law. As shown repeatedly above, the employer contribution was paid by SLED and not deducted or withheld from the postretirement

salaries. Plaintiffs also contend that their agreements were unenforceable "illegal contracts" that violate public policy. *Id.* To the contrary, the General Assembly has in recent years endorsed the idea of permitting retirees to return to work while collecting full retirement benefits and with a reduction in the amount paid by agencies for salaries.<sup>16</sup> See, for instance, Act No. 291 of 2010, Part 1B, Section 89.144 (GP: Cost Savings When Filling Vacancies Created by Retirements). The most recent reiteration of this proviso is found in the 2012-2013 Appropriations Act, Part 1B, Section 89.89. In those annual provisos, the General Assembly has mandated that whenever classified FTE positions become vacant because of employee retirements, the vacant positions must be managed so that in the aggregate, there should be a cost savings of 25% when managing those positions. This is the same general cost savings approach that was part of the Retirement/Rehire program, except that now, the mandated percentage reduction for managing the filling of the vacancies is 25%, instead of the 13.6% reduction that was applied to Plaintiffs Grimsley and Jowers.

#### **4. The statute of limitations issue**

While the foregoing discussion has centered on the merits of Plaintiffs' claims, it is argued by SLED that it is actually not necessary for the Court even to consider the merits. As Plaintiffs' claims if meritorious or not, were brought well over three years after their accrual and therefore could be barred by the applicable statute of limitations. However, I do not reach that conclusion as it could be held that the statute commences to run anew with each check presented.

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<sup>16</sup> As noted above, however, the General Assembly by the enactment of Act No. 278 of 2012 has restored an earnings cap of \$10,000 on most PORs members who retire prior to the age of fifty-seven. While this does not affect these plaintiffs, they would not even have been eligible to retire and be rehired at their former salaries if they were younger than 57 when they retired in 2004.

SLED argues the Doctrine of Laches bars Plaintiffs' claims; however, I feel that if the case were to go forward this issue should be presented at trial as a factual dispute exist.

**6. For the reasons already cited, Plaintiffs are now estopped from asserting their present claims.**

The facts presented to me support the affirmative defense that Plaintiffs are now estopped from asserting their present claims. Having accepted four years of benefits pursuant to the program that permitted them to retire and return to work, Plaintiffs cannot now claim that SLED's actions harmed them. Instead, such a late assertion of alleged rights to their old salaries would harm SLED if permitted, because SLED would be required to find funding to pay Plaintiffs' salary differentials for the entire four-year period in which Plaintiffs uncomplainingly participated in the program. The general rule pertaining to estoppel in South Carolina has been stated as follows:

The principle of estoppel in equity stands upon the very foundations of right and fair dealing. It considers and weighs the conduct of men in their dealings with each other, and gives that effect ... to their actions which ... justice dictate[s].” It arises when a person, in reliance on what another has done or said, changes position to his detriment and the other person then attempts to repudiate or evade the consequences of his action or speech.

*Russell v. Drivers Leasing Services, Inc.*, 282 S.C. 358, 361, 318 S.E.2d 579, 581 (Ct. App. 1984). This is a fair description of Plaintiffs' actions in this case, and as a result, they should be held to be estopped from asserting their present claims, in addition to the other reasons stated herein as to why those claims should fail.

**7. Plaintiffs' consent to the terms of the Retirement/Rehire program bars their present claims.**

Still another reason why Plaintiffs' claims are barred is the simple reason that Plaintiffs unequivocally consented to the arrangement under which they were rehired. It is axiomatic that consent can serve as a defense to numerous acts that might otherwise be held tortious, such as

assault, trespass or invasion of privacy, among many others. See, e.g., *Hawkins By and Through Hawkins v. Multimedia, Inc.*, 288 S.C. 569, 571, 344 S.E.2d 145, 146 (1986) (“Consent may be found where the evidence shows a voluntary agreement to do something proposed by another, and the party consenting possesses sufficient information and ability to make an intelligent choice”). Here there can be no question that Plaintiffs freely and readily agreed to participate in the Retirement/Rehire program, with no suggestion of lack of information or ability to make an intelligent choice. The choice Plaintiffs made was a very intelligent one, and no doubt one that they would make again if they had been given the opportunity to do so. Their consent bars this action.

**8. Matters raised in the affidavits of Plaintiffs.**


Plaintiffs’ respective Affidavits dated May 22, 2012, contain several inaccuracies or other matters not specifically discussed above. First, they appear to suggest that their retirement and rehiring took place pursuant to a 2001 program referenced in Exhibit A to both affidavits. However, and as shown in detail in the Reply Affidavit of Robert Stewart, that program was completely different from the program under which Plaintiffs retired and were rehired. Among other things, the 2001 program required employees to elect to participate in that program by September 15, 2001, which clearly did not occur for these Plaintiffs, who retired in 2004.

Both Plaintiffs refer to the fact that a year after they retired, certain cost of living raises they received starting on July 1, 2005 were reduced by the same approximate percentage of 13.6% (or 13.55%) as had been applied when they were rehired a year earlier. SLED points out however, that (a) this happened only in mid-2005, and not in the remaining years of Plaintiffs’ four years of service as working retirees (Kitchens Reply Affidavit), and (b) it occurred more than three years before this action was brought, and therefore that issue is time-barred.

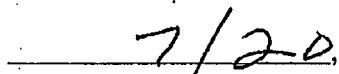
**CONCLUSION**

For the foregoing reasons, the Court concludes that SLED's Motion for Summary Judgment should be granted, Plaintiffs' Motion for Summary Judgment should be denied, and that this action should be, and hereby is, dismissed with prejudice in all respects.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
J. Ernest Kinard, Jr.  
Circuit Court Judge,  
Fifth Judicial Circuit

 \_\_\_\_\_, South Carolina

 \_\_\_\_\_, 2012



**JURISDICTION AND VENUE**

5. Jurisdiction and venue are proper in the instant case under Article V, § 11, of the South Carolina Constitution and South Carolina Code Annotated § 14-1-80.

**PLAINTIFF CLASS**

6. Plaintiffs Phillip D. Grimsley, Sr., and Roger M. Jowers (hereinafter "SLED Retiree Plaintiffs") bring this action on behalf of themselves and, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure, as representatives of a class defined as follows:

All persons currently or previously employed by the South Carolina Law Enforcement Division who participated in an internally created retirement plan who retired and returned to employment and had the amount SLED was statutorily obligated to pay to the state retirement system (employer portion) deducted from their salary.

7. Individually named SLED Retiree Plaintiffs are all state employees who retired and returned to work for SLED pursuant to the SLED Retirement Program.

8. Upon retiring and returning to work, the SLED Retiree Plaintiffs and the Plaintiff class had the amount it cost SLED to pay the employer portion of retirement deducted from their salaries. See Attachment A.

9. Members of the plaintiff class are so numerous as to make joinder of all members impracticable.

10. There are questions of law and fact that are common to SLED Retiree Plaintiffs and to all members of the Plaintiff Class; and these questions predominate over questions, if any, that may affect only individual plaintiffs or individual members of Plaintiff Class inasmuch as the unlawful and unconstitutional activity alleged herein is of a character that is generally applicable to the SLED Retiree Plaintiffs and Plaintiff Class members. Among the questions of law and

fact common to SLED Retiree Plaintiffs and the Class they represent are:

- (a) Whether the SLED Retirement Program violates S.C. Code Ann. §9-11-90;
- (b) Whether the SLED Retirement Program is an unconstitutional taking of SLED Retiree's property or an unconstitutional taxing of SLED Retirees;
- (c) Whether the SLED Retirement Program violates SLED Retiree Plaintiffs' due process rights under the South Carolina and United States Constitutions.

11. SLED Retiree Plaintiffs' claims are typical of the claims of the members of the Plaintiff Class that they represent, as SLED Retiree Plaintiffs and members of the Plaintiff Class will lose clearly ascertainable amounts of money in excess of One Hundred Dollars (\$100.00) each by having their salaries reduced to pay the employer's portion of their retirement.

12. SLED Retiree Plaintiffs will fairly and adequately protect the interest of the Plaintiff Class that they seek to represent. The interests of the SLED Retiree Plaintiffs are coincident with, and not antagonistic to, those of the Plaintiff Class. SLED Retiree Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class action litigation.

13. Class action treatment of the matters at issue in this controversy is superior to the alternatives, if any, for the fair and efficient adjudication of such issues, because such treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would entail. Class action treatment in this case will have the added virtue of permitting the adjudication of what may be relatively small claims by certain members of the Plaintiff Class, for whom it would otherwise not be financially feasible to litigate their claims as individual actions against the Defendants.

14. As to each class member, the amount in controversy exceeds One Hundred Dollars (\$100.00), and/or the action is one for declaring a state action unconstitutional.

15. SLED Retiree Plaintiffs are aware of no difficulty in the management of this action that would preclude it from being maintained as a class action.

#### GENERAL ALLEGATIONS

16. SLED Retiree Plaintiffs are all current or former employees of the State Law Enforcement Division and were not participants in the TERI program.

17. SLED Retiree Plaintiffs all retired from the State Law Enforcement Division and returned to work for the State Law Enforcement Division pursuant to the SLED Retirement Program.

18. SLED Retiree Plaintiffs were members of the Police Officers Retirement System. The employer's contribution to the Police Officer Retirement System is established by S.C. Code Ann. §9-11-220.

19. SLED's obligation to pay the employer's contribution to the retirement system when a member of the Police Officers Retirement System retires and returns to employment is established by S.C. Code Ann. §9-11-90:

“An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer, regardless of whether the retired member is a full-time or part time employee or a temporary or permanent employee.”

20. SLED Retiree Plaintiffs were advised SLED had created an internal program that would allow them to retire and return to employment.

21. In order to participate in the program, SLED Retiree Plaintiffs had to retire from SLED and separate from employment for a period of time equal to their annual leave payout, but not less than fifteen days. SLED Retiree Plaintiffs then had to request to be rehired by SLED as a

full time employee with no grievance rights or reduction in force rights and the term of employment could not exceed forty-eight months.

22. SLED Retiree Plaintiffs were advised by SLED that they would "have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement." See Attachment A.

23. In order to participate in the SLED Retirement Program, SLED Retiree Plaintiffs were required to pay the employer contribution to the retirement system from their own salary.

**FOR A FIRST CAUSE OF ACTION**  
**(Violation of S.C. Code Ann. §9-11-90)**

24. The allegations of the preceding paragraphs above are incorporated herein by reference as if set forth herein verbatim.

25. S.C. Code Ann. §9-11-90 allows a retired member of the Police Officers Retirement System to retire for 15 days and be rehired to employment without affecting the monthly retirement allowance the member receives from the System.

26. Pursuant to this statute, SLED was required to pay to the retirement system the employer contribution for active members for any retired member engaged to perform services for SLED.

27. SLED violated this statute by having the employer contribution deducted from SLED Retiree Plaintiffs' salaries as a condition of being rehired and having the SLED Retiree Plaintiffs pay the employer contribution.

28. SLED Retiree Plaintiffs have suffered damages as a direct and proximate result of the Defendants violation of this statute.

**FOR A SECOND CAUSE OF ACTION**  
**(Unlawful Taking or Unconstitutional Taxing)**

29. The allegations of the preceding paragraphs above are incorporated herein by reference as if set forth herein verbatim.

30. The SLED Retirement Program required SLED Retiree Plaintiffs to pay the employer's portion of retirement to the retirement system.

31. The SLED Retirement Program oppressively, arbitrarily, capriciously and unreasonably deprives SLED Retiree Plaintiffs of their property and/or vested entitlement.

32. The SLED Retirement Program violates the protections afforded all citizens against unlawful takings or taxings contained in both the United States and South Carolina Constitutions.

33. The unlawful takings or unconstitutional taxings violated the due process rights of the SLED Retiree Plaintiffs.

34. The application of the SLED Retirement Program to SLED Retiree Plaintiffs constitutes a violation of SLED Retiree Plaintiffs' due process rights, an unconstitutional taking, an unconstitutional taxing, and Defendants should be estopped and/or enjoined from applying the SLED Retirement Program to SLED Retiree Plaintiffs.

**FOR A THIRD CAUSE OF ACTION**  
**(Declaratory Judgment)**

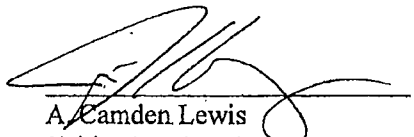
35. The allegations of the preceding paragraphs above are incorporated herein by reference as if set forth herein verbatim.

36. This cause of action seeks a declaratory judgment pursuant to S.C. Code Ann. §15-53-10 *et. seq.* and Rule 57, South Carolina Rules of Civil Procedure, for the purposes of determining a question of actual controversy between the parties.

37. There exists an actual dispute within the parties as to the validity of the conduct of Defendants in forcing the SLED Retiree Plaintiffs to pay the employer contribution to the retirement system.

38. A declaratory judgment defining the rights, privileges and duties of and between the parties is appropriate pursuant to South Carolina Code § 15-53-10, *et seq.* It is specifically requested that the Court declare the Defendants' actions a violation of the statutory and common law of South Carolina; that this Court declare Defendants must disgorge to Plaintiffs and the Plaintiff Class wages wrongfully withheld; and that this Court declare Plaintiffs and Plaintiff Class are entitled to interest on all such wages.

WHEREFORE, SLED Retiree Plaintiffs pray for an Order from this Court certifying the Class; declaring the actions of Defendants are a violation of the rights of SLED Retiree Plaintiffs and the Class; requiring Defendants to disgorge the wages wrongfully withheld with interest; and estopping and/or enjoining Defendants from requiring SLED Retiree Plaintiffs from paying the employer portion of retirement; together with attorneys' fees and costs of this action, and such further relief as the Court deems just and appropriate.



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Attorneys for the Plaintiffs

December 16, 2008

Columbia, South Carolina

# Exhibit A

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION



MARK SANFORD  
Governor

ROBERT M. STEWART  
Chief

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT

## EMPLOYEE ORIENTATION FOR RE-EMPLOYMENT UNDER THE PORS RETIREMENT PROVISIONS

As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed on your benefits and employment status.

- **EMPLOYMENT STATUS:** You will be an AT-WILL employee. (AT-WILL means that you can be separated from employment at any time for cause or for no cause.) You have no grievance or reduction in force (RIF) rights. You are eligible for all other rights of any permanent employee.
- **SALARY:** You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5% employee portion of retirement will no longer be deducted from your check. \$39,828
- **INSURANCE:** You have the election to enroll in the insurance under SLED or continue coverage on the retiree group. If you elect to come under SLED's insurance your salary will be decreased by the amount of the state's portion of the premium.
- **LEAVE:** You will accrue leave at the same rate you were accruing when you left employment. Your accrual rate was 21.50. You will begin accruing in the month of AUGUST. You will begin with a zero balance of sick and annual leave. You will not receive a pay out of annual leave at your second termination. You must complete leave slips for leave taken.
- **TIME AND ATTENDANCE:** If you are a non-exempt employee you must complete time and attendance sheets (Dailies). If you are currently completing a time sheet as a temporary employee and are going into an exempt position, you will discontinue completing the time sheets on \_\_\_\_\_.
- **DEDUCTION CHANGES:** If you wish to make any deduction changes now that you are a permanent employee, you must complete a P-4 withholding form.

My signature indicates that the above checked items were discussed with me during orientation.

[Signature]  
Employee Signature

\_\_\_\_\_  
Social Security Number

07-19-2004  
Date



An Accredited Law Enforcement Agency  
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)  
896-7041

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 South Carolina Law Enforcement )  
 Division and the State of South Carolina, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 South Carolina Law Enforcement )  
 Division and the State of South Carolina, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

ANSWER OF DEFENDANT  
 SOUTH CAROLINA LAW ENFORCEMENT  
 DIVISION

Defendant South Carolina Law Enforcement Division, answering the Complaint herein, alleges the following:

**FOR A FIRST DEFENSE**

1. Defendant South Carolina Law Enforcement Division denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.
2. Paragraphs 1 and 2 are admitted on information and belief.
3. Answering Paragraph 3, it is admitted that Plaintiffs were employed by SLED, retired from that employment, and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired."
4. Paragraph 4 is admitted.
5. The allegations of Paragraph 5 set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

6. The allegations of Paragraph 6 are merely descriptive of this action and of the purported class that Plaintiffs are seeking to have certified, and require neither admission nor denial. In addition, such allegations set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

7. Only so much of Paragraph 7 is admitted as alleges that the two named Plaintiffs are or were state employees who retired and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired."

8. Paragraph 8 is denied as stated.

9. Paragraph 9 is denied.

10. The first sentence of Paragraph 10 is denied. The second sentence of Paragraph 10 (with numbered subparts) is merely descriptive of the issues that Plaintiffs claim to be involved in this action, and therefore requires neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

11. Paragraph 11 is denied for lack of information.

12. Answering Paragraph 12, this Defendant does not deny that Plaintiff's counsel would be able to represent a class of plaintiffs if class certification were appropriate, but this Defendant denies that class certification is appropriate, particularly in view of the small number of individuals who might seek the relief sought by Plaintiffs in this action. It is denied that the interests of the two named Plaintiffs are not antagonistic to those of others who might be in a position to assert similar claims. Any remaining allegations of Paragraph 12 are denied.

13. Paragraph 13 is denied.

14. Paragraphs 14 and 15 are denied as stated.

15. Paragraph 16 is admitted only on information and belief and only with respect to the two named Plaintiffs. Any remaining allegations of Paragraph 16 are denied.

16. Answering Paragraph 17, it is admitted that the two named Plaintiffs were employed by SLED, retired from that employment, and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired." Any remaining allegations of Paragraph 16 are denied.

17. The first sentence of Paragraph 18 is admitted on information and belief with respect to the two named Plaintiffs. The second sentence of Paragraph 18 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

18. Paragraph 19 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. It is further denied that the statutory provisions cited in Paragraph 19 have any relevance to the voluntary employment program in which Plaintiffs have participated.

19. Answering Paragraph 20, it is admitted that the two named Plaintiffs received information about the possibility of voluntarily returning to work if they were to retire, subject to various conditions, but this Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of their content.

20. Paragraph 21 is denied as stated. This Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

21. Answering Paragraph 22, this Defendant would refer the Court to the entirety of Exhibit A to the Complaint, which is quoted in part in Paragraph 22, for the best evidence of the nature of the voluntary return-to-work program in which Plaintiffs elected to participate. This Defendant would refer the Court to the totality of the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

22. Paragraph 23 is denied.

23. Answering Paragraph 24, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

24. Paragraphs 25 and 26 set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

25. Paragraphs 27 and 28 are denied.

26. Answering Paragraph 29, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

27. Paragraph 30 is denied.

28. Paragraphs 31 through 34 are denied.

29. Answering Paragraph 35, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

30. Paragraph 36 is merely descriptive of Plaintiffs' Third Cause of Action, and therefore requires neither admission nor denial Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

31. Paragraph 37 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. In addition, it is denied that this Defendant has required the named Plaintiffs to pay the employer contribution to a retirement system after Plaintiffs retired and returned to work.

32. Answering Paragraph 38, it is denied that Plaintiffs are entitled to any of the relief described therein to which they claim to be entitled.

33. To the extent any allegations of the prayer for relief on p. 7 of the Complaint, attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

#### **FOR A SECOND DEFENSE**

34. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant upon which relief may be granted.

#### **FOR A THIRD DEFENSE**

35. Plaintiff has failed to exhaust all appropriate and available administrative remedies.

#### **FOR A FOURTH DEFENSE**

36. This action is barred by the Doctrine of Sovereign Immunity.

**FOR A FIFTH DEFENSE**

37. This Defendant has neither taxed nor taken property of the Plaintiffs.

**FOR A SIXTH DEFENSE**

38. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this actions.

**FOR A SEVENTH DEFENSE**

39. Plaintiffs' return to work with SLED was a purely voluntary act on their part, made with full knowledge of the terms and conditions of their return to work. In addition, the program under which they returned to work was not required by state statute.

**FOR AN EIGHTH DEFENSE**

40. This case does not meet the requirements for class certification as set forth in SCRCR Rule 23.

**FOR A NINTH DEFENSE**

41. Some or all of Plaintiffs' claims are barred by the doctrine of laches.

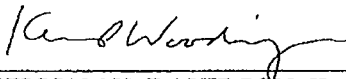
**FOR A TENTH DEFENSE**

42. Some or all of Plaintiffs' claims are barred by the applicable statutes of limitations.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendant South Carolina Law Enforcement Division prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY:



---

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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA  
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

February 18, 2009

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated, )

Plaintiffs, )

v. )

South Carolina Law Enforcement Division and the State of South Carolina, )

Defendants. )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

AMENDED ANSWER OF DEFENDANT SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Defendant South Carolina Law Enforcement Division, answering the Complaint herein, alleges the following:

FOR A FIRST DEFENSE

1. Defendant South Carolina Law Enforcement Division denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.
2. Paragraphs 1 and 2 are admitted on information and belief.
3. Answering Paragraph 3, it is admitted that Plaintiffs were employed by SLED, retired from that employment, and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired."
4. Paragraph 4 is admitted.
5. The allegations of Paragraph 5 set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

6. The allegations of Paragraph 6 are merely descriptive of this action and of the purported class that Plaintiffs are seeking to have certified, and require neither admission nor denial. In addition, such allegations set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

7. Only so much of Paragraph 7 is admitted as alleges that the two named Plaintiffs are or were state employees who retired and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired."

8. Paragraph 8 is denied as stated.

9. Paragraph 9 is denied.

10. The first sentence of Paragraph 10 is denied. The second sentence of Paragraph 10 (with numbered subparts) is merely descriptive of the issues that Plaintiffs claim to be involved in this action, and therefore requires neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

11. Paragraph 11 is denied for lack of information.

12. Answering Paragraph 12, this Defendant does not deny that Plaintiff's counsel would be able to represent a class of plaintiffs if class certification were appropriate, but this Defendant denies that class certification is appropriate, particularly in view of the small number of individuals who might seek the relief sought by Plaintiffs in this action. It is denied that the interests of the two named Plaintiffs are not antagonistic to those of others who might be in a position to assert similar claims. Any remaining allegations of Paragraph 12 are denied.

13. Paragraph 13 is denied.

14. Paragraphs 14 and 15 are denied as stated.

15. Paragraph 16 is admitted only on information and belief and only with respect to the two named Plaintiffs. Any remaining allegations of Paragraph 16 are denied.

16. Answering Paragraph 17, it is admitted that the two named Plaintiffs were employed by SLED, retired from that employment, and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired." Any remaining allegations of Paragraph 16 are denied.

17. The first sentence of Paragraph 18 is admitted on information and belief with respect to the two named Plaintiffs. The second sentence of Paragraph 18 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

18. Paragraph 19 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. It is further denied that the statutory provisions cited in Paragraph 19 have any relevance to the voluntary employment program in which Plaintiffs have participated.

19. Answering Paragraph 20, it is admitted that the two named Plaintiffs received information about the possibility of voluntarily returning to work if they were to retire, subject to various conditions, but this Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of their content.

20. Paragraph 21 is denied as stated. This Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

21. Answering Paragraph 22, this Defendant would refer the Court to the entirety of Exhibit A to the Complaint, which is quoted in part in Paragraph 22, for the best evidence of the nature of the voluntary return-to-work program in which Plaintiffs elected to participate. This Defendant would refer the Court to the totality of the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

22. Paragraph 23 is denied.

23. Answering Paragraph 24, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

24. Paragraphs 25 and 26 set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

25. Paragraphs 27 and 28 are denied.

26. Answering Paragraph 29, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

27. Paragraph 30 is denied.

28. Paragraphs 31 through 34 are denied.

29. Answering Paragraph 35, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

30. Paragraph 36 is merely descriptive of Plaintiffs' Third Cause of Action, and therefore requires neither admission nor denial Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

31. Paragraph 37 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. In addition, it is denied that this Defendant has required the named Plaintiffs to pay the employer contribution to a retirement system after Plaintiffs retired and returned to work.

32. Answering Paragraph 38, it is denied that Plaintiffs are entitled to any of the relief described therein to which they claim to be entitled.

33. To the extent any allegations of the prayer for relief on p. 7 of the Complaint, attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

**FOR A SECOND DEFENSE**

34. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant upon which relief may be granted.

**FOR A THIRD DEFENSE**

35. Plaintiff has failed to exhaust all appropriate and available administrative remedies.

**FOR A FOURTH DEFENSE**

36. This action is barred by the Doctrine of Sovereign Immunity.

**FOR A FIFTH DEFENSE**

37. This Defendant has neither taxed nor taken property of the Plaintiffs.

**FOR A SIXTH DEFENSE**

38. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this actions.

**FOR A SEVENTH DEFENSE**

39. Plaintiffs' return to work with SLED was a purely voluntary act on their part, made with full knowledge of the terms and conditions of their return to work. In addition, the program under which they returned to work was not required by state statute.

**FOR AN EIGHTH DEFENSE**

40. This case does not meet the requirements for class certification as set forth in SCRCF Rule 23.

**FOR A NINTH DEFENSE**

41. Some or all of Plaintiffs' claims are barred by the doctrine of laches.

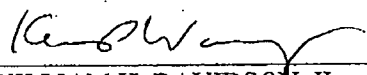
**FOR A TENTH DEFENSE**

42. Some or all of Plaintiffs' claims are barred by the applicable statutes of limitations.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendant South Carolina Law Enforcement Division prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY:

  
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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA  
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

February 23, 2009

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated, )

Plaintiffs, )

v. )

South Carolina Law Enforcement Division and the State of South Carolina, )

Defendants. )

IN THE COURT OF COMMON PLEAS

Civil Action Number: 08-CP-40-8854

**CERTIFICATE OF SERVICE**

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the **Amended Answer of Defendant South Carolina Law Enforcement Division** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 23<sup>rd</sup> day of February, 2009, addressed as follows:

A. Camden Lewis, Esquire  
Keith M. Babcock, Esquire  
W. Jonathan Harling, Esquire  
Lewis & Babcock, L.L.P.  
1513 Hampton Street  
Post Office Box 11208  
Columbia, South Carolina 29211

Richard Harpootlian, Esquire  
1410 Laurel Street  
Columbia, South Carolina 29201

John A. O'Leary  
James Walter Fayssoux, Jr.  
O'Leary & Associates, P.A.  
714 Calhoun Street  
Columbia, South Carolina 29201

J. Emory Smith, Esquire  
Assistant Attorney General  
1000 Assembly Street  
Post Office Box 11549  
Columbia, South Carolina 29211

Shelley E. Stafford

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Phillip D. Grimsley, Sr. and Roger M. )  
 Jowers, on behalf of themselves and other )  
 similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 South Carolina Law Enforcement )  
 Division and the State of South Carolina, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

AMENDED ANSWER OF DEFENDANT  
 SOUTH CAROLINA LAW ENFORCEMENT  
 DIVISION

Defendant South Carolina Law Enforcement Division, answering the Complaint herein,  
 alleges the following:

**FOR A FIRST DEFENSE**

1. Defendant South Carolina Law Enforcement Division denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.
2. Paragraphs 1 and 2 are admitted on information and belief.
3. Answering Paragraph 3, it is admitted that Plaintiffs were employed by SLED, and retired from that employment. This Defendant would further show that Plaintiffs then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired." Any remaining allegations of Paragraph 3 are denied.
4. Paragraph 4 is admitted.

5. The allegations of Paragraph 5 set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

6. The allegations of Paragraph 6 are merely descriptive of this action and of the purported class that Plaintiffs are seeking to have certified, and require neither admission nor denial. In addition, it is denied that there is anyone in the proposed class as described, because no deductions were made from their salaries as therein set forth. Finally, such allegations set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

7. Only so much of Paragraph 7 is admitted as alleges that the two named Plaintiffs are or were state employees who retired and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired."

8. Paragraph 8 is denied..

9. Paragraph 9 is denied.

10. The first sentence of Paragraph 10 is denied. The second sentence of Paragraph 10 (with numbered subparts) is merely descriptive of the issues that Plaintiffs claim to be involved in this action, and therefore requires neither admission nor denial. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

11. Paragraph 11 is denied, because there are no members of the class, as described, that Plaintiffs seek to represent. Even if the class were to be defined differently, there are

substantial differences in the situations of the individual class members that would make class certification inappropriate. Any remaining allegations of Paragraph 11 are denied.

12. Answering Paragraph 12, this Defendant does not deny that Plaintiff's counsel would be able to represent a class of plaintiffs if such a class existed and class certification were appropriate, but this Defendant denies that such a class exists and that class certification is appropriate. Moreover, the number of individuals who might seek the relief sought by Plaintiffs in this action is relatively small (probably around 75 individuals at most). It is denied that the interests of the two named Plaintiffs are not antagonistic to those of others who might be in a position to assert similar claims. Any remaining allegations of Paragraph 12 are denied.

13. Paragraph 13 is denied.

14. Paragraphs 14 and 15 are denied as stated.

15. Paragraph 16 is admitted only on information and belief and only with respect to the two named Plaintiffs. Any remaining allegations of Paragraph 16 are denied.

16. Answering Paragraph 17, it is admitted that the two named Plaintiffs were employed by SLED, retired from that employment, and then voluntarily returned to work for SLED as at-will employees under terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired." Any remaining allegations of Paragraph 17 are denied.

17. The first sentence of Paragraph 18 is admitted on information and belief with respect to the two named Plaintiffs. The second sentence of Paragraph 18 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

18. Paragraph 19 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. It is further denied that the statutory provisions cited in Paragraph 19 created any duty to the Plaintiffs.

19. Answering Paragraph 20, it is admitted that the two named Plaintiffs received information about the possibility of voluntarily returning to work if they were to retire, subject to various conditions, but this Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of their content.

20. Paragraph 21 is denied as stated. This Defendant would refer the Court to the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

21. Answering Paragraph 22, this Defendant would refer the Court to the entirety of Exhibit A to the Complaint, which is quoted in part in part in Paragraph 22, for the best evidence of the nature of the voluntary return-to-work program in which Plaintiffs elected to participate. This Defendant would refer the Court to the totality of the communications between this Defendant and the named Plaintiffs for the best evidence of the nature of the terms and conditions under which Plaintiffs voluntarily agreed to return to work after they retired.

22. Paragraph 23 is denied.

23. Answering Paragraph 24, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

24. Paragraphs 25 and 26 set forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this

Defendant would deny same and demand strict proof thereof, except that this Defendant would show that it did pay to the Retirement System all employee contributions as required by law.

25. Paragraphs 27 and 28 are denied.

26. Answering Paragraph 29, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

27. Paragraph 30 is denied.

28. Paragraphs 31 through 34 are denied.

29. Answering Paragraph 35, this Defendant reiterates and realleges each and every paragraph and affirmative defense of this Answer as if set forth herein.

30. Paragraph 36 is merely descriptive of Plaintiffs' Third Cause of Action, and therefore requires neither admission nor denial Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

31. Paragraph 37 sets forth legal conclusions which can neither be admitted or denied. Insofar as such allegations attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof. In addition, it is denied that this Defendant has required the named Plaintiffs to pay the employer contribution to a retirement system after Plaintiffs retired and returned to work.

32. Answering Paragraph 38, it is denied that Plaintiffs are entitled to any of the relief described therein to which they claim to be entitled.

33. To the extent any allegations of the prayer for relief on p. 7 of the Complaint, attempt to establish liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

**FOR A SECOND DEFENSE**

34. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant upon which relief may be granted.

**FOR A THIRD DEFENSE**

35. Plaintiff has failed to exhaust all appropriate and available administrative remedies.

**FOR A FOURTH DEFENSE**

36. This action is barred by the Doctrine of Sovereign Immunity.

**FOR A FIFTH DEFENSE**

37. This Defendant has neither taxed nor taken property of the Plaintiffs.

**FOR A SIXTH DEFENSE**

38. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this action.

**FOR A SEVENTH DEFENSE**

39. Plaintiffs' return to work with SLED was a purely voluntary act on their part, made with full knowledge of the terms and conditions of their return to work. In addition, the program under which they returned to work was not required by state statute.

**FOR AN EIGHTH DEFENSE**

40. This case does not meet the requirements for class certification as set forth in SCRCF Rule 23.

**FOR A NINTH DEFENSE**

41. Some or all of Plaintiffs' claims are barred by the doctrine of laches.

**FOR A TENTH DEFENSE**

42. Some or all of Plaintiffs' claims are barred by the applicable statutes of limitations.

**FOR AN ELEVENTH DEFENSE**

43. Plaintiffs' claims are barred, in whole or in part, by the public duty rule.

**FOR A TWELFTH DEFENSE**

44. Plaintiffs' claims are barred by the consent of the Plaintiffs.

**FOR A THIRTEENTH DEFENSE**

45. Plaintiffs' claims are barred by the doctrines of release, waiver and estoppel, or any one or more of them.

**FOR A FOURTEENTH DEFENSE**

46. Even if this Defendant is liable to Plaintiffs for some amount of money, which this Defendant denies, any such amounts are subject to being offset by increases in their take-home pay as a result of decreased taxes, the discontinuance of the 6.5 employee contribution for at least part of the applicable time period, and other factors.

**FOR A FIFTEENTH DEFENSE**

47. Plaintiffs lack standing to assert one or more of their claims and/or those of some or all of the members of the putative class.

**FOR A SIXTEENTH DEFENSE**

48. Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, the Defendant South Carolina Law Enforcement Division prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.

BY: 

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k woodington@dml-law.com

ATTORNEYS FOR DEFENDANT SOUTH CAROLINA  
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

April 19, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PHILLIP D. GRIMSLEY, SR., and ROGER  
M. JOWERS, on behalf of themselves and  
others similarly situated,

Plaintiffs,

v.

SOUTH CAROLINA LAW  
ENFORCEMENT DIVISION and  
THE STATE OF SOUTH CAROLINA,

Defendants.

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTH JUDICIAL CIRCUIT  
) Civil Action Number: 2008-CP-40-08854

) **PLAINTIFFS' MOTION FOR**  
) **SUMMARY JUDGMENT**

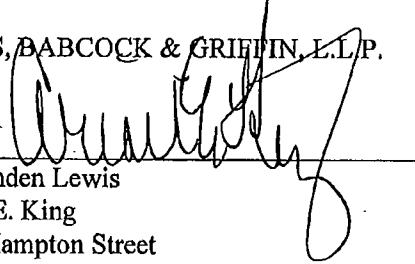
**TO: KENNETH P. WOODINGTON, ESQUIRE, ATTORNEY FOR DEFENDANT  
SOUTH CAROLINA LAW ENFORCEMENT DIVISION AND J. EMORY  
SMITH, ESQUIRE, ATTORNEY FOR THE STATE OF SOUTH CAROLINA**

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned counsel, will move before this Court, for an Order for summary judgment under Rule 56, SCRC. The grounds for this motion are that SLED's retirement program requires Plaintiffs and the class members to pay the employers' portion of retirement to the state retirement system, in violation of statute, of the Constitutional prohibition on taking, and of the Constitutional requirements of due process. This is an issue of law appropriate for summary judgment.

This motion for summary judgment will be further supported by a detailed memorandum of law, deposition testimony, documents, applicable case law, applicable statutes, and other such available evidence as this Court is willing to receive.

Respectfully submitted,

LEWIS, BABCOCK & GRIFFIN, L.L.P.



---

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RICHARD A. HARPOOTLIAN, P.A.  
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John A. O'Leary  
James Walter Fayssoux, Jr.  
O'LEARY & ASSOCIATES, P.A.  
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Columbia, South Carolina 29201  
(803) 779-5556

Attorneys for the Plaintiffs

March 28, 2012  
Columbia, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated, )

Plaintiffs, )

v. )

South Carolina Law Enforcement Division and the State of South Carolina, )

Defendants. )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

**MOTION FOR SUMMARY JUDGMENT OF SOUTH CAROLINA LAW ENFORCEMENT DIVISION**

TO: ARIAL E. KING, ESQUIRE, RICHARD A. HARPOOTLIAN, ESQUIRE, AND JOHN A. O'LEARY, ESQUIRE, ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant South Carolina Law Enforcement Division will move at such time and place as may be set by the Court, for an Order granting summary judgment on the ground that there is no genuine issue as to any material fact, and Defendant is entitled to judgment as a matter of law.

The specific grounds for this motion are as follows:

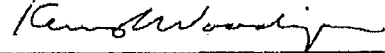
1. Plaintiffs' claims are without legal or factual merit, because Plaintiffs have no legal right under any statute or otherwise to any particular salary after voluntarily leaving state employment and then voluntarily returning to state employment.
2. The Complaint fails to set forth facts sufficient to constitute a cause of action.
3. Plaintiffs agreed to return to work under the terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired," and are bound by those agreements.

4. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this action.

This motion is based upon the pleadings filed in this case; and on such other matters on file in this case or as may be presented to the Court at or before the time of the hearing, as well as on such additional grounds as may be developed during the briefing process.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:   
WILLIAM H. DAVIDSON, II  
KENNETH P. WOODINGTON  
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k woodington@dml-law.com

ATTORNEYS FOR DEFENDANT SOUTH CAROLINA  
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

March 30, 2012

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Phillip D. Grimsley, Sr. and Roger M. )  
 Jowers, on behalf of themselves and other )  
 similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 South Carolina Law Enforcement )  
 Division and the State of South Carolina, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

AMENDED  
 MOTION FOR SUMMARY JUDGMENT OF  
 SOUTH CAROLINA LAW ENFORCEMENT  
 DIVISION

TO: ARIAL E. KING, ESQUIRE, RICHARD A. HARPOOTLIAN, ESQUIRE, AND JOHN  
 A. O'LEARY, ESQUIRE, ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant South Carolina Law Enforcement Division will move at such time and place as may be set by the Court, for an Order granting summary judgment on the ground that there is no genuine issue as to any material fact, and Defendant is entitled to judgment as a matter of law.

The specific grounds for this motion are as follows:

1. Plaintiffs' claims are without legal or factual merit, because Plaintiffs have no legal right under any statute or otherwise to any particular salary after voluntarily leaving state employment and then voluntarily returning to state employment.
2. The Complaint fails to set forth facts sufficient to constitute a cause of action.
3. Plaintiffs agreed to return to work under the terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired," and are bound by those agreements.

4. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this action.

5. Plaintiffs' return to work with SLED was a purely voluntary act on their part, made with full knowledge of the terms and conditions of their return to work.

6. Some or all of Plaintiffs' claims are barred by the applicable statutes of limitations and/or by the doctrine of laches.

7. Some or all of Plaintiffs' claims are additionally barred by one or more of the affirmative defenses set forth in the original pleadings or in the proposed Amended Complaint that is being filed herewith.

This motion is based upon all pleadings filed in this case; including the proposed Amended Complaint which is being filed herewith, depositions, affidavits, and on such other matters on file in this case or as may be presented to the Court at or before the time of the hearing, as well as on such additional grounds as may be developed during the briefing process.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA  
LAW ENFORCEMENT DIVISION

Columbia, South Carolina  
April 19, 2012

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Phillip D. Grimsley, Sr. and Roger M. )  
 Jowers, on behalf of themselves and other )  
 similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 South Carolina Law Enforcement )  
 Division and the State of South Carolina, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

SECOND AMENDED  
 MOTION FOR SUMMARY JUDGMENT OF  
 SOUTH CAROLINA LAW ENFORCEMENT  
 DIVISION

TO: ARIAL E. KING, ESQUIRE, RICHARD A. HARPOOTLIAN, ESQUIRE, AND JOHN  
 A. O'LEARY, ESQUIRE, ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant  
 South Carolina Law Enforcement Division will move at such time at such time and place as may  
 be set by the Court, for an Order granting summary judgment on the ground that there is no  
 genuine issue as to any material fact, and Defendant is entitled to judgment as a matter of law.

The specific grounds for this motion are as follows:

1. Plaintiffs' claims have no basis in fact, because the employer contribution was never deducted from their salaries, as they claim, nor were Plaintiffs required to pay the employer contribution themselves.
2. SLED at all times complied with *S.C. Code Ann. § 9-11-90(4)(b)*, because it paid to the Police Officers' Retirement System the employer contribution for the salaries of the Plaintiffs after they retired and returned to employment.

3. Plaintiffs' claims are without legal or factual merit, because Plaintiffs have no legal right under any statute or otherwise to any particular salary after voluntarily leaving state employment and then voluntarily returning to state employment.

4. The Complaint fails to set forth facts sufficient to constitute a cause of action.

5. Plaintiffs agreed to return to work under the terms and conditions set forth in documents executed by each of them in 2004 entitled "Request to be Rehired," and are bound by those agreements.

6. Plaintiffs have no constitutionally protected property interests in any of the matters in issue in this action..

7. Even if Plaintiffs had a property interest in any of the matters in issue in this action, which SLED denies, there was no taking of such property interest.

8. Even if Plaintiffs had a property interest in any of the matters in issue in this action, which SLED denies, Plaintiffs voluntarily relinquished any such interest when they voluntarily returned to work at reduced salaries.

9. Plaintiffs' return to work with SLED was a purely voluntary act on their part, made with full knowledge of the terms and conditions of their return to work.

10. Some or all of Plaintiffs' claims are barred by the applicable statutes of limitations and/or by the doctrine of laches.

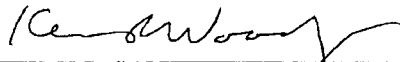
11. Some or all of Plaintiffs' claims are additionally barred by one or more of the affirmative defenses set forth in the original pleadings or in the proposed Amended Complaint that is being filed herewith.

This motion is based upon all pleadings filed in this case; including the proposed Amended Complaint previously filed, depositions, affidavits, documents produced by any party

in discovery, and on such other matters on file in this case or as may be presented to the Court at or before the time of the hearing, as well as on such additional grounds as may be developed during the briefing process.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA  
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

May 24, 2012

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Phillip D. Grimsley, Sr. and Roger M. )  
 Jowers, on behalf of themselves and other )  
 similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 South Carolina Law Enforcement )  
 Division and the State of South Carolina, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

**MEMORANDUM OF  
 SOUTH CAROLINA LAW ENFORCEMENT  
 DIVISION IN SUPPORT OF ITS SECOND  
 AMENDED MOTION FOR SUMMARY  
 JUDGMENT  
 AND  
 IN OPPOSITION TO PLAINTIFFS'  
 MOTION FOR SUMMARY JUDGMENT**

**Introduction and Summary**

This action was filed on December 16, 2008, by Plaintiffs Grimsley and Jowers against the South Carolina Law Enforcement Division (SLED) and the State of South Carolina. Plaintiffs, both of whom retired unconditionally from SLED in 2004 and then agreed to be rehired at slightly reduced salaries, claim that § 9-11-90(4)(b) created certain rights in them with respect to the employer contribution to be paid by SLED on their salary upon their rehire. In the parlance of the cases in this area, they came back to work as “working retirees.” *See, e.g., Ahrens v. State*, 392 S.C. 340, 709 S.E.2d 54 (2011). In *Ahrens*, the Supreme Court noted that the return of a retired employee to the employment from which he retired “was conditioned on whether an employer in the system chose to hire that employee.” 392 S.C. at 351-352, 709 S.E.2d at 60.

SLED paid the employer contribution for Plaintiffs to the Police Officers’ Retirement System (“PORS”), as it did for all of its employees. Moreover, § 9-11-90(4)(b) did not create rights of any kind in Plaintiffs, as opposed to creating a duty on the part of employers to the PORS. Nor were any rights of Plaintiffs denied by SLED even if such rights had existed.

The program under which Plaintiffs retired and were rehired, far from depriving them of anything, was one that worked to their enormous and immediate benefit. As *Ahrens, supra*, holds, there was no requirement that SLED rehire retirees at all. Instead, however, SLED did rehire Plaintiffs shortly after their retirement, permitting them to collect their full retirement pay as well as almost all of their prior salary as employees. For Plaintiff Grimsley, for example, this meant that he went from making about \$53,000 per year in 2004 from his salary alone, to making about \$81,500 in 2005, the combined amount of his slightly reduced state salary and his Police Officers' Retirement System benefit. *Stewart Aff. Par. 20 and Ex 9.*

Plaintiffs' claims rest on an incorrect characterization of the facts. They claim that SLED "had the amount it cost SLED to pay the employer portion of retirement deducted from their [post-retirement] salaries," Complaint, Par. 8 (Emphasis added). However, there is simply no such thing as a deduction of the employer contribution from the salary of an individual. *Royal Aff. Par. 8 & 9; Kitchens Aff. Par. 6 & 7.* Instead, Plaintiffs were simply rehired at lower salaries. *Stewart Aff. Par. 16.* To this they voluntarily and readily agreed, as might be expected in light of the kind of financial benefit illustrated above.

Plaintiffs' claims also rest on a misconception of the rights and duties created by the retirement statutes. The statute on which they rely, § 9-11-90(4)(b), provides that when persons are rehired by the State as working retirees, "An employer shall pay to the [Police Officers' Retirement] system the employer contribution" for those working retirees. As the affidavits filed by SLED in this case show, there is no genuine issue of fact that SLED did indeed pay the employer contributions for the salaries of Plaintiffs, just as it has always done for all of its employees, whether working retirees or otherwise. *Stewart Aff. Par. 17; Royal Aff. Par. 16; Kitchens Aff. Par. 6 & 7.* Had SLED not paid the employer contribution, the same statute (§ 9-

11-90(4)(b)) provides that the State would have been required to deduct the amount of the employer contribution from funds provided by the State to SLED. However, a failure by a state agency to pay the employer contribution would probably have been unprecedented.<sup>1</sup>

As will be shown below, the requirement that an employer pay the employer contribution for working retirees is a requirement that was intended to protect, and did protect, the Retirement System from not receiving an employer contribution for working retirees who were filling positions that otherwise would have been subject to the payment of an employer contribution. This provision did not create any rights in the Plaintiffs. Moreover, even if the statute did create rights or property interests in the Plaintiffs, which SLED denies, such interests were not "taken," but were voluntarily waived and abandoned by Plaintiffs when they elected to return to work under the highly favorable terms under which they returned to work

SLED further asserts that even if Plaintiffs' claims are meritorious, which SLED denies, such claims are completely or partially barred by applicable three-year statutes of limitations as well as by the doctrine of laches, in this case seeking the equitable remedy of disgorgement. Plaintiffs entered into the agreements of which they complain in mid-2004, but did not file this action until December 2008, four and a half years later. SLED also asserts other additional affirmative defenses as set forth herein including waiver, estoppel, and consent.

All parties have filed motions for summary judgment with affidavits and other evidence. The facts are undisputed, and this matter is now in a posture appropriate for resolution on the merits.<sup>2</sup>

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<sup>1</sup> *Royal Aff. Par. 17*. For cases in which the employer is a political subdivision, as opposed to a state agency, it would probably be rare, but not unprecedented for the employer to fall behind on paying the employer contribution. This seems implicit in the remedy that § 9-11-90(4)(b) creates for such nonpayment, that is, the withholding of State funds from the delinquent employer. *See also*, §9-11-230 (Budget and Control Board shall certify to each employer other than the State the amount of employer contribution due the System.).

## FACTS

### A. Background.

In 2002, several major changes were made to the statutes governing the ability of South Carolina state employees to retire and return to work. The most dramatic of these was the removal of the earnings limitation, or salary cap, that had always been in place in the past to a greater or lesser degree. Act No. 356 of 2002, §12 (copy attached). This removal of the salary caps, which applied both to members of the Police Officers' Retirement System such as Plaintiffs and also to non-police officer state employees, meant that for the first time ever, it was possible for state employees and PORS members to take full retirement, collect full retirement benefits, and also return to their former state jobs at salaries that could have been, but were not required to be, the same as their salaries when they retired.<sup>3</sup>

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<sup>2</sup> This case has been to the Supreme Court on issues raised in a motion to dismiss filed by SLED's co-defendant, the State of South Carolina. *Grimsley v. South Carolina Law Enforcement Div.* 396 S.C. 276, 721 S.E.2d 423 (2012). The Supreme Court held, contrary to the State's assertion, that exhaustion of remedies was not required under the South Carolina Retirement Contribution Procedures Act, *S.C. Code Ann.* §§ 9-21-10, et seq. The Court also held that the Complaint "asserted a cognizable property interest rooted in state law sufficient to survive the motion to dismiss." 396 S.C. at 285, 721 S.E.2d at 428 (*emphasis added*). As discussed in more detail below, the full record now before that Court makes it clear that the facts as proven are substantially different from those alleged in the Complaint, and that Plaintiffs have no property interest in the matters to which they assert a claim.

<sup>3</sup> There are several significant differences between this "working retiree" program created by § 9-11-40(4) and the well-known Teacher and Employee Retention Incentive ("TERI") program. First, the TERI program has never applied to PORS members. The TERI programs instead has always applied only to members of the South Carolina State Retirement System, § 9-1-10, et seq. (hereinafter "State System"). Secondly, the working retiree program does apply to PORS members (as well as others). Thirdly, under the TERI program, there was a contract between the employee and the employer. See *Layman v. State*, 368 S.C. 631, 642, 630 S.E.2d 265, 271 (2006). Fourthly, TERI employees do not collect retirement benefits while working, instead receiving them upon termination of employment. *Id.* Finally, TERI employees retain all grievance rights, § 9-1-2210(E), which in practice means that their postretirement salaries remain unchanged from the time of retirement.

Prior to 2002, there had always been a salary cap or earnings limitation upon the amount that a retired PORS member could earn while still remaining a retiree. Until the late 1990's, the amount that a working retiree could earn was quite low. For instance, from 1989 until 1999, it was only \$9,500 annually. *See* Act No. 189 of 1989, Part II, §50B. However, in 1999, the earning limitation rose from \$9,500 to \$25,000. Act No. 100, of 1999, Part II, § 27. This was increased to \$50,000 in 2001. Act No. 25 of 2001, § 2. The salary cap was removed altogether in 2002. *See* Act No. 356 of 2002, § 12, which is captioned "Earnings limitation removed under certain conditions."

Until 1999, there had been no requirement that the employer contribution should be paid for working retirees, as is now the case. Presumably, until the salary cap was raised in 1999 from \$9,500 to \$25,000, the available salaries were so low that most working retirees would not have filled a fulltime job when they returned to work. However, once the salary cap was raised from \$9,500 to \$25,000 in 1999, the amount of salary earnable by a working retiree had started to become high enough to cover the salaries of at least some fulltime positions. Accordingly, in 1999, the General Assembly added the requirement in § 9-11-90(4)(b) (and § 9-1-1790(B), for the State system) that employers must pay an employer contribution to the Retirement System on the salaries of working retirees who returned to employment. Without this requirement for the employer to pay the employer contribution on the salaries of working retirees, there would soon have been a fairly sizable number of working retirees in the PORS and in the State system who would be filling fulltime positions, or at least positions with substantial salaries, but with no employer contribution being paid to the PORS or the State Retirement System on the salaries for those positions. Such a development would have been detrimental to those two Systems, and to state retirees generally, by carving out a class of employees who were filling positions that were

effectively full-time positions, but for which positions the Retirement Systems would have received no employer contribution.

In practice, the working retiree provisions of the PORS, § 9-11-90(4), require that the individual retire fully, and leave state employment for at least fifteen consecutive calendar days prior to returning to work. The ability to return to work was not conferred by § 9-11-90 or any other statute. Instead, as the Supreme Court has held, the ability of a retired employee to return to work "was conditioned on whether an employer in the system chose to hire that employee." *Ahrens v. State, supra*, 392 S.C. at 351-352, 709 S.E.2d at 60 (2011).

Section 9-11-90 likewise contains no provision pertaining to the salary to be paid upon the retiree's return to employment. That section instead simply states that the retiree "may be hired and return to employment covered by this system or any system provided in this title without affecting the monthly retirement allowance he is receiving from this system." (Emphasis added.)

The elimination of the salary caps in 2002, coupled with the absence of a TERI program for PORS members, led then-Chief Stewart to see whether a plan could be created that would make it attractive for SLED employees who had reached retirement age to retire and take "working retiree" status if they so chose. *Stewart Aff. Par. 5*. As Chief Stewart's Affidavit also notes, "During that time of substantial budget cuts, such a program would also benefit SLED by cost savings, mostly in the area of salaries. This assisted SLED in avoiding layoffs of any agents and in maintaining a basic level of law enforcement services to the citizens of South Carolina." *Stewart Aff. Par. 6*. Chief Stewart consulted with the Budget and Control Board's Office of Human Resources and also with Vance Bettis, Esq., among others. *Id. Par. 8*. The result was that Chief Stewart and SLED created the program known as the Retirement/Rehire program.

Chief Stewart and SLED then created a uniform series of forms that could be used by persons who were interested in becoming working retirees. *Stewart Aff. Par. 11.*<sup>4</sup>

**B. The Retirement/Rehire program for SLED working retirees, starting after July 1, 2002.**

The Affidavit of former SLED Chief Robert M. Stewart sets forth in detail the entire process under which Plaintiffs retired and rehired. *Stewart Aff. Par. 13.* In summary, what happened was that starting in the late summer or fall of 2002 (shortly after the salary caps were eliminated), if a SLED agent wished to retire and seek to become a working retiree, he would first advise Chief Stewart that would be retiring on a date specified in the retirement notice form. Exhibit 1 to Stewart Affidavit.<sup>5</sup> The individual, in signing the form, noted the existence of certain conditions “if I wish to apply to be rehired,” and “if I am selected to be rehired. . . .” *Id.* (Emphases added). At that point, the individual was completely retired and separated from employment with SLED, which had no obligation to rehire the individual. *Stewart Aff. Par. 22. Ahrens, supra.* Indeed, Chief Stewart advised each person considering retirement and rehire not to do so “unless they were ready to retire immediately and permanently.” *Stewart Aff. Par. 15.*

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<sup>4</sup> In the prior fiscal year, 2001, the General Assembly had provided for agencies to offer certain voluntary retirement incentives. As discussed below, this option was similar in some ways to the SLED Retirement/Rehire program, but it applied only to persons who applied for in 2001. Plaintiffs were not among that group.

<sup>5</sup> Exhibits 1 through 4 to the Stewart Affidavit are the forms for Plaintiff Grimsley. Exhibits 5 through 8 are the corresponding forms for Plaintiff Jowers.

If a retired employee sought to be rehired, he would then would fill out a form in which he requested Chief Stewart to rehire him. Exhibit 2 to Stewart Affidavit. The form expressed the agent's understanding that that if rehired,

. . . . the following provisions apply and I agree to them:

**Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).**<sup>6</sup>

Accrual of annual and sick leave at current rate.

**Salary: 13.6% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.**

Employment not to exceed 48 months.

No lump sum payment for annual leave upon second separation.

Review date: twelve months after date of rehire.

No probationary period.

Must apply to this agency and receive permission to reenter retirement system as an active member.

Exhibit 2 to Stewart Affidavit (emphases added).<sup>7</sup>

The third step in the process was that the SLED Director of Human Resources advised the employee that his request to return to employment had been approved, "based on your written acceptance of the following provisions." Exhibit 3 to Stewart Affidavit. Among the conditions stated in that form was the following:

Your salary will be \$45,702 (previous base salary less 13.6%), no longevity pay, additional reduction by cost of health insurance to agency if elected.<sup>8</sup>

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<sup>6</sup> S.C. Code Ann. § 8-17-370(16) exempts PORS working retirees such as Plaintiffs from coverage under the state personnel grievance process. That section was enacted as part of Act No. 356 of 2002, the same statute that removed the earnings limitation for PORS working retirees.

<sup>7</sup> The employer contribution for PORS members had been 10.3% of salary prior to July 1, 2004, at which time it increased to 13.6%.

(Emphasis added.) As the then-Director of Human Resources, Lynn Hutto, testified at her deposition, "They came back at a brand new salary. . . ." Hutto deposition, 43: 12.

The fourth and final form was informational. It was labeled "Employee Orientation for Re-Employment under the PORS Retirement Provisions." Exhibit 4 to Stewart Affidavit. This form contained a statement by SLED to the employee that

As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed of your benefits and employment status.

Plaintiffs each signed this form at the bottom. *Id.* The form there stated "My signature below indicates that the above checked items were discussed with me during orientation." *Id.* This sentence was followed by a signature line.

The items listed in the informational form were essentially the same as those quoted above. The "Salary" bullet point referenced the same "reduction of 13.6% in your salary," noting that that reduction was "to cover the amount it will cost SLED to pay the employer portion of retirement." (This recitation did not appear in the previous two forms that referenced the salary reduction of 13.6%, instead only appearing in the fourth form, an informational document.) The employees had already agreed, by executing the second form, to accept a 13.6% salary reduction, with no reason given by SLED for that specific percentage (nor any need for one). Finally, the fourth form mentioned that the employee contribution of 6.5% would no longer be deducted from the salary check. The reason for this was that the employee, as a retiree, was no longer required at the time to pay the employee contribution.<sup>9</sup>

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<sup>8</sup> The salary figure in the quoted exhibit is the specific number applicable to Plaintiff Grimsley. This figure varied by employee.

<sup>9</sup> This changed effective July 1, 2005, when the General Assembly amended §9-11-90(4)(c) to require working retirees to pay the employee contribution even though they were retired. This amendment was upheld in *Layman v. State*, 368 S.C. 631, 630 S.E.2d 265 (2006) as to

Once all four forms had been executed, the employees returned to work, collecting their both their new salaries (13.6% less than before retiring) from SLED and their full retirement from the PORS. In the case of Plaintiff Grimsley, his pre-retirement salary had been \$52,896. In 2005, the first full year after his retirement, his SLED salary was \$48,318.00, and his PORS retirement benefit was \$33,158.04, for a total of \$81,472.04. Stewart Affidavit, Paragraph 20 and Exhibit 9.<sup>10</sup> In other words, his combined income as a working retiree was more than half again the amount of his preretirement income.

**C. Payment Of The Employer Contribution By SLED And Absence Of A Deduction Of The Employer Contribution From The Employees' Salaries.**

Because Plaintiffs' claims pertain to the employer contribution, it is appropriate to provide some brief amount of background concerning the nature of the employer contribution and the mechanics of how it operates. This information is found primarily in the Affidavit of Donald R. Royal.

At the outset, it should be reiterated that there is no doubt that SLED did pay the employer contribution for these Plaintiffs, just as it has done for all of its employees at all times. *Stewart Aff. Par. 17; Royal Aff. Par. 16; Kitchens Aff. Par. 6 & 7.* As far as SLED is aware, Plaintiffs do not contend otherwise, nor could they reasonably do so.

The employer contribution, as its name would indicate, is paid by the employer, not by the employee. In fact, the PORS statute requires that it be paid by the employer. Section 9-11-220(1) provides that

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employees generally, and in *Ahrens, supra*, as to certain employees who claimed that the State had created rights in them by contract or estoppel.

<sup>10</sup> Plaintiff Jowers has not yet produced his tax forms for 2005, but the numbers would presumably be comparable.

(1) Commencing as of July 1, 1974, each employer shall contribute to the System seven and one-half percent of the compensation of Class One members in its employ and ten percent of compensation of Class Two members in its employ. Such rates of contribution shall be subject to adjustment from time to time on the basis of the annual actuarial valuations of the System.<sup>11</sup>

(Emphasis added.)

The employer contribution is paid periodically in a lump sum that is equal to the appropriate percentage (13.6% in 2004) of the total salary amount actually paid. The remittance is a periodic lump sum payment of the appropriate employer contribution percentage (13.6% in 2004) of that total salary amount. It is not itemized on an employee-by-employee basis.<sup>12</sup> *Royal Aff. Par. 12.*

In addition, as set forth in more detail in the Royal Affidavit, the employer contribution to the Police Officers' Retirement System, like all fringe benefits in state government, is not included within the salary of the employee, and therefore is not deducted from the salary of the employee. *Royal Aff. Par. 8.* Instead, it is paid from the fringe benefit amount appropriated to the agency. *Royal Aff. Par. 8.* For SLED, the fringe benefit amount for the employees is approximately 35% over and above the employees' salary amounts. *Id., Par. 7.* The employees never see this amount reflected in their salary information, because it is not part of their salaries. In addition to the employer contribution to the Retirement System, the total amount of fringe benefits includes such things as employer contributions for workers' compensation, health

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<sup>11</sup> In 2004, when Plaintiffs retired, the rate for the employer contribution had been adjusted upward from the 7.5% in the statute to the 13.6% referenced earlier. As noted earlier, the 13.6% figure took effect on July 1, 2004. Immediately prior to that it had been 10.3%.

<sup>12</sup> At the time of the Hutto deposition in 2009, and earlier, SLED made this lump sum remittance on a quarterly basis. See Exhibit 20 to Hutto Dep. Beginning in 2010, the lump sum payment of the employer contribution was made automatically at each semimonthly pay period. There was no change in the nature of the lump sum payment as a specific percentage of payroll, which was over and above the amount paid as salary to the employees.

insurance, and for other similar fringe benefits. *Id.*, *Par. 9*. Most state employees probably have no idea how much is paid by their employers for these various employer contributions, nor are these specific amounts really a matter of concern for the employees, because these amounts are governed by law and are over and above the figure that actually is of concern to the employees, that is, their salaries.

As might be expected from the nature of the employer contribution and the manner in which it is remitted by the employer, there is simply no such thing as "having the employer contribution deducted from [employees'] salaries," as Plaintiffs allege. *See Royal Aff. Par. 8*. In fact, again as might be expected, the postretirement pay stubs of the Plaintiffs reflect no deduction at all for retirement, given that (a) in 2004, retirees did not pay an employee contribution, and (b) the pay stub would never reflect a deduction for the employer contribution, since that amount was never deducted from salary, but rather was paid by the employer as part of benefits over and above salary. *See Kitchens Aff. Par. 6 and 7*. SLED simply decided to use the percentage figure of the preretirement employer contribution as a uniform measure of the salary reduction and of the amount of cost savings as a result of the rehire process. *See Stewart Aff., Par. 18.*<sup>13</sup>

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<sup>13</sup> By way of illustration, the employer contribution for Plaintiff Grimsley of 13.6% of his preretirement salary of \$52,896 would have been approximately \$7,200. The employer contribution on his reduced salary upon rehire (13.6% of \$48,318) was about \$6,600, just \$600 less than it had been for the preretirement salary. The total salary reduction had been about \$4,600. SLED therefore saved all of the salary reduction of \$4,600, as well as an additional \$600 in benefits, i.e., the amount by which the employer contribution was reduced. The \$4,600 accordingly was available for salaries for other employees. *See, Royal Aff. Par. 8; Stewart Aff. Par. 21.*

**D. Specific Facts Pertaining to Plaintiffs Grimsley and Jowers.**

Plaintiffs Jowers and Grimsley retired on June 1, 2004 and June 30, 2004, respectively. The financial advantage to them of the terms of their retirement was substantial, as the numbers above for Plaintiff Grimsley would indicate.

While Plaintiffs, after being rehired, were at-will employees who could have been terminated at any time in SLED's sole discretion, both of them were in fact permitted to continue in their employment for the entire 48-month period mentioned in the documents above. (Section 9-11-90(4)(a) provided that the 48-month period was the maximum period for which a working retiree could work without his status changing.) On April 29, 2008 and June 2, 2008, when Plaintiffs Jowers and Grimsley were nearing the completion of 48 months of employment as working retirees, they each were informed in letters from then-Director Lloyd that their employee status would terminate on July 1, 2008 and June 16, 2008, respectively, that is, at the end of 48 months. *Aff. Kitchens, Par. 8 and Ex. 2 and 3.* They were informed about opportunities for part-time work. *Id.*

In December 2008, four and a half years after they were rehired, Plaintiffs Grimsley and Jowers filed the present action.

**ARGUMENT**

- 1. Plaintiffs' claims have no basis in fact, because the employer contribution was never deducted from their salaries, as they claim, nor were they required to pay the employer contribution themselves.**

SLED submits that in light of the facts as explained above, it is obvious that Plaintiffs' claims are completely lacking in merit. Their claim that SLED violated § 9-11-90 by "having the employer contribution deducted from [their post-retirement] salaries," Complaint, Par. 27, is simply not factual. There was no salary DEduction for the employer contribution. Plaintiffs

instead agreed to a salary REduction. This claim as stated in the Complaint is therefore incorrect as a matter of fact.

The claim of Plaintiffs that SLED violated § 9-11-90 by “having the [Plaintiffs] pay the employer contribution” is also not factual. SLED, and not the Plaintiffs, unquestionably paid the employer contribution. *See e.g. Royal Aff. Par. 16.*

Plaintiffs’ claim fares no better if viewed as one that the employees were wrongfully required, as a condition of their employment, to have the amount of the employee contribution “deducted” from their salaries. *Complaint, Par. 27.* They did agree to come back as working retirees at reduced salaries, but the fact that this occurred does not state a legal claim. There is nothing in § 9-11-90 that requires them to be rehired at all. To reiterate once again what was held in *Ahrens, supra*, the return of a working retiree to the employment from which he retired “was conditioned on whether an employer in the system chose to hire that employee.” 392 S.C. at 351-352, 709 S.E.2d at 60. Given that there was no right at all to return to work after retirement, there was obviously no violation of any right of Plaintiffs by requiring them to agree to a reduction in salary as a condition of returning to work. SLED could have conditioned Plaintiffs’ return to work on their taking a salary reduction of between 0% and 100%. If Plaintiffs found the rehire salary unacceptable, which they obviously did not, they could have declined to return to work. The fact that the relatively small percentage chosen by SLED was 13.6%, the same as the employer contribution on their old salary, was of no significance to any right of the Plaintiffs.<sup>14</sup>

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<sup>14</sup> As noted above, Plaintiffs’ agreement to accept the 13.6% figure was made in the second of the four documents that were part of the process. Exhibits 2 and 6 to Stewart Affidavit. Those documents did not state a reason for using the 13.6% figure, nor did they need to. Plaintiffs were obviously agreeable to being rehired with a 13.6% salary reduction and full retirement benefits. The only reference to that percentage as covering the employer contribution did not come until

Plaintiffs have effectively already conceded this. As the Supreme Court held in the appeal from the grant of the State's motion to dismiss, "[Plaintiffs] do not claim they are entitled to a particular salary level." 396 S.C. at 284, 721 S.E.2d at 427. Instead, the Court held, Plaintiffs "have asserted a cognizable property interest rooted in state law sufficient to survive the motion to dismiss." 396 S.C. at 285, 721 S.E.2d at 428. (*Emphases added.*) In so holding, the Court cited *Rydde v. Morris*, 381 S.C. 643, 646 675 S.E.2d 431, 431 (2009), which held that in reviewing a dismissal of a case on a Rule 12(b)(6) motion to dismiss, the court is "required] to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiffs to relief on any theory of the case." (*Emphasis added.*) However, as already shown, the "fact alleged" and the actual facts are entirely different. There was no deduction from the Plaintiffs' salaries, only a reduction. As a result, now that the facts have been shown to be substantially different from those alleged in the Complaint, it is apparent that Plaintiffs' claim based on an alleged violation of § 9-11-90 is without merit.

**2. The facts of this case show that Plaintiffs lack a property interest.**

In *Grimsley*, the Supreme Court noted that Plaintiffs "assert a violation of S.C. Code Ann. section 9-11-90." 396 S.C. at 284, 721 S.E.2d at 427. The Court then noted that Plaintiffs "contend that they have a cognizable property interest in the percentage of their salary that was deducted in violation of section 9-11-90." *Id.* The Court concluded that "section 9-11-90 provides a basis to assert a property interest. Specifically, Appellants' takings claim is predicated on their entitlement to retain the percentage of their salary—13.6%—that was used to pay the

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the fourth document in the series, which was merely informational. Exhibits 4 and 8 to Stewart Affidavit.

employer portion of the retirement contributions. It follows that Appellants are able to point to a property interest rooted in state law.” 396 SC at 285, 721 S.E.2d at 428.

As has already been discussed, this discussion by the Court was couched in terms of review of the granting of a motion to dismiss, accepting all factual assertions in the complaint as true. However, as the facts show, no “percentage of their salary was deducted.” For the same reason, their salary upon rehire was not “used to pay the employer portion of the retirement contributions.” As a result, even if the facts as pled had been sufficient to show that a property interest existed, the facts as proven show otherwise.

3. **Even if § 9-11-90 created a property interest in Plaintiffs in the amount of the employer contribution, which SLED denies, Plaintiffs voluntarily waived and relinquished any such interests when they voluntarily returned to work at reduced salaries.**

As indicated, for instance, by every case upholding a guilty plea, it is axiomatic that constitutional rights may be voluntarily waived. *See, e.g., Hyman v. State*, 397 S.C. 35, 723 S.E.2d 375, 379 (2012)(by pleading guilty, “accused . . . waives the right to trial and the incidents thereof and the constitutional guarantees with respect to criminal prosecutions”). The permissibility of a waiver applies all the more strongly in a situation involving the lesser alleged right to a fraction of a public salary.

The documents show that Plaintiffs freely, and one may assume, enthusiastically, agreed to retire and be rehired at a salary that was 13.6% less than their pre-retirement salary. Again, the "Request to be Rehired" form stated in part as follows:

I understand that if [rehire] does occur, the following provisions apply and I agree to them:

\* \* \*

Salary: 13.6% less than previous base salary. . . .

Exhibits 2, 6 (Emphases added). It is difficult to see how one could more clearly agree to be rehired at a reduced salary. Accordingly, even assuming Plaintiffs had some kind of property interest, it was waived, and the waiver was to their great advantage.

**4. The statute of limitations bars Plaintiffs' claims.**

While the foregoing discussion has centered on the merits of Plaintiffs' claims, it is actually not necessary for the Court even to consider the merits. Whether Plaintiffs' claims are meritorious or not, they were brought well over three years after their accrual and therefore are barred by the applicable statute of limitations.

As discussed above, by July and August 2004, when the two Plaintiffs returned to work as working retirees, they had agreed to all of the terms on which their rehiring was based. This action was filed in December 2008, four and a half years later. This was well outside the applicable three-year statute of limitations Plaintiffs' claims are therefore time-barred.<sup>15</sup>

Plaintiff's first cause of action, which is based upon an alleged violation of §9-11-90,, is governed by *S.C. Code Ann.* § 15-3-530(2), which provides "an action upon a liability created by statute other than a penalty or forfeiture" must be brought within three years. Even assuming

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<sup>15</sup> The same is true for Plaintiffs' claims based on a reduction in June 2005 to the cost of living allowances for 2005-2006. That action took place three and a half years before this action was filed. (COLA's were not reduced in subsequent years. *Kitchens Reply Aff.*)

that Plaintiffs had a meritorious claim based upon §9-11-90, which SLED denies, the claim is barred by the three year statute of limitations period.

Plaintiff's second cause of action, the alleged "takings" claim, is based upon an alleged unlawful taking or unconstitutional taxing, is subject to the separate three year statute of limitations set forth in *S.C. Code Ann.* § 15-3-530(4). That section provides that "an action for taking, detaining, or injuring any goods or chattels" must be brought within three years. Its counterpart for real property takings is *S.C. Code Ann.* § 15-3-530(3).

The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist. *Anonymous Taxpayer v. South Carolina Dep't of Revenue*, 377 S.C. 425, 439, 661 S.E.2d 73, 80 (2008) (citing *RWE NUKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 196, 644 S.E.2d 730, 733 (2007)). In the present case, the statute on which Plaintiffs rely, §9-11-90(4)(b), has not changed since its enactment in 1999. Moreover, the terms of Plaintiffs' rehire were set in mid-2004. They accordingly knew or should have known that their causes of action existed at the time they were rehired.<sup>16</sup>

In *Harvey v. South Carolina Dep't of Corrections*, 338 S.C. 500, 527 S.E.2d 765 (Ct. App. 2000), a 1993 lawsuit by certain state employees was held to be time-barred because the acts of which they complained occurred in 1983. The fact that the effects of those actions would not have been felt by the plaintiffs until much later was held not to matter, because it was in 1983 that the employees knew of their claim. *Id.* at 508, 527 S.E.2d at 769-70. Quoting *Matthews v. City of Greenwood*, 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991), the Court in *Harvey* held that "a particular cause of action accrues 'at the moment when the plaintiff has a legal right to sue on

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<sup>16</sup> Since all acts alleged in the Complaint occurred well over three years before this action was brought, the specific dates relating to each Plaintiff or each act in 2004 are not material to this action.

it.” 338 S.C. at 508, 527 S.E.2d at 769. *Accord, Anonymous Taxpayer v. South Carolina Dep’t of Revenue*, 377 S.C. 425, 661 S.E.2d 73(2008) (1997 action challenging 1989 changes in state tax exemptions for retired state employees was time-barred even though plaintiff did not retire until 1997).

In the present case, the “moment when the plaintiff [had] a legal right to sue,” *Harvey, supra*, occurred in mid-2004 when Plaintiffs executed all of the documents of which they now complain. As a result, their claims are clearly barred by the applicable statutes of limitations.

**5. The doctrine of laches also bars Plaintiffs’ claims.**

In this action, Plaintiffs have sought disgorgement of “the wages wrongfully withheld.” Complaint, p. 7 (prayer for relief). Disgorgement is an equitable remedy. *Verenes v. Alvanos*, 387 S.C. 11, 18, 690 S.E.2d 771, 774 (2010). As a result, the doctrine of laches applies to this case as well. It adds the element of detrimental change of position by the other party, in this case, SLED:

Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights.

*Chambers of South Carolina, Inc. v. County Council for Lee County*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). Here, unreasonable delay is shown by the fact that this action was brought well beyond the expiration of the three-year statute of limitations. In addition, there can be no question as to the detriment to SLED that has resulted from the Plaintiffs’ not filing this action until they had obtained all the benefits of four years of retirement salary plus retirement benefits. It is obvious that SLED would never have rehired Plaintiffs in 2004 at reduced salaries had SLED known at the time that Plaintiffs would later file suit claiming an entitlement to the difference between their old and new salaries.

**6. For the reasons already cited, Plaintiffs are now estopped from asserting their present claims.**

The facts set forth above also support the affirmative defense that Plaintiffs are now estopped from asserting their present claims. Having accepted four years of benefits pursuant to the program that permitted them to retire and return to work, Plaintiffs cannot now claim that SLED's actions harmed them. Instead, such a late assertion of alleged rights to their old salaries would harm SLED if permitted, because SLED would be required to find funding to pay Plaintiffs' salary differentials for the entire four-year period in which Plaintiffs uncomplainingly participated in the program. The general rule pertaining to estoppel in South Carolina has been stated as follows:

The principle of estoppel in equity stands upon the very foundations of right and fair dealing. It considers and weighs the conduct of men in their dealings with each other, and gives that effect ... to their actions which ... justice dictate[s].” It arises when a person, in reliance on what another has done or said, changes position to his detriment and the other person then attempts to repudiate or evade the consequences of his action or speech.

*Russell v. Drivers Leasing Services, Inc.*, 282 S.C. 358, 361, 318 S.E.2d 579, 581 (Ct. App. 1984). This is a fair description of Plaintiffs' actions in this case, and as a result, they should be held to be estopped from asserting their present claims, in addition to the other reasons stated herein as to why those claims should fail.

**7. Plaintiffs' consent to the terms of the Retirement/Rehire program bars their present claims.**

Still another reason why Plaintiffs' claims are barred is the simple reason that they unequivocally consented to the arrangement under which they were rehired. It is axiomatic that consent can serve as a defense to numerous acts that might otherwise be held tortious, such as assault, trespass or invasion of privacy, among many others. *See, e.g., Hawkins By and Through Hawkins v. Multimedia, Inc.*, 288 S.C. 569, 571, 344 S.E.2d 145, 146 (1986) (“Consent may be

found where the evidence shows a voluntary agreement to do something proposed by another, and the party consenting possesses sufficient information and ability to make an intelligent choice”). Here there can be no question that Plaintiffs freely and readily agreed to participate in the Retirement/Rehire program, with no suggestion of lack of information or ability to make an intelligent choice. The choice Plaintiffs made was a very intelligent one, and no doubt one that they would make again if they had been given the opportunity to do so. Their consent bars this action.

**8. Matters raised in the affidavits of Plaintiffs.**

Plaintiffs’ respective Affidavits dated May 22, 2012, contain several inaccuracies or other matters not specifically discussed above. First, they appear to suggest that their retirement and rehiring took place pursuant to a 2001 program referenced in Exhibit A to both affidavits. However, and as shown in detail in the Reply Affidavit of Robert Stewart, that program was completely different from the program under which Plaintiffs retired and were rehired. Among other things, the 2001 program required employees to elect to participate in that program by September 15, 2001, which clearly did not occur for these Plaintiffs, who retired in 2004.

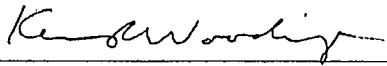
Both Plaintiffs refer to the fact that a year after they retired, certain cost of living raises they received starting on July 1, 2005 were reduced by the same approximate percentage of 13.6% (or 13.55%) as had been applied when they were rehired a year earlier. SLED would point out however, that (a) this happened only in mid-2005, and not in the remaining years of Plaintiffs’ four years of service as working retirees (Kitchens Reply Affidavit), and (b) it occurred more than three years before this action was brought, and therefore is time-barred for the same reasons discussed earlier.

**CONCLUSION**

For the foregoing reasons, SLED respectfully submits that its Motion for Summary Judgment should be granted, Plaintiffs' Motion for Summary Judgment should be denied, and this action should be dismissed.

Respectfully submitted,

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LAW ENFORCEMENT DIVISION

Columbia, South Carolina

May 30, 2012

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
PHILLIP D. GRIMSLEY, SR., and ROGER )  
M. JOWERS, on behalf of themselves and )  
others similarly situated, )  
Plaintiffs, )  
v. )  
SOUTH CAROLINA LAW )  
ENFORCEMENT DIVISION and )  
THE STATE OF SOUTH CAROLINA, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
Civil Action Number: 2008-CP-40-08854

**PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF THEIR MOTION FOR  
SUMMARY JUDGMENT AND IN  
OPPOSITION TO DEFENDANTS'  
MOTIONS FOR SUMMARY  
JUDGMENT**

REC'D  
FILED  
SOUTH CAROLINA COUNTY  
CLERK  
W. McBRIDE  
G.S.  
PH 4: 15

Plaintiffs Phillip D. Grimsley, Sr., and Roger M. Jowers, on behalf of themselves and others similarly situated, hereby submit this Memorandum in Support of their Motion for Summary Judgment and in Opposition to the Defendants' Motions for Summary Judgment. For the reasons set forth herein, Plaintiffs' Motion should be granted and Defendants' Motions should be denied.

**NATURE OF THE CASE**

Plaintiff are former employees of the South Carolina Law Enforcement Division and were members of the Police Officers Retirement System. While employed, Plaintiffs were given the opportunity to participate in a retirement program that was created internally created by SLED. This program required Plaintiffs to retire from SLED and then be rehired by SLED as a full time employee. Plaintiffs were advised by SLED they would "have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement." In other

words, Plaintiffs were responsible for the employer contribution to the retirement system through the reduction of their own salary.

SLED's obligation to pay the employer's contribution to the retirement system when a member of the Police Officers Retirement System retires and returns to employment is established by S.C. Code Ann. § 9-11-90:

An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer, regardless of whether the retired member is a full-time or part-time employee or permanent employee.

SLED receives appropriations from the General Assembly, including the monies to pay the employer portion of the retirement contribution. Under SLED's retirement program, SLED, in effect, misappropriates monies due the retirement system and hides the misappropriation by taking money from the retirees' wages.

#### UNDISPUTED FACTS

1. SLED created a retirement/rehire program for its employees in 2002. (Stewart Aff.)
2. The terms of the program required that employees return to work at 13.6% less than their salary at the time of retirement in order to "cover the amount it will cost SLED to pay the employer portion of retirement." (Ex. D to Jowers Aff; Ex. 8 to Stewart Aff.).
3. S.C. Code Ann. §9-11-90 fixes the obligation for SLED to pay employer contributions:

An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer, regardless of whether the retired member is a full-time or part time employee or a temporary or permanent employee.

S.C. Code 9-11-90

4. SLED receives specific appropriations from the General Assembly, including the monies to pay the employer portion of the retirement contribution. (Royal Aff.).

5. SLED, is, in effect, keeping the specific appropriations for the employer contributions by reducing Plaintiffs' salary in order to "cover the amount it will cost SLED to pay the employer portion of retirement." (Ex. 8 to Stewart Aff.)

**ARGUMENTS**  
**Standard of Review**

Summary judgment is a very well recognized vehicle to secure the "just, speedy and inexpensive determination of every action." *Celotex Corp. V. Catrett*, 477 U.S. 317 (1986). The United States Supreme Court interpreting the identically phrased Fed.R.Civ.P. 56, held that the party opposing the motion for summary judgment was required "to go beyond the pleadings . . . and designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324 (quoting Fed.R.Civ.P. 56(e)).

The party opposing the motion, not the Court, bears the burden of identifying specific facts in the record that establishes a genuine issue of material fact. "When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot rely on the mere allegations of his Complaint, but must disclose the facts he intends to rely on by affidavit or proof." *Shupe v. Settle*, 315 S.C. 524, 445 S.E.2d 651, 655 (Ct.App. 1994). Rule 56(e), SCRCF, requires that affidavits supporting or opposing summary judgment shall be made on personal knowledge and shall set forth facts admissible in evidence.

"Summary judgment serves the useful purpose of disposing of meretricious, pretended claims before the court and parties become 'entrenched in a frivolous and costly trial. The courts, therefore, should not be reluctant to grant summary judgment in appropriate cases; indeed, summary judgment is mandated where

appropriate." *Myrtle Beach Pipeline Co. v. Emerson Electric Co.*, 843 F. Supp. 1027, 1035 (D.S.C. 1993); *see also, Trico Surveying, Inc. v. Godley Auction, Co.*, 314 S.C. 542, 431 S.E.2d 565 (1993).

"Summary judgment is an integral part of the rules of procedure, intended to expedite the disposition of cases not requiring the services of a fact finder." *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 226 S.E.2d 703 (1976). This case is appropriate for summary judgment as the facts are not in dispute and Plaintiff should be granted summary judgment on its causes of action for violation of a statute, unconstitutional taking, and declaratory judgment.

**I. ARGUMENTS AS TO PLAINTIFF'S MOTIONS FOR SUMMARY JUDGEMENT**

**A. Defendants have violated S.C. Code § 9-11-90.**

As already noted, S.C. Code Ann. §9-11-90 requires the obligation for SLED to pay employer contributions:

An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer, regardless of whether the retired member is a full-time or part time employee or a temporary or permanent employee.

Furthermore, the General Assembly specifically appropriates money for agency costs and those funds must be used as directed:

The General Assembly has, beyond question, the duty and authority to appropriate money as necessary for the operation of the agencies of government and has the right to specify the conditions under which the appropriated monies shall be spent. This the Assembly traditionally does by way of the annual State Appropriations Bill. In writing the appropriations bill, it attempts as best it can to predict the needs of the various departments of state government.

State ex rel. McLeod v. McInnis, 278 S.C. 307, 313-14, 295 S.E.2d 633, 637 (1982). S.C.Code

Ann. § 11-9-10 states that:

It shall be unlawful for any moneys to be expended for any purpose or activity except that for which it is specifically appropriated, and no transfer from one appropriation account to another shall be made unless such transfer be provided

for in the annual appropriation act.

Defendants admit to reducing the Plaintiffs' salaries, but claims Section 9-11-90 is not violated because employer retirement contributions are not actually deducted from the paychecks that Plaintiffs receive<sup>1</sup>. Defendants argue that the pay stubs reveal that no retirement contributions were actually deducted from Plaintiffs' checks to pay for the employer contribution. Furthermore, SLED admits that the annual appropriations acts contain a section designated "Employee Benefits," which includes a line item designated "State Employer Contributions." (Royal Aff.). However, SLED reduces the salaries of Plaintiff (and other retirees that return to work) by 13.6% to "cover the amount it will cost SLED to pay the employer portion of retirement." SLED further asserts that because SLED did transmit the money, in periodic lump sum remittances, it "paid" the employer contribution as required by statute. The fact is SLED gets money for a specific purpose and thereafter uses the money for another purpose.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). The statute is very clear as to retirement contributions. It requires the employer to "**pay to the system the employer contribution for active members prescribed by law with respect to any retired member....**" (emphasis added) In other words, working retirees such as Plaintiffs must be treated the same way as other employees with regard to employer retirement contributions. The statute's intent is that Defendants will make the required employer contributions for all employees from

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<sup>1</sup>SLED also apparently contends that it can retain "unspent general funds" from one year to the next. (Royal Aff., ¶ 15 and Ex. 2). However, the Act upon which SLED relies also states "Agencies shall not withhold services in order to carry forward general funds." Likewise, SLED cannot reduce Plaintiffs' salary to "cover the amount it will cost SLED to pay the employer portion of retirement" just so that it can carry forward unspent general funds

its appropriations.

Defendants attempt to evade that requirement by claiming that as long as SLED engaged in the ministerial act of transferring the money to the Retirement Systems, regardless of whether SLED is paying the contribution from its appropriated funds or the withheld wages of Plaintiff, the statute has not been violated. If Defendants' interpretation is accepted, the intent of the General Assembly has will be frustrated and spirit of the statute would be eviscerated.<sup>2</sup> It is clear that the General Assembly's intent was that the funds it appropriates to SLED be used for the purposes appropriated. There is simply no foundation in law for SLED to reduce Plaintiffs' salaries to try to recoup or offset expenses that have been specifically appropriated by the legislature.

**B. Defendants have taken Plaintiffs' property in violation of the constitution.**

Defendants' actions, in reducing Plaintiffs' salary by the amount needed to pay employer retirement contributions constitute a taking of Plaintiff's property in violation of the state and federal constitutions. U.S. Const. 5<sup>th</sup> Am.; S.C. Const. Art. I, Sec. 3. The Takings Clause provides that private property shall not be taken for public use without just compensation. *Rick's Amusement, Inc. v. State*, 351 S.C. 352, 357, 570 S.E.2d 155, 157 (2001). Similarly, to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. *Worsley Co. v. Town of Mount Pleasant*, 339 S.C. 51, 56, 528 S.E.2d 657, 660 (2000).

The United States Supreme Court case on the prejudgment garnishment of wages has

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<sup>2</sup>In addition, if that interpretation is accepted, all agencies could then reduce any employee's salary, whether the employee was an active member or working retiree, and use those funds for its own use.

clearly held that wages constituted property:

Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing this prejudgment garnishment procedure violates the fundamental principles of due process.

*Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 342 (1969). Justice Harlan's

concurring opinion stated:

The "property" of which petitioner has been deprived is the use of the garnished portion of her wages during the interim period between the garnishment and the culmination of the main suit. Since this deprivation cannot be characterized as de minimis, she must be accorded the usual requisites of procedural due process: notice and a prior hearing.

*Sniadach* at 342.

Defendants do not dispute that Plaintiffs' salary is reduced in order to "cover the amount it will cost SLED to pay the employer portion of retirement" but have argued that Plaintiffs have no claim for a taking because they have no property interest in a particular salary level.

However, South Carolina Supreme Court has already rejected this argument stating:

...Appellants do not claim they are entitled to a particular salary level. Rather, Appellants contend that they have a cognizable property interest in the percentage of their salary that was deducted in violation of section 9-11-90, regardless of any particular salary level.... Properly construing Appellants' claim, we hold section 9-11-90 provides a basis to assert a property interest.

*Grimsley v. S. Carolina Law Enforcement Div.*, 396 S.C. 276, 283-84, 721 S.E.2d 423, 427 (2012).

Here, state laws set forth the amounts that can be deducted from wages for retirement contributions, as well as the contributions that must be paid by the employer. In addition, the General Assembly considers the costs to the agency for employer contributions in making appropriations. In other words, the State has created a statutory right to be paid without a reduction for the 13.6 % employer contribution. The reduction of wages is contrary to the

specific statutory requirements and constitutes a taking of the property interest created by statute. See, e.g., *Wicker v. South Carolina Dept. of Corrections*, 360 S.C. 421, 424, 602 S.E.2d 56, 57 (2004) (“We find that where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.”). Here, as recognized our Supreme Court, Plaintiffs have a “statutory right” like that recognized in *Wicker* -- that is, Section 9-11-90 specifically provides Plaintiffs with “a cognizable property interest in the percentage of their salary that was deducted in violation of section 9-1-90, regardless of any particular salary level.” *Grimsley v. S. Carolina Law Enforcement Div.*, 396 S.C. 276, 283-84, 721 S.E.2d 423, 427 (2012). Plaintiffs are entitled to summary judgment on their claim that Defendants have unconstitutionally taken their wages.

**C. Plaintiffs are entitled to a declaratory judgment.**

Under S. C. Code § 15-53-10, et seq., a party can seek a declaratory judgement defining the rights, privileges and duties of and between the parties. As set forth above, Defendants have violated the statutory laws of the State of South Carolina and has acted unconstitutionally. Plaintiffs are therefore entitled to a declaration that Defendants’ actions are illegal and that Defendants must disgorge all of the wages wrongfully withheld and declare the Plaintiffs (and the class) are entitled to interest on those withheld wages.<sup>3</sup>

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<sup>3</sup>The amount of money that Plaintiffs and the class have been deprived is significant. For the years 2005 to 2008, Plaintiff Grimsley was paid approximately \$28,000 less than he should have been. Grimsley. Aff. Plaintiff Jowers received approximately \$24,500 less than he should have. In addition, according to SLED’s own spreadsheet for showing the salary at retirement and the rehire salary for 71 working retirees, show that wages of thousands of dollars were withheld under SLED’s program. See, SLED’s discovery responses, attached hereto, as Exhibit A.

## **II. ARGUMENTS IN OPPOSITION TO SLED'S MOTION FOR SUMMARY JUDGEMENT.**

Plaintiffs have addressed most of SLED's grounds for summary judgment in the arguments above. However, two of the grounds in the SLED's Second Amended Motion for Summary Judgment merit separate sections.

### **A. Plaintiffs did not relinquish any interest by agreeing to return to work at a reduced salary.**

Defendants argue that Plaintiffs signed documents entitled "Request to be Rehired" in which they "agreed" to be rehired a reduced salary in order to "cover the amount it will cost SLED to pay the employer portion of retirement." First, the "agreements" were forms created by SLED, and do not contain language upon which the parties negotiated. If Plaintiffs did not sign the form, they could not be rehired. Secondly, agreements in violation of statutory or constitutional law will not be enforced. *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002) (An illegal contract is unenforceable); *Carolina Care Plan, Inc. v. United Healthcare Services, Inc.*, 361 S.C. 544, 555. 606 S.E.2d 752, 758 (2004) (This Court will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution.). SLED is attempting to enforce an agreement that violates Section 9-11-90 and which constitutes an unconstitutional taking. These "agreements" cannot be enforced.

### **B. The Statute of Limitations does not bar Plaintiffs' case.**

Defendants argue that the Plaintiffs entered the program in 2004, but did not bring this lawsuit in 2008, and thus, their action is barred by the statute of limitations. However, the statute of limitations began to run anew every time Defendants issued a paycheck to Plaintiffs that was 13.6% less than it should have been, due to SLED's improper withholding of that amount to pay the employer retirement contribution for Plaintiffs. *See, e.g. Tilley v. Pacesetter Corp.*, 333 S.C.

33, 42, 508 S.E.2d 16, 20 (1998)(“Accordingly, although we find the three year statute of limitations applicable, it begins to run from each payment [in violation of the statute], such that plaintiffs' claims are not barred.”).<sup>4</sup> Thus, Plaintiffs can recover for the three years prior to the filing of the Complaint through the current date.

### III. ARGUMENTS AS TO THE STATE’S MOTION FOR SUMMARY JUDGMENT

The State argues that a) it is not a proper defendant because there is not cause of action against it; 2) the claims are barred by sovereign immunity. These arguments are addressed below.

#### A. The State is a necessary party because Plaintiffs have asserted a declaratory judgment.

One of Plaintiffs’ causes of action is a declaratory judgment, asking this Court to declare that SLED and the State have violated South Carolina statutory and common law, and to require disgorgement. The South Carolina Declaratory Judgment Act, provides :

When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise the municipality shall be made a party and shall be entitled to be heard. If the statute, ordinance or franchise is alleged to be unconstitutional the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard.

S.C. Code § 15-53-80 (emphasis added). Because the Respondent is a party who would be affected by the declaratory judgment, it must be included as a party.

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<sup>4</sup>See also, *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 358, 559 S.E.2d 327, 337 (Ct. App. 2001)(A new statute of limitations begins to run after each separate invasion of property.)

The State relies *Hardwick v. Liberty Mut. Ins. Co.*, 243 S.C. 162, 133 S.E.2d 71 (1963) for the proposition that it does not need to be joined as party because there is no justiciable controversy between Appellant and Respondent. However, the State's reliance is misplaced. That case simply recognized that there was justiciable controversy between the driver of a car and an insurance company on the duty to defend under the policy.<sup>5</sup> In fact, the court did not even consider whether the various parties should have been added under the Declaratory Judgment Statute:

We do not here or now decide whether Surety Indemnity Company and/or various claimants should have been or should be joined as parties pursuant to the provisions of Section 10-2008,<sup>6</sup> as that issue is not before us. We simply hold that the failure to so join any of them did not render the complaint subject to demurrer.

*Hardwick*, 243 S.C. at 170, 133 S.E.2d at 74. Thus, *Hardwick* offers no guidance here.

Pursuant to the Declaratory Judgment Act, the State must be included as a party who would be affected by the judgment. Furthermore, the State is a necessary party in that Plaintiffs have alleged that SLED is misappropriating funds that the State has appropriated for the specific purpose of employer retirement contributions. Finally, Plaintiffs seek disgorgement of the monies taken and those monies are within the control of the State. Thus, the State's request for summary judgment must be denied.

**B. Sovereign immunity does not apply.**

The government has never been immune from an action alleging a taking of private

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<sup>5</sup>In the lower court, the insurance company sought a demurrer on the grounds that other parties should have been named as parties. After the lower court found the complaint was not demurrable, and the insurance company appealed.

<sup>6</sup>Section 10-2008 of the 1962 Code was the precursor to S.C. Code § 15-53-80.

property or for a declaratory judgment. In fact, before the Tort Claims Act was enacted, the State and its subdivisions were not liable for any action **except** for the taking of property:

In this jurisdiction neither the State nor any of its political subdivisions is liable in an action *ex delicto* unless by express enactment of the General Assembly, except where the acts complained of, in effect, constitute a taking of private property for public use without just compensation.

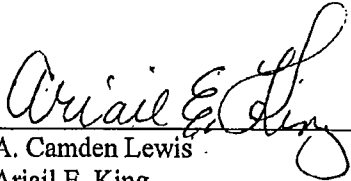
*Graham v. Charleston County School Bd.*, 262 S.C. 314, 317, 204 S.E.2d 384, 386 (S.C. 1974)

(overruled by *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). Furthermore, the Declaratory Judgment Act specifically provides that a party “may have determined any question of construction or validity arising under the instrument, **statute**, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” S.C. Code 15-53-30.

After *McCall* abolished the doctrine of sovereign immunity, the General Assembly enacted the Tort Claims Act, S.C. Code § 15-78-10, et seq., which does provide for certain exemptions whereby the State is exempted from liability. However, none of those exceptions relieve the State from liability from an unconstitutional taking or a declaratory judgment.

#### CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully submit that this Court should grant Plaintiffs’ Motion for Summary Judgment and deny the Defendants’ Motions for Summary Judgment.



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Attorneys for the Plaintiffs

June 4, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Phillip D. Grimsley, Sr. and Roger M. )  
Jowers, on behalf of themselves and other )  
similarly situated, )

Civil Action Number: 08-CP-40-8854

Plaintiffs, )

v. )

DEFENDANT SLED'S RESPONSES TO  
PLAINTIFFS' FOURTH SET OF  
INTERROGATORIES

South Carolina Law Enforcement )  
Division and the State of South Carolina, )

Defendants. )  
\_\_\_\_\_ )

TO: ARIAL E. KING, ESQUIRE, RICHARD A. HARPOOTLIAN, ESQUIRE, AND JOHN  
A. O'LEARY, ESQUIRE, ATTORNEYS FOR PLAINTIFF

Pursuant to Rule 33, SCRPC, Defendant South Carolina Law Enforcement Division  
responds to Plaintiff's Fourth Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

This Defendant makes the following general objections, which are incorporated by  
reference into each of these responses.

1. This Defendant objects to the production of any information or documents  
referenced in these requests that are subject to the attorney-client privilege or the attorney work  
product privilege.

2. This Defendant also objects to the production of information or documents from  
the personnel files of individuals who are not parties in this presently-uncertified class action.  
Such information is personal to those nonparty individuals and would be inappropriate for  
disclosure by this Defendant in the absence of an order from the Court.



1. Identify each SLED employee who entered into "re-employment under the PORs Retirement Provisions" (as shown on Ex. A hereto) and who had "a reduction of 13.6% in [their] salary to cover the amount it will cost SLED to pay the employer portion of retirement."

**RESPONSE:**

This Defendant objects to this Interrogatory for the reasons set forth in General Objection No. 2 above. Notwithstanding this objection, and without waiving same, this Defendant would respond as set forth below.

Notwithstanding the above objections, and pursuant to oral discussions regarding this Interrogatory, this Interrogatory is regarded as seeking information concerning each SLED employee who signed an "Employee Orientation" form such as that shown on Ex. A to the Fourth Interrogatories, or its predecessor (used from 2002 through June 2004), which referred to a 10.3% amount. A sample of the latter is attached hereto as Doc. No. 8022-C-0001. Approximately 54 employees who signed one version of that form or the other were rehired at their previous salary less 10.3% and approximately 22 others, starting in July 2004, were rehired at their previous salary less 13.6%.

All information provided in this interrogatory response is based on information about the employees referenced in the attached spreadsheet (see response to Interrogatory 2). Information about any relevant events that occurred after the date of that spreadsheet will be provided shortly, but it is believed that few if any rehires of retired employees that occurred after those referenced in the spreadsheet involved a salary reduction of 10.3% or 13.6%.

2. For each person identified in the Answer to Interrogatory No. 1, state the dollar amount for the "employer contribution" withheld from the employee's check for retirement from the date of re-employment to the present.

**RESPONSE:**

This Defendant objects to this Interrogatory for the reasons set forth in General Objection No. 2 above. In addition, this Defendant denies that there was an "employer contribution" that was "withheld from the employee's check for retirement," and therefore objects to this Interrogatory on the ground that the information described by this Interrogatory does not exist as described.

Notwithstanding these objections, and without waiving same, this Defendant would refer Plaintiffs to the attached spreadsheet (Doc. No. 8022-C-0002) for information concerning the comparison between the dollar amounts paid to these employees before they retired and after they were rehired at salaries that were reduced by percentage reductions of either 10.3% or 13.6%, and who in the course of being rehired at reduced salaries, signed "Employee Orientation" forms that referenced a reduction in salary of 10.3% or 13.6%.

This Defendant further objects to this Interrogatory on the ground that the burden of computing dollar amount information pertaining to salary reductions upon rehire is substantially the same for both parties. That information can be obtained by making computations from the information on the attached spreadsheet.

The forms used in rehires after the first rehire also provided that the 6.5% employee contribution would be deducted from the employees' checks, unlike the initial rehire forms, which in most cases indicated that that employee contribution was no longer being withheld.

The initial four-year terms of employment of all of the employees on the spreadsheet except one (Employee No. 20) expired no later than 2008, so unless this Defendant's presently-ongoing review indicates that someone signed an "Employee Orientation" form that referenced a reduction in salary of 10.3% or 13.6% after 2008, this Defendant objects to the production of any information about information "through the present" that extends beyond each employee's initial re-hiring, on the ground that such evidence is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

**3. For each person identified in the Answer to Interrogatory No. 1, state the dollar amount for the "employee contribution" from the employee's check for retirement from the date of re-employment to the present.**

**RESPONSE:**

This Defendant objects to this Interrogatory on the following grounds: To the extent that the Interrogatory requests information about actual withholding of the 6.5% employee contribution, such information would raise an issue not presented in this case. This Defendant would show, however, that since all of the employees on the attached spreadsheet became retired employees at the time of their initial termination of employment, their salaries upon rehire were not subject to the employee contribution, at least prior to July 1, 2005.

This Defendant further objects to this Interrogatory on the ground that the burden of computing dollar amount information pertaining to employee contributions upon rehire is substantially the same for both parties. That information can be obtained by making computations from the information on the attached spreadsheet.

DAVIDSON & LINDEMANN, P.A.

BY: 

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ATTORNEYS FOR DEFENDANT SOUTH CAROLINA  
LAW ENFORCEMENT DIVISION

Columbia, South Carolina

April 17, 2012

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

JAMES H. HODGES  
Governor



ROBERT M. STEWART  
Chief

## EMPLOYEE ORIENTATION FOR RE-EMPLOYMENT UNDER THE PORS RETIREMENT PROVISIONS

As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed on your benefits and employment status.

- **EMPLOYMENT STATUS:** You will be an AT-WILL employee. (AT-WILL means that you can be separated from employment at any time for cause or for no cause.) You have no grievance or reduction in force (RIF) rights. You are eligible for all other rights of any permanent employee.
- **SALARY:** You will have a reduction of 10.3% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5 % employee portion of retirement will no longer be deducted from your check # 42,255
- **INSURANCE:** You have the election to enroll in the insurance under SLED or continue coverage on the retiree group. If you elect to come under SLED's insurance your salary will be decreased by the amount of the state's portion of the premium.
- **LEAVE:** You will accrue leave at the same rate you were accruing when you left employment. Your accrual rate was [REDACTED]. You will begin accruing in the month of [REDACTED]. You will begin with a zero balance of sick and annual leave. You will not receive a pay out of annual leave at your second termination. You must complete leave slips for leave taken.
- **TIME AND ATTENDANCE:** If you are a non-exempt employee you must complete time and attendance sheets (Dailies). If you are currently completing a time sheet as a temporary employee and are going into an exempt position, you will discontinue completing the time sheets on \_\_\_\_\_.
- **DEDUCTION CHANGES:** If you wish to make any deduction changes now that you are a permanent employee, you must complete a P-4 withholding form.

My signature indicates that the above checked items were discussed with me during orientation.

[REDACTED]  
Employee

[REDACTED]  
Social Security Number

1-27-03  
Date

Employee 64



An Accredited Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

8022-C-001

NAME	REDUCTION % FROM FORM	SALARY AT RETIREMENT	REHIRE DATE	REHIRE SALARY	DATE OF TERMINATION OF INITIAL REHIRE PD.	SALARY AT TERMINATION OF INITIAL REHIRE PD.	6.5% EMPLOYEE CONTRIBUTION AT TIME OF REHIRE?
85	10.3	\$45,959	09/17/02	\$41,225	08/16/06	\$45,706	NO
84	10.3	\$63,327	09/17/02	\$56,804	09/16/06	\$62,978	NO
86	10.3	\$45,732	09/17/02	\$41,021	09/16/06	\$45,480	NO
87	10.3	\$42,536	09/17/02	\$38,154	09/16/06	\$42,302	NO
83	10.3	\$56,592	10/02/02	\$50,763	01/16/04	\$50,763	NO
80	10.3	\$42,250	10/17/02	\$37,898	10/16/06	\$42,016	NO
81	10.3	\$62,108	10/17/02	\$55,710	10/16/06	\$61,766	NO
82	10.3	\$32,109	10/17/02	\$28,801	10/16/06	\$30,358	NO
78	10.3	\$56,207	11/04/02	\$50,418	10/01/06	\$55,898	NO
77	10.3	\$51,181	11/04/02	\$45,909	11/01/06	\$50,899	NO
79	10.3	\$63,220	11/04/02	\$56,708	11/01/06	\$62,872	NO
74	10.3	\$51,226	11/18/02	\$45,950	08/09/04	\$45,450	NO
71	10.3	\$51,976	11/18/02	\$46,622	07/01/05	\$50,184	NO
70	10.3	\$47,227	11/18/02	\$42,363	11/17/06	\$46,965	NO
72	10.3	\$52,892	11/18/02	\$47,444	11/17/06	\$52,600	NO
73	10.3	\$45,507	11/18/02	\$40,820	11/17/06	\$45,256	NO
75	10.3	\$49,183	11/18/02	\$44,117	11/17/06	\$48,912	NO
76	10.3	\$42,192	11/18/02	\$37,846	11/17/06	\$41,959	NO
69	10.3	\$63,325	12/02/02	\$56,803	01/15/04	\$56,803	NO
68	10.3	\$59,820	12/02/02	\$53,659	07/27/06	\$59,490	NO
67	10.3	\$56,942	01/02/03	\$51,076	01/16/03	\$51,076	NO
66	10.3	\$81,956	01/02/03	\$73,515	01/01/07	\$81,504	NO
62	10.3	\$68,008	01/17/03	\$61,003	03/22/04	\$61,003	NO
63	10.3	\$55,211	01/17/03	\$49,524	02/18/05	\$53,235	NO
64	10.3	\$47,108	01/17/03	\$42,256	01/15/07	\$46,849	NO
65	10.3	\$66,056	01/17/03	\$59,252	01/15/07	\$65,692	NO
59	10.3	\$62,108	02/03/03	\$55,711	02/01/07	\$61,766	NO
60	10.3	\$65,048	02/03/03	\$58,348	02/01/07	\$64,690	NO
61	10.3	\$58,754	02/03/03	\$52,702	02/01/07	\$58,430	NO
56	10.3	\$42,476	02/18/03	\$38,101	02/01/07	\$45,621	NO
57	10.3	\$72,254	02/18/03	\$64,812	02/16/07	\$71,855	NO
58	10.3	\$81,956	02/18/03	\$73,515	02/16/07	\$81,504	NO
55	10.3	\$51,523	03/03/03	\$46,216	02/14/06	\$51,239	NO
54	10.3	\$63,220	03/17/03	\$56,708	03/01/07	\$62,872	NO
53	10.3	\$69,541	04/02/03	\$62,378	03/16/07	\$69,158	NO
52	10.3	\$78,032	05/02/03	\$69,995	04/16/07	\$77,603	NO
51	10.3	\$36,720	06/17/03	\$32,938	06/01/07	\$36,517	NO
50	10.3	\$52,218	08/04/03	\$46,840	07/16/07	\$53,487	NO
49	10.3	\$47,227	08/18/03	\$42,363	08/10/07	\$48,373	NO
9	10.3	\$19,99ph	09/02/03	\$39,033	04/01/05	\$40,203	NO
48	10.3	\$61,130	09/17/03	\$54,834	09/01/07	\$62,616	NO

NAME	REDUCTION % FROM FORM	SALARY AT RETIREMENT	REHIRE DATE	REHIRE SALARY	DATE OF TERMINATION OF INITIAL REHIRE PD.	SALARY AT TERMINATION OF INITIAL REHIRE PD.	6.5% EMPLOYEE CONTRIBUTION AT TIME OF REHIRE?
46	10.3	\$28,849	10/17/03	\$25,878	10/01/07	\$29,778	NO
47	10.3	\$47,812	10/17/03	\$42,887	10/01/07	\$48,973	NO
45	10.3	\$55,211	11/03/03	\$49,524	10/16/07	\$56,553	NO
44	10.3	\$54,162	12/02/03	\$48,583	11/16/07	\$51,552	NO
42	10.3	\$68,015	01/20/04	\$61,009	05/19/06	\$65,670	NO
43	10.3	\$47,106	01/20/04	\$42,254	10/19/06	\$46,846	NO
41	10.3	\$54,323	02/17/04	\$48,728	11/02/06	\$54,023	NO
40	10.3	\$55,575	02/17/04	\$49,851	02/01/08	\$56,927	NO
39	10.3	\$45,618	03/17/04	\$40,920	02/29/08	\$46,728	NO
38	10.3	\$63,220	04/02/04	\$56,708	03/14/08	\$70,260	NO
36	10.3	\$42,868	05/17/04	\$38,453	08/15/04	\$38,035	NO
37	10.3	\$53,821	05/17/04	\$48,277	05/01/08	\$55,129	NO
35	10.3	\$44,547	06/17/04	\$41,157	01/21/05	\$39,524	NO
34	13.6	\$43,323	07/02/04	\$38,554	06/16/08	\$44,955	NO
32	13.6	\$44,755	07/19/04	\$39,828	07/01/08	\$46,440	NO
33	13.6	\$43,117	07/19/04	\$38,371	07/01/08	\$44,740	NO
31	13.6	\$52,896	08/17/04	\$45,702	06/16/08	\$53,289	NO
30	13.6	\$45,674	09/17/04	\$39,462	09/01/08	\$46,012	NO
29	13.6	\$44,622	10/18/04	\$38,553	01/01/05	\$38,553	NO
28	13.6	\$43,812	02/02/05	\$37,854	06/16/08	\$44,137	NO
27	13.6	\$49,190	08/17/05	\$42,500	09/15/06	\$43,775	YES
26	13.6	\$49,029	10/17/05	\$42,361	06/16/08	\$45,388	YES
25	13.6	\$63,307	02/17/06	\$54,697	12/01/08	\$58,607	YES
24	13.6	\$47,897	03/19/07	\$42,820	12/01/08	\$44,545	YES
23	13.6	\$55,880	06/04/07	\$48,728	06/02/08	\$49,728	YES
21	13.6	\$65,211	08/17/07	\$56,342	06/16/08	\$56,905	YES
22	13.6	\$51,732	08/17/07	\$44,696	06/16/08	\$45,142	YES
12	13.6	\$98,723	08/17/07	\$85,297	08/01/08	\$86,149	YES
15	13.6	\$74,949	07/17/08	\$64,756	12/01/08	\$64,756	YES
16	13.6	\$78,808	07/17/08	\$68,090	12/01/08	\$68,090	YES
17	13.6	\$64,966	07/17/08	\$56,130	12/01/08	\$56,130	YES
18	13.6	\$63,979	07/17/08	\$55,277	12/01/08	\$55,277	YES
19	13.6	\$81,828	07/17/08	\$70,699	12/01/08	\$70,699	YES
20	13.6	\$80,740	07/17/08	\$69,760	To be supplied	To be supplied	YES
14	13.6	\$82,236	10/02/08	\$71,052	12/01/08	\$71,052	YES

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 PHILLIP D. GRIMSLEY, SR., and )  
 )  
 ROGER M. JOWERS, on behalf of )  
 )  
 themselves and others similarly )  
 )  
 situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 SOUTH CAROLINA LAW )  
 )  
 ENFORCEMENT DIVISION and )  
 )  
 THE STATE OF SOUTH CAROLINA, )  
 )  
 )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTH JUDICIAL CIRCUIT  
 Civil Action Number: 2008-CP-40-08854

**AFFIDAVIT OF PHILLIP D. GRIMSLEY**

JEANETTE W. McBRIDE  
 C.C.P. & G.S.  
 2012 MAY 25 AM 10:16  
 RICHLAND COUNTY  
 FILED

The affiant, Phillip D. Grimsley, after being sworn, does depose and state:

1. In 2004, I decided to retire from the South Carolina Law Enforcement Division (SLED) and return to work under SLED's retirement program. The program was offered to employees who had 25 years or more of service paid into the Police Officers Retirement System (PORS). One aspect of the program provided that "SLED is funding the Program with existing funds and will use a reduced rehire salary to offset the cost of the Incentive." (Exhibit A).
2. When I decided to retire, I was required to sign a request to be rehired. On the request dated May 20, 2004, the form stated that my salary would be "10.3% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized." (Exhibit B).
3. Before my actual retirement date, I received another agreement to sign, saying that the cost to return to work was being increased. The General Assembly had given all state employees a 3% raise and SLED required all retirees that returned to work to pay the 3% raise by reducing

our salaries even more. On June 21, 2004, I signed the new request, which stated that my salary would be 13.6% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized." (Exhibit C).

4. On July 27, 2004, I received confirmation of my rehiring which stated:

Your salary will be **\$45,702** (previous base salary less 13.6%) no longevity pay, additional reduction by cost of health insurance to agency if elected.

(Exhibit D, emphasis in original).

5. On June 13, 2005, I received a letter from Lynn Hutto, Director of Human Resources for SLED. While I cannot locate my letter, it is identical to the one received by Plaintiff Jowers, which is attached hereto. (Exhibit E). This letter stated that the General Assembly had given a 4% pay increase for all classified employees in permanent full time equivalent position and a 6% increase as a result of a the 2004 Law Enforcement Pay Study." However, both my raises were reduced by SLED: *"Please note that both the 4% and the 6% have been adjusted by 13.55%."*

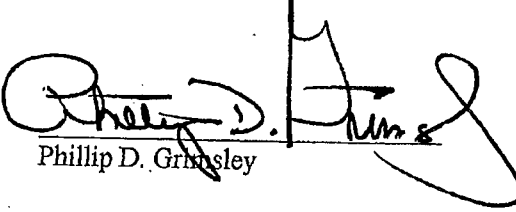
(Exhibit E, italics in original).

6. For the years I was in the SLED retirement program, I lost 13.6% of my salary annually, which translates to thousands of dollars. For example, in 2005, which was the first full year of my re-employment, my gross salary according to my W2 was \$46,971.02. (Exhibit F). If SLED had not reduced it by 13.5% for employer retirement contributions, it would have been \$54,301.76. Thus, in 2005, I lost \$7,330.74.

7. In 2006, my gross salary was \$51,079.92 (Exhibit G). However, without the 13.5% reduction, my salary would have been \$59,051.93. For that year, I lost \$7,972.01.


8. In 2007, my gross salary was \$52,593.84 (Exhibit H). Without the 13.5% reduction, my salary would have been \$60,802.13, which means I lost \$8,208.29 in 2007.

9. I did not work a full year in 2008 (Exhibit I). However, my gross salary for the time I was employed was \$28,901.29 (Exhibit J). Had it not been cut 13.5%, my salary would have been \$33,411.90. Thus, I lost \$4,510.61 that year. I filed this lawsuit shortly thereafter leaving my employment with SLED.

  
Phillip D. Grimsley

SWORN to before me this

22<sup>nd</sup> day of May, 2012,

  
\_\_\_\_\_  
(L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 10/26/19

**TAB A**

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

JIM HODGES  
Governor



ROBERT M. STEWART  
Chief

## MEMORANDUM



TO: SLED Personnel

FROM: Robert M. Stewart *MS*

SUBJECT: SLED Voluntary Retirement Incentive Program

DATE: July 31, 2001

As a result of a budget shortfall, SLED has been exploring opportunities to address financial needs while maintaining critical service levels. The legislature offered agencies an opportunity to develop retirement incentive programs specifically designed to create savings within agencies to address the FY2001-2002 budget cuts. SLED has developed a VOLUNTARY RETIREMENT INCENTIVE Program whereby the agency will purchase either "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, not to exceed 70% of base salary, for eligible participants. This Program is completely voluntary and can benefit employees who are interested in retiring and who are eligible to retire with 25 years service credit in the PORS or 28 years service credit in the SCRS on or before October 1, 2001.

Because you are eligible to retire under the requirements of the SLED VOLUNTARY RETIREMENT INCENTIVE Program, you are receiving this package of information. Please complete the enclosed "Acknowledgement of Receipt" form and return it to Lynn Hutto as soon as practicable. Should you desire to participate in the Program, you are also required to complete and have notarized the three (3) page "Agreement and Release" form and return it to Lynn Hutto on or before September 15, 2001.

Some employees may be eligible to return to temporary employment with the State Law Enforcement Division. Factors influencing decisions to rehire may include the availability of funds, recommendations from supervisory staff, and the needs of the agency. In accordance to legislation passed by the General Assembly and signed by the



053

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P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

Governor in May 2001, state employees retiring from employment with the State of South Carolina must wait for a period no less than sixty (60) calendar days before returning to employment with the state. During the sixty (60) calendar day period, executive staff will be determining rehire decisions based upon availability of funds, the needs of the agency, and supervisory recommendations. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

As stated above, *all* employees receiving this document must return the "Acknowledgement of Receipt" form to Lynn Hutto as soon as practicable. Signing and returning the "Acknowledgement of Receipt" form only indicates that you have received notification of the Program. Those individuals choosing to participate in the SLED VOLUNTARY RETIREMENT INCENTIVE Program must complete and return the "Agreement and Release" form on or before September 15, 2001.

**NOTICE OF THE  
2001  
SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED)  
VOLUNTARY RETIREMENT INCENTIVE PROGRAM**

**PURPOSE**

As a result of a budget shortfall, the South Carolina Law Enforcement Division has been exploring opportunities to address financial needs while maintaining service levels and commitment to personnel. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in the SLED Voluntary Retirement Incentive Program.

SLED is funding this Program with existing funds and will use a reduced rehire salary to offset the cost of the Incentive. Savings can be realized with any level of participation in the Program.

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Retirement Incentive Program simply because you have received this notice.

Employees who decide to participate in the SLED Voluntary Retirement Incentive Program will be required to sign the attached "Agreement and Release" form, which will also release any and all claims the employee could bring against the State or SLED, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. The employee and a representative of the agency must sign the agreement.

The Chief of SLED shall develop the SLED Voluntary Retirement Incentive Plan in consultation with the Office of Human Resources and the South Carolina Retirement Systems, and upon approval by the Division of Budget and Analysis shall implement the Program. All decisions regarding the Retirement Incentive Program are the responsibility of the Chief of SLED, are final, and are not grievable or appealable. Questions and applications for the Retirement Incentive Program should be referred to Lynn Hutto in the SLED Office of Human Resources.

## RETIREMENT INCENTIVE PROGRAM

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Program simply because, as an employee, you have received this notice.

This notice explains the provisions that govern the SLED Voluntary Retirement Incentive Program, and includes an "Agreement and Release" ("Agreement") that you will use should you decide to participate in the Program. The "Agreement" includes the employee's release of any and all claims that the employee could bring against the State Law Enforcement Division, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. An "Acknowledgement of Receipt" is also included in your receipt of the documents in this package. Please sign and return the Acknowledgement when you receive this notice. Signing the "Acknowledgement of Receipt" form does not indicate participation in the Program.

If you have any questions about the SLED Voluntary Retirement Incentive Program, please contact Lynn Hutto, Division Director of Human Resources at 803/896-7168.

The SLED Voluntary Retirement Incentive Program works as follows:

1. Eligibility

- A. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in this Program.
- B. Employees who cannot purchase enough service credit in addition to service credit available under the "Incentive," defined below, to retire as of October 1, 2001, are not eligible to participate in this plan.
- C. Employees participating in a voluntary separation program in accordance with the provision of the State Appropriation Act, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- D. Employees who are taking part in the TERI plan or any equivalent program for law enforcement officers, are not eligible to participate in this Program.

- E. Employees who have submitted a notice of resignation which has been accepted by the agency prior to the effective date of the Program, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- F. Employees who are eligible through service, or who are able to purchase service credit to become eligible by October 1, 2001, may participate in this Program.
- G. Only employees in FTE positions may be eligible to participate in this Program.
- H. Employees choosing to participate in this Program must declare to retire from service with the State of South Carolina no later than September 15, 2001. The effective date of retirement shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date; in such a case, the specific retirement date must be approved by the Chief of SLED.
- I. Employees choosing to participate in this Program cannot be rehired with the State in a temporary position for a period of sixty (60) calendar days from the date of retirement.
- J. Employees choosing to participate in this Program cannot become employed with the agency in an FTE position for a period of at least two (2) years from the date of separation.
- K. The Chief of SLED may declare an employee or categories of job classes ineligible to participate in the Program due to financial considerations or business needs in order for the agency to continue its mission.
- L. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

2. The "Incentive"

SLED will provide to the employee the following:

The Division will purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three not to exceed 70% of base salary (if approved and as defined by the South Carolina Retirement System) on behalf of an employee electing to participate in the Program and who is

currently eligible to retire, or who will become eligible to retire as of October 1, 2001, as a result of participating in the Program.

3. Limit on the "Incentive"

- A. Under no circumstances will the Division pay for the purchase of "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three for any employee in an amount in excess of 70% of the employee's base salary.
- B. SLED shall make payment for unused annual leave as directed by Human Resource Regulations.

4. Timing of Acceptance and Notice Provisions

- A. Employees eligible to participate in the "SLED Voluntary Retirement Incentive Program" may accept participation in this Program beginning August 1, 2001.
- B. Eligible employees may have forty-five (45) calendar days to consider whether to participate in this Program. The final date to declare participation in this Program is September 15, 2001.
- C. After an eligible employee chooses to participate in the Program, the employee will have seven (7) calendar days from the date of his/her acceptance to revoke his/her acceptance.
- D. All employees who choose to participate in this Program must declare to retire and separate from employment with the State of South Carolina no later than September 15, 2001. The effective date of retirement and separation shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date.
- E. Employees who choose to participate in the SLED Voluntary Retirement Incentive Program must acknowledge that they would not otherwise be entitled to the Program but for their participation in the Program.
- F. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program will receive a list of 1) all job titles and ages of

employees eligible to participate and 2) ages of all individuals in the same job class not eligible to participate.

- G. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program must submit a signed written agreement (which is attached) with full release of claims including Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA)(excluding existing Workers' Compensation claims).
- H. All employees receiving these documents must sign the attached "Acknowledgement of Receipt" form and return it immediately to Lynn Hutto of the SLED Office of Human Resources.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

AGREEMENT AND RELEASE

This Agreement and Release (hereinafter the Agreement) is agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between \_\_\_\_\_ (hereinafter the Employee) and the South Carolina Law Enforcement Division (hereinafter SLED).

WHEREAS, the Employee is currently employed by SLED, and

WHEREAS, SLED began offering the SLED Voluntary Retirement Incentive Program, which is attached to this Agreement, to eligible employees of SLED beginning August 1, 2001, and

WHEREAS, the time period in which eligible employees of SLED may choose to participate in the SLED Voluntary Retirement Incentive Program beginning August 1, 2001 and ending September 15, 2001, and

WHEREAS, the Employee is currently employed by SLED, is eligible to participate in the SLED Voluntary Retirement Incentive Program and chooses to participate in the Program in a timely manner, and

WHEREAS, the Employee chooses to resign and separate from employment with SLED no later than October 1, 2001, unless an exception to the retirement date has been approved by the Chief of SLED, and

WHEREAS, the Employee understands he/she may not be employed with the State Law Enforcement Division in an FTE position for a period of two (years) from the date of retirement. However, SLED may hire participating employees into temporary positions as the Division deems necessary, and

THEREFORE, the employee and SLED enter into the following Agreement:

1. **Employee's Voluntary Retirement.** The Employee voluntarily retires from employment with SLED and the State of South Carolina effective at the close of business on \_\_\_\_\_, 2001, and therefore voluntarily offers to resign employment with SLED effective that same date. SLED accepts the Employee's voluntary retirement and resignation.
2. **Incentive.** SLED agrees to purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, on behalf of the Employee not later than October 1, 2001 and not to exceed 70% of the

employee's base salary. SLED and Employee agree that SLED is purchasing this "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three pursuant either to S.C. Code Ann. Section 9-1-1140 or to S.C. Code Ann. Section 9-11-50. In order to purchase the "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, SLED and Employee agree that SLED will pay an amount up to 70% of base salary as an "Employer Contribution" to Employee's retirement account maintained by the South Carolina Budget and Control Board's Division of Retirement Systems. Employee affirms that he/she will be responsible for all tax liability, if any, resulting from his/her acceptance of this Incentive. SLED will make the purchase described in this Paragraph in a manner that will allow the Employee to retire on the date listed in Paragraph 1 of this Agreement.

3. **Release.** The Employee, for himself/herself and his/her heirs, executors, administrators, successors, and assigns, hereby releases the State and SLED, its present and past employees, agents, officers, successors, insurers, and assigns, from any and all, present or future claims by the Employee. This release specifically includes, but is not limited to, all claims which may have been asserted by or on behalf of the Employee against the State and SLED in any lawsuit, grievance, administrative proceeding, or charge of discrimination against the State and SLED, on account of any matter relating to the Employee's employment with SLED or his/her voluntary resignation from employment with SLED. This release excludes any existing Workers' Compensation claims filed by the employee. The Employee specifically includes in this release claims that may have been asserted by him/her or on his/her behalf under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA).
4. **Adequate Consideration.** The Employee affirms that the Incentive described in Paragraph 2 of this Agreement is adequate consideration for the release of claims described in Paragraph 3 of this Agreement. The Employee affirms that, absent this Agreement, he/she would not otherwise be entitled to the Incentive described in Paragraph 2 of this Agreement.
5. **Confidentiality.** SLED and the Employee will deem the terms, conditions, and circumstances of this Agreement confidential, except as required by law and as deemed necessary to enforce this Agreement.
6. **Voluntary Waiver.** The Employee affirms that he/she has carefully read and considered this Agreement, and that he/she fully understands the meaning and importance of its provisions, including his/her release of all claims under the Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA). The Employee also affirms that he/she is fully competent to sign and execute this Agreement and that he/she does so without any coercion, promise of reward, undue influence, threat, or intimidation of any kind or type.

7. Forty-Five Day Period. The Employee affirms that he/she has been afforded the opportunity to consider this Agreement for a forty-five (45) calendar day period.
8. Revocation Period. The Employee understands that he/she has seven (7) calendar days after signing this Agreement to revoke his/her acceptance of the Agreement, and that SLED will make the incentive payment described in Paragraph 2 of this Agreement only after the passage of these seven (7) calendar days and only after this Agreement comes into full and binding effect.
9. Governing Law. This Agreement is governed by the laws of the State of South Carolina.
10. The contents of this written document constitute the entire Agreement regarding the SLED Voluntary Retirement Incentive Program.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

FOR THE EMPLOYEE:

FOR SLED:

\_\_\_\_\_  
Employee Name (signature)

\_\_\_\_\_  
Lynn Hutto  
Human Resources Director  
S.C. Law Enforcement Division

\_\_\_\_\_  
Employee Name (print)

Sworn to and Subscribed to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2001

Sworn to and Subscribed to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2001

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

My commission expires:  
\_\_\_\_\_

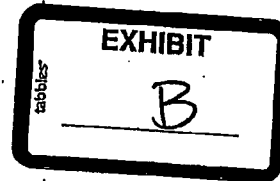
**TAB B**

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



ROBERT M. STEWART  
Chief



TO: Chief Robert M. Stewart  
FROM: Lt. Phil Grimsley  
SUBJECT: REQUEST TO BE REHIRED  
DATE: May 20, 2004

043

I am requesting to be rehired with the South Carolina State Law Enforcement Division. I understand that if this does occur, the following provisions apply and I agree to them:

- Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights-(at-will employee).
- Accrual of annual and sick leave at current rate.
- Salary: 10.3% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.
- Employment not to exceed 48 months.
- No lump sum payment for annual leave upon second separation.
- Review date: twelve months after date of rehire.
- No probationary period.
- Must apply to this agency and receive permission to reenter retirement system as an active member.

5-20-04  
DATE

Phil Grimsley  
SIGNATURE

Approved for rehire:  
RMS/g

SWORN TO BEFORE ME THIS 20th DAY OF May, 2004.

Glenn D. Booth  
My Commission Expires: 3/13/11



An Accredited Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

TAB C

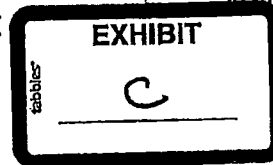
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# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor

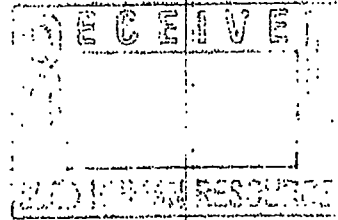


ROBERT M. STEWART  
Chief



044

TO: Chief Robert M. Stewart  
FROM: Lt. Phil Grimsley  
SUBJECT: REQUEST TO BE REHIRED  
DATE: June 21, 2004



I am requesting to be rehired with the South Carolina State Law Enforcement Division. I understand that if this does occur, the following provisions apply and I agree to them:

- Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).
- Accrual of annual and sick leave at current rate.
- Salary: 13.6% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.
- Employment not to exceed 48 months.
- No lump sum payment for annual leave upon second separation.
- Review date: twelve months after date of rehire.
- No probationary period.
- Must apply to this agency and receive permission to reenter retirement system as an active member.

6/21/04  
DATE

Phil Grimsley  
SIGNATURE

Approved for rehire:  
RMS/gdw

SWORN TO BEFORE ME THIS 21<sup>st</sup> DAY OF June, 2004.

Gerald Booth  
My Commission Expires: 3/13/11



An Accredited Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

**TAB D**


# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



ROBERT M. STEWART  
Chief

**THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.**

TO: Phillip Grimsley  
FROM: Lynn Hutto, Director of Human Resources   
SUBJECT: Confirmation of Your Request to Rehire  
DATE: July 27, 2004

This is confirmation that your request to return to employment with the SC Law Enforcement Division has been approved based on your written acceptance of the following provisions:

- Status: FTE (full time equivalent employee) with no grievance or RIF (reduction-in-force) rights (at will employee).
- Accrual of annual leave will be at 21.50 hours a month. Accrual of sick leave will be at 10.75 a month. No lump sum payment for annual leave upon second separation.
- Your salary will be \$45,702 (previous base salary less 13.6%) no longevity pay, additional reduction by cost of health insurance to agency if elected.
- Employment not to exceed 48 months.
- Review date: twelve months after date of rehire.
- No probationary period.
- Must apply to this agency and receive permission to reenter retirement system as an active member.

Because your last day of employment was June 30, 2004 and you were compensated for a total of 45 days of annual leave, your re-employment date will be August 17, 2004.

Please contact Margie Coker at 803-896-7205 to schedule a time to complete the employment processing. You will need your social security card and driver's license at the time of your meeting. Should you be unable to return by the date indicated above please contact Margie Coker.

Cc: Capt. Drakeford  
HR file



045

An Accredited Law Enforcement Agency  
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)  
896-7041



# TAB E

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION



MARK SANFORD  
Governor

ROBERT M. STEWART  
Chief

## MEMORANDUM

**TO:** Jowers, Roger  
Dept: 54

**FROM:** Lynn Hutto, Director  
Human Resources

**DATE:** June 13, 2005

**SUBJECT:** 2005-2006 General Increase and LEO Study Pay - Retiree

This is to inform you that the 2005-2006 General Appropriation Act provided for a 4% general base pay increase for all classified employees in permanent full time equivalent positions effective 6/2/05. In addition to the general increase you will receive another 6% increase as a result of the 2004 Law Enforcement Pay Study. *Please note that both the 4% and the 6% have been adjusted by 13.55%.* These increases will be paid on the pay date of July 1, 2005 and will increase your annual salary to \$43,342.

Thank you for your dedicated work on behalf of the State Law Enforcement Division. Should you have questions concerning the information provided, please contact the Human Resource Office at 896-7199.

Previous Salary:	\$39,828
4% General Increase (-13.55%):	\$41,205
6% LEO Study (-13.55%):	\$43,342 (Salary on July 1, 2005)

Cc: HR File



012



An Accredited Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

TAB F

OMB No. 1545-0047

a Control number	1 Wages, tips, other compensation 46,971.02	2 Federal income tax withheld 4,555.23
	3 Social security wages 48,318.00	4 Social security tax withheld 2,995.72
	5 Medicare wages and tips 48,318.00	6 Medicare tax withheld 700.61

c Employer's name, address, and ZIP code  
**COMPTROLLER GENERAL  
 STATE OF SOUTH CAROLINA  
 1200 SENATE STREET ROOM 305  
 COLUMBIA, SC 29201  
 69-0570001-008**

7 Social security type	8 Allocated tips	9 Advance EIC payment 0.00
10 Dependent care benefits 0.00	11 Nonqualified plans	
b Employer identification number	d Employee's social security number	
12a See instructions for box 12	12d	
C 0.00	C 0.00	
12b D 0.00	12e T 0.00	
12c E 0.00	12f W 0.00	
13 Statutory employee <input type="checkbox"/>	13a Retirement plan <input checked="" type="checkbox"/>	13b Director or officer <input type="checkbox"/>
14 Other		

e Employee's name, address, and ZIP code  
**PHILLIP D GRIMSLEY  
 LAKE CITY SC 29560-2140**

**2005** 16 State Employer's state I.D. No. SC  
 16 State wages, tips, etc. 46,971.02  
**W-2** Wage and Tax Statement  
 Copy For EMPLOYEE'S State, City, or Local Income Tax Return  
 17 State income tax 2,607.34  
 18 Local wages, tips, etc.  
 19 Local income tax  
 20 Locality name  
 Department of the Treasury-Internal Revenue Service

Form 1099-R  CORRECTED (If checked) OMB No. 1545-0119 **2005**  
 1 Gross distribution 2a Taxable amount  
 33,156.04 33,056.16  
 2b Taxable amount not determined Total distribution  
 Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.  
 PAYER'S name, street address, city, state, and ZIP code

**S. C. POLICE OFFICERS  
 RETIREMENT SYSTEM  
 PO BOX 11860  
 COLUMBIA, SC 29211-1960**

PAYER'S Federal identification number	RECIPIENT'S identification number	
3 Capital gain (Included in box 2a)	4 Federal income tax withheld 2,614.00	5 Employee contributions or insurance premiums 101.88
6 Net unrealized appreciation in employer's securities	7 Distribution code 7	8 Other IR/SEP SIMPLE %
9a Your percentage of total distribution	9b Total employee contributions %	

RECIPIENT'S name, street address (incl. apt. no.), city, state and ZIP code  
**PHILLIP D GRIMSLEY  
 LAKE CITY SC 29560**

Account number (see instructions)	10 State tax withheld 1,350.00
11 State/Payer's state number SC 26264182-2	12 State distribution
13 Local tax withheld	14 Name of locality 15 Local distribution

**Copy C For Recipient's Records**  
 This information is being furnished to the Internal Revenue Service  
 Department of the Treasury  
 Internal Revenue Service



TAB G



**Richard Eckstrom  
Comptroller General**

1200 Senate Street Room 305  
Columbia, South Carolina 29201

The taxable wages included in Blocks 1 & 16 were compiled using the following year-to-date information:

GROSS WAGES (SEE NOTE)	<u>51,079.92</u>
LESS:	
RETIREMENT CONTRIBUTIONS	<u>3,281.19</u>
DEFERRED COMPENSATION	<u>0.00</u>
MONEYPLUS DEDUCTIONS	<u>0.00</u>
TAXABLE WAGES	<u>47,798.73</u>

NOTE: For Optional Life Participants in the Moneyplus Program, the amount in box 12a(C) is included in gross wages. This amount reflects imputed income based on IRS Guidelines for coverage exceeding \$50,000.

Central State Audit Division 803-734-2124



**State Budget and Control Board  
SOUTH CAROLINA RETIREMENT SYSTEMS**

Post Office Box 11960  
Columbia, SC 29211-1960

**Instructions for Recipient (Continued)**

N - Recharacterized IRA contribution made for 2006 and recharacterized in 2006.  
P - Excess contributions plus earnings/excess deferrals taxable in 2005.  
Q - Qualified distribution from a Roth IRA.  
R - Recharacterized IRA contribution made in 2005 and recharacterized in 2006.  
S - Early distribution from a SIMPLE IRA in first 2 years, no known exception (under age 59 1/2).  
T - Roth IRA distribution, exception applies.  
If the IRA/SEP/SIMPLE box is checked, you have received a traditional IRA, SEP or SIMPLE distribution.  
Box 8. If you received an annuity contract as part of a distribution, the value of the contract is shown. It is not taxable when you receive it and should not be included in boxes 1 and 2a. When you receive periodic payments from the annuity contract, they are taxable at that time. If the distribution is made to more than one person, the percentage of the annuity contract distributed to you is also shown. You will need this information if you use the 10-year tax option (Form 4972).  
Box 9a. If a total distribution was made to more than one person, the percentage you received is shown.  
Box 9b. For a life annuity from a qualified plan or from a tax-sheltered annuity (with after-tax contributions), an amount may be shown for the employee's total investment in the contract. It is used to compute the taxable part of the distribution. See Pub. 575.

OMB No. 1545-0047

a Contract number	1 Wages, tips, other compensation 47,798.73	2 Federal income tax withheld 4,730.88
	3 Social security wages 51,079.92	4 Social security tax withheld 3,166.96
	5 Medicare wages and tips 51,079.92	6 Medicare tax withheld 740.66

c Employer's name, address, and ZIP code  
**COMPTROLLER GENERAL  
STATE OF SOUTH CAROLINA  
1200 SENATE STREET ROOM 305  
COLUMBIA, SC 29201  
69-0570001-008**

7 Social security tips	8 Allocated tips	9 Advance EIC payment
10 Dependent care benefits	11 Nonqualified plans	0.00

b Employer identification number  
**57-600286**

d Employee's social security number  
[REDACTED]

12a See instructions for box 12 C 0.00	12b G 0.00
12c D 0.00	12d I 0.00
12e E 0.00	12f H 0.00

13  Statutory plan  Retirement plan  Third-party sick pay

14 Other

e Employee's name, address, and ZIP code  
**PHILLIP D GRIMSLEY  
LAKE CITY SC 29560-2140**

2006 SC 25030665-4

15 State Employer's state I.D. No. 25030665-4

16 State wages, tips, etc. 47,798.73

17 State income tax 2,703.00

18 Local wages, tips, etc.

19 Local income tax

20 Locality name

W-2 Wage and Tax Statement  
Copy B To Be Filed With Employee's FEDERAL Tax Return

Department of the Treasury-Internal Revenue Service

OMB No. 1545-0119 2001

2a Taxable amount 34,200.42

2b Taxable amount not determined

3 Capital gain (included in box 2a)

4 Federal income tax withheld 2,880.00

5 Employee contributions/ Designated Roth contribution or insurance premiums 101.88

6 Not unrealized appreciation in employer's securities

7 Distribution code(s) IRA/SEP/SIMPLE 7

8 Other %

9a Your percentage of total distribution %

9b Total employee contributions %

RECIPIENT'S name, street address (incl. apt. no.), city, state and ZIP code  
**PHILLIP D GRIMSLEY**



TAB H



**State Budget and Control Board**  
**SOUTH CAROLINA RETIREMENT SYSTEMS**

Post Office Box 11960  
 Columbia, SC 29211-1960

Form 1099-R  CORRECTED (If checked) OMB No. 1545-0119 **2007**

Distributions From  
 Pensions, Annuities,  
 Retirement or  
 Profit-Sharing  
 Plans, IRAs,  
 Insurance  
 Contracts, etc

1 Gross distribution	2a Taxable amount
35,310.86	35,209.08
2b Taxable amount not determined	Total distribution

PAYER'S name, street address, city, state, and ZIP code

**S. C. POLICE OFFICERS  
 RETIREMENT SYSTEM  
 PO BOX 11960  
 COLUMBIA, SC 29211-1960**

PAYER'S Federal identification number RECIPIENT'S identification number

3 Capital gain (included in box 2a)	4 Federal income tax withheld	6 Employee contributions/ Designated Roth contributor or insurance premiums
	2,700.00	101.88

5a Not unrealized appreciation in employer's securities	7 Distribution code(s) IRA/SEP/SIMPLE	8 Other	%
	7		

9a Your percentage of total distribution	9b Total employee contributions
	%

RECIPIENT'S name, street address (incl. apt. no.), city, state and ZIP code

**PHILLIP D GRIMSLEY  
 LAKE CITY SC 29560**

**Instructions for Recipient (Continued)**

- N - Recharacterized IRA contribution made for 2007 and recharacterized in 2007.
- P - Excess contributions plus earnings/excess deferrals taxable in 2008.
- Q - Qualified distribution from a Roth IRA.
- R - Recharacterized IRA contribution made in 2008 and recharacterized in 2007.
- S - Early distribution from a SIMPLE IRA in first 2 years, no known exception (under age 59 1/2).
- T - Roth IRA distribution, exception applies.

If the IRA/SEP/SIMPLE box is checked, you have received a traditional IRA, SEP or SIMPLE distribution.

Box 8. If you received an annuity contract as part of a distribution, the value of the contract is shown. It is not taxable when you receive it and should not be included in boxes 1 and 2a. When you receive periodic payments from the annuity contract, they are taxable at that time. If the distribution is made to more than one person, the percentage of the annuity contract distributed to you is also shown. You will need this information if you use the 10-year tax option (Form 4972).

Box 9a. If a total distribution was made to more than one person, the percentage you received is shown.

Box 9b. For a life annuity from a qualified plan or from a 403 (b) Plan (with after-tax contributions), an amount may be shown for the employee's total investment in the contract. It is used to compute the taxable part of the distribution. See Pub. 575.

Boxes 10-16. If state or local income tax was withheld from the distribution, boxes 12 and 15 may show the part of the distribution subject to state and/or local tax.

**Additional Information. You may want to see:**

- W-4P, Withholding Certificate for Pension or Annuity Payments
- Form 4972, Tax on Lump-Sum Distributions
- Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts
- Form 8608, Nondeductible IRAs
- Pub. 608, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)
- Pub. 671, Tax-Sheltered Annuity Plans (403(b) Plans)
- Pub. 678, Pension and Annuity Income
- Pub. 690, Individual Retirement Arrangements (IRAs)
- Pub. 721, Tax Guide to U.S. Civil Service Retirement Benefits
- Pub. 949, General Rule for Pensions and Annuities
- Pub. 989, Health Savings Account and other Tax-Favored Health Plans.

Account number (see instructions)	1st year of desig. Roth contrib.	10 State tax withheld
		1,366.00
11 State/Payer's state no.	12 State distribution	
SC 26254192-2		
13 Local tax withheld	14 Name of locality	15 Local distribution

**Copy C For Recipient's Records**

This information is being furnished to the Internal Revenue Service (Keep for your records)

Department of the Treasury  
 Internal Revenue Service

**Richard Eckstrom**  
**Comptroller General**  
 1200 Senate Street Room 305  
 Columbia, South Carolina 29201  
 Statewide Payroll Division 803 734-2124



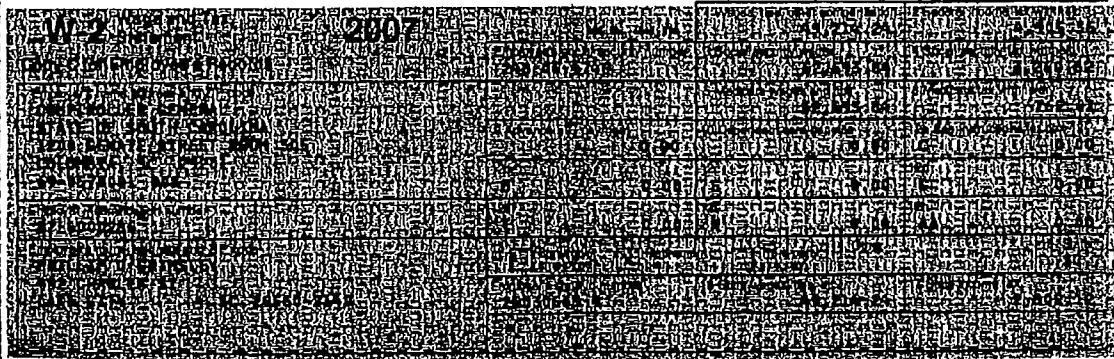
This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

The tax amounts in box 1 & 16 were compiled using the following information:

<b>GROSS WAGES (See Note)</b>	<b>52,595.84</b>
<b>LESS:</b>	
<b>RETIREMENT CONTRIBUTIONS</b>	<b>3,379.60</b>
<b>DEFERRED COMPENSATION</b>	<b>0.00</b>
<b>MONEYPLUS DEDUCTIONS</b>	<b>0.00</b>
<b>TAXABLE WAGES</b>	<b>49,214.24</b>

NOTE: For Optional Life participants in the MoneyPlus program, the amount in box 12a (C) is included in gross wages. This amount reflects imputed income based on IRS guidelines for coverage exceeding \$50,000.

Department of the Treasury-Internal Revenue Service



**EXHIBIT**

tabular  
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# TAB I

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION**

**MARK SANFORD**  
Governor



**REGINALD I. LLOYD**  
Director

June 2, 2008

Phillip D. Grimsley  
[REDACTED]  
Lake City, SC 29560

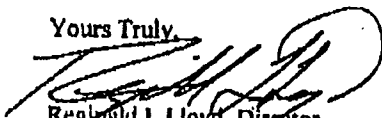
Re: Law Enforcement Retirement/Retention Status

Dear Lt. Grimsley:

Thank you for participating in the Law Enforcement Retirement/Retention Plan and for the many years in which you served the citizens of the State of South Carolina. In accordance with your signed agreement your at will status as an employee of the SC Law Enforcement Division will terminate June 16, 2008.

Please contact Lynn Hutto in the Office of Human Resources if you wish to work sequestered juries, conduct background investigations or other special projects in retiree status.

Yours Truly,

  
Reginald I. Lloyd, Director  
S.C. Law Enforcement Division

Cc: Lynn Hutto  
Deputy Chief Neal Dolan  
Assistant Chief Timothy James  
Inspector Richard Hunton



003



An Accredited Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

TAB J



**State Budget and Control Board**  
**SOUTH CAROLINA RETIREMENT SYSTEMS**

Post Office Box 11960  
Columbia, SC 29211-1960

**Instructions for Recipient (Continued)**

- L - Loans treated as distributions.
- N - Recharacterized IRA contribution made for 2008 and recharacterized in 2008.
- P - Excess contributions plus earnings/excess deferrals taxable in 2007.
- Q - Qualified distribution from a Roth IRA.
- R - Recharacterized IRA contribution made for 2007 and recharacterized in 2008.
- S - Early distribution from a SIMPLE IRA in first 2 years, no known exception (under age 69 1/2).
- T - Roth IRA distribution, exception applies.

If the IRA/SEP/SIMPLE box is checked, you have received a traditional IRA, SEP or SIMPLE distribution.

**Box 6.** If you received an annuity contract as part of a distribution, the value of the contract is shown. It is not taxable when you receive it and should not be included in boxes 1 and 2a. When you receive periodic payments from the annuity contract, they are taxable at that time. If the distribution is made to more than one person, the percentage of the annuity contract distributed to you is also shown. You will need this information if you use the 10-year tax option (Form 4972).

**Box 9a.** If a total distribution was made to more than one person, the percentage you received is shown.

**Box 9b.** For a life annuity from a qualified plan or from section 403 (b) plan (with after-tax contributions), an amount may be shown for the employee's total investment in the contract. It is used to compute the taxable part of the distribution. See Pub. 675.

**Boxes 10-15.** If state or local income tax was withheld from the distribution, boxes 12 and 15 may show the part of the distribution subject to state and/or local tax.

**Additional Information. You may want to see:**

- W-4P, Withholding Certificate for Pension or Annuity Payments, Form 4972, Tax on Lump-Sum Distributions, Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, Form 8808, Nondeductible IRAs, Pub. 660, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans), Pub. 671, Tax-Sheltered Annuity Plans (403(b) Plans), Pub. 675, Pension and Annuity Income, Pub. 690, Individual Retirement Arrangements (IRAs), Pub. 721, Tax Guide to U.S. Civil Service Retirement Benefits, Pub. 939, General Rule for Pensions and Annuities, Pub. 969, Health Savings Account and other Tax-Favored Health Plans.

**Form 1099-R**

OMB No. 1545-0047

CORRECTED (if checked)

**2008**

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

1 Gross distribution <b>36,086.94</b>	2a Taxable amount <b>36,086.08</b>
2b Taxable amount not determined	Total distribution

PAYER'S name, street address, city, state, and ZIP code  
**S. C. POLICE OFFICERS RETIREMENT SYSTEM  
PO BOX 11960  
COLUMBIA, SC 29211-1960**

PAYER'S federal identification number **57-6041562** RECIPIENT'S identification number

3 Capital gain (included in box 2a)	4 Federal income tax withheld <b>3,042.00</b>	5 Employee contributions/ Designated Roth contributions or insurance premiums <b>101.88</b>
-------------------------------------	--	--

6 Net unrealized appreciation in employer's securities	7 Distribution code(s) <b>7</b>	8 IRA/SEP/SIMPLE <input type="checkbox"/>	9 Other <input type="checkbox"/>	%
--	------------------------------------	---	----------------------------------	---

9a Your percentage of total distribution	9b Total employee contributions
--	---------------------------------

RECIPIENT'S name, street address (incl. apt. no.), city, state and ZIP code

**PHILLIP D GRIMSLEY  
LAKE CITY SC 29560**

Account number (see instructions)	151 year of design. Roth contrib.	10 State tax withheld <b>1,554.00</b>
11 State/Payer's state no. <b>SC 25254192-2</b>	12 State distribution	
13 Local tax withheld	14 Name of locality	16 Local distribution

**Copy C For Recipient's Records** Department of the Treasury  
This information is being furnished to the Internal Revenue Service Internal Revenue Service  
(Keep for your records)

**Richard Eckstrom**  
**Comptroller General**  
1200 Senate Street Room 305  
Columbia, South Carolina 29201  
Statewide Payroll Division 803 734-2124



This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

The taxable wages in box 1 & 16 were compiled using the following information:

<b>GROSS WAGES (See Note)</b>	<b>28,901.29</b>
<b>LESS:</b>	
RETIREMENT CONTRIBUTIONS	<b>1,859.08</b>
DEFERRED COMPENSATION	<b>0.00</b>
MONEYPLUS DEDUCTIONS	<b>0.00</b>
<b>TAXABLE WAGES</b>	<b>27,042.21</b>

NOTE: For Optional Life participants in the MoneyPlus program, the amount in box 12a (C) is included in gross wages. This amount reflects imputed income based on IRS guidelines for coverage exceeding \$50,000.

W-2 2008

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	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00
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**EXHIBIT**  
J



adjustment, less 13.6%), no longevity pay, additional reduction by cost of health insurance to agency if elected.

(Exhibit C, emphasis in original).

4. On July 19, 2004, I signed the agreement to retire and be rehired by SLED. (Exhibit D).

The agreement expressly stated that I would pay the employer retirement contribution:

SALARY: You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5% employee portion of retirement will no longer be deducted from your check.

(Exhibit D). Handwritten beside the paragraph is the amount "\$39,828".

5. On June 13, 2005, I received a letter from Lynn Hutto, Director of Human Resources for SLED. (Exhibit E). This letter stated that the General Assembly had given a 4% pay increase for all classified employees in permanent full time equivalent position and a 6% increase as a result of a the 2004 Law Enforcement Pay Study." However, both my raises were reduced by SLED: *"Please note that both the 4% and the 6% have been adjusted by 13.55%."* (Exhibit E, italics in original).

6. For the years I was in the SLED retirement program, I lost 13.6% of my salary annually, which translates to thousands of dollars. For example, according to December 1, 2005, Earnings Statement, my gross salary earned as of that date was \$40,895.46. (Exhibit F). However, without the 13.5% reduction, my salary would have been \$47,277.99. For that year, I lost at least \$6,382.53.

7. As of December 1, 2006, my gross salary to date was \$43,068.53 (Exhibit G). However, without the 13.5% reduction, my gross salary would have been \$49,790.21. For that year, I lost at least \$6,721.68.

8. As of December 14, 2007, my gross salary to date was \$45,911.40 (Exhibit H).

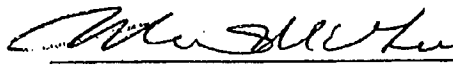
However, without the 13.5% reduction, my gross salary would have been \$53,076.76. For that year, I lost at least \$7,165.36.

9. I did not work a full year in 2008. However, my gross salary for the time I was employed was \$27,310.44 (Exhibit I). Had it not been cut 13.5%, my salary would have been \$31,572.76. Thus, I lost \$4,262.32 that year. I filed this lawsuit shortly thereafter leaving my employment with SLED.

  
\_\_\_\_\_  
Roger M. Jowers

SWORN to before me this

20<sup>th</sup> day of May, 2012,

  
\_\_\_\_\_  
(L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires 10/26/19

# TAB A

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION**

JIM HODGES  
*Governor*



ROBERT M. STEWART  
*Chief*

**MEMORANDUM**

TO: SLED Personnel  
FROM: Robert M. Stewart *MS*  
SUBJECT: SLED Voluntary Retirement Incentive Program  
DATE: July 31, 2001

As a result of a budget shortfall, SLED has been exploring opportunities to address financial needs while maintaining critical service levels. The legislature offered agencies an opportunity to develop retirement incentive programs specifically designed to create savings within agencies to address the FY2001-2002 budget cuts. SLED has developed a VOLUNTARY RETIREMENT INCENTIVE Program whereby the agency will purchase either "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, not to exceed 70% of base salary, for eligible participants. This Program is completely voluntary and can benefit employees who are interested in retiring and who are eligible to retire with 25 years service credit in the PORS or 28 years service credit in the SCRS on or before October 1, 2001.

Because you are eligible to retire under the requirements of the SLED VOLUNTARY RETIREMENT INCENTIVE Program, you are receiving this package of information. Please complete the enclosed "Acknowledgement of Receipt" form and return it to Lynn Hutto as soon as practicable. Should you desire to participate in the Program, you are also required to complete and have notarized the three (3) page "Agreement and Release" form and return it to Lynn Hutto on or before September 15, 2001.

Some employees may be eligible to return to temporary employment with the State Law Enforcement Division. Factors influencing decisions to rehire may include the availability of funds, recommendations from supervisory staff, and the needs of the agency. In accordance to legislation passed by the General Assembly and signed by the



053

Governor in May 2001, state employees retiring from employment with the State of South Carolina must wait for a period no less than sixty (60) calendar days before returning to employment with the state. During the sixty (60) calendar day period, executive staff will be determining rehire decisions based upon availability of funds, the needs of the agency, and supervisory recommendations. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

As stated above, *all* employees receiving this document must return the "Acknowledgement of Receipt" form to Lynn Hutto as soon as practicable. Signing and returning the "Acknowledgement of Receipt" form only indicates that you have received notification of the Program. Those individuals choosing to participate in the SLED VOLUNTARY RETIREMENT INCENTIVE Program must complete and return the "Agreement and Release" form on or before September 15, 2001.

**NOTICE OF THE  
2001  
SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED)  
VOLUNTARY RETIREMENT INCENTIVE PROGRAM**

**PURPOSE**

As a result of a budget shortfall, the South Carolina Law Enforcement Division has been exploring opportunities to address financial needs while maintaining service levels and commitment to personnel. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in the SLED Voluntary Retirement Incentive Program.

SLED is funding this Program with existing funds and will use a reduced rehire salary to offset the cost of the Incentive. Savings can be realized with any level of participation in the Program.

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Retirement Incentive Program simply because you have received this notice.

Employees who decide to participate in the SLED Voluntary Retirement Incentive Program will be required to sign the attached "Agreement and Release" form, which will also release any and all claims the employee could bring against the State or SLED, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. The employee and a representative of the agency must sign the agreement.

The Chief of SLED shall develop the SLED Voluntary Retirement Incentive Plan in consultation with the Office of Human Resources and the South Carolina Retirement Systems, and upon approval by the Division of Budget and Analysis shall implement the Program. All decisions regarding the Retirement Incentive Program are the responsibility of the Chief of SLED, are final, and are not grievable or appealable. Questions and applications for the Retirement Incentive Program should be referred to Lynn Hutto in the SLED Office of Human Resources.

## RETIREMENT INCENTIVE PROGRAM

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Program simply because, as an employee, you have received this notice.

This notice explains the provisions that govern the SLED Voluntary Retirement Incentive Program, and includes an "Agreement and Release" ("Agreement") that you will use should you decide to participate in the Program. The "Agreement" includes the employee's release of any and all claims that the employee could bring against the State Law Enforcement Division, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. An "Acknowledgement of Receipt" is also included in your receipt of the documents in this package. Please sign and return the Acknowledgement when you receive this notice. Signing the "Acknowledgement of Receipt" form does not indicate participation in the Program.

If you have any questions about the SLED Voluntary Retirement Incentive Program, please contact Lynn Hutto, Division Director of Human Resources at 803/896-7168.

The SLED Voluntary Retirement Incentive Program works as follows:

1. Eligibility

- A. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in this Program.
- B. Employees who cannot purchase enough service credit in addition to service credit available under the "Incentive," defined below, to retire as of October 1, 2001, are not eligible to participate in this plan.
- C. Employees participating in a voluntary separation program in accordance with the provision of the State Appropriation Act, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- D. Employees who are taking part in the TERI plan or any equivalent program for law enforcement officers, are not eligible to participate in this Program.

- E. Employees who have submitted a notice of resignation which has been accepted by the agency prior to the effective date of the Program, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- F. Employees who are eligible through service, or who are able to purchase service credit to become eligible by October 1, 2001, may participate in this Program.
- G. Only employees in FTE positions may be eligible to participate in this Program.
- H. Employees choosing to participate in this Program must declare to retire from service with the State of South Carolina no later than September 15, 2001. The effective date of retirement shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date; in such a case, the specific retirement date must be approved by the Chief of SLED.
- I. Employees choosing to participate in this Program cannot be rehired with the State in a temporary position for a period of sixty (60) calendar days from the date of retirement.
- J. Employees choosing to participate in this Program cannot become employed with the agency in an FTE position for a period of at least two (2) years from the date of separation.
- K. The Chief of SLED may declare an employee or categories of job classes ineligible to participate in the Program due to financial considerations or business needs in order for the agency to continue its mission.
- L. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

2. The "Incentive"

SLED will provide to the employee the following:

The Division will purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three not to exceed 70% of base salary (if approved and as defined by the South Carolina Retirement System) on behalf of an employee electing to participate in the Program and who is

currently eligible to retire, or who will become eligible to retire as of October 1, 2001, as a result of participating in the Program.

3. Limit on the "Incentive"

- A. Under no circumstances will the Division pay for the purchase of "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three for any employee in an amount in excess of 70% of the employee's base salary.
- B. SLED shall make payment for unused annual leave as directed by Human Resource Regulations.

4. Timing of Acceptance and Notice Provisions

- A. Employees eligible to participate in the "SLED Voluntary Retirement Incentive Program" may accept participation in this Program beginning August 1, 2001.
- B. Eligible employees may have forty-five (45) calendar days to consider whether to participate in this Program. The final date to declare participation in this Program is September 15, 2001.
- C. After an eligible employee chooses to participate in the Program, the employee will have seven (7) calendar days from the date of his/her acceptance to revoke his/her acceptance.
- D. All employees who choose to participate in this Program must declare to retire and separate from employment with the State of South Carolina no later than September 15, 2001. The effective date of retirement and separation shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date.
- E. Employees who choose to participate in the SLED Voluntary Retirement Incentive Program must acknowledge that they would not otherwise be entitled to the Program but for their participation in the Program.
- F. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program will receive a list of 1) all job titles and ages of

employees eligible to participate and 2) ages of all individuals in the same job class not eligible to participate.

G. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program must submit a signed written agreement (which is attached) with full release of claims including Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA)(excluding existing Workers' Compensation claims).

H. All employees receiving these documents must sign the attached "Acknowledgement of Receipt" form and return it immediately to Lynn Hutto of the SLED Office of Human Resources.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

AGREEMENT AND RELEASE

This Agreement and Release (hereinafter the Agreement) is agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between \_\_\_\_\_ (hereinafter the Employee) and the South Carolina Law Enforcement Division (hereinafter SLED).

WHEREAS, the Employee is currently employed by SLED, and

WHEREAS, SLED began offering the SLED Voluntary Retirement Incentive Program, which is attached to this Agreement, to eligible employees of SLED beginning August 1, 2001, and

WHEREAS, the time period in which eligible employees of SLED may choose to participate in the SLED Voluntary Retirement Incentive Program beginning August 1, 2001 and ending September 15, 2001, and

WHEREAS, the Employee is currently employed by SLED, is eligible to participate in the SLED Voluntary Retirement Incentive Program and chooses to participate in the Program in a timely manner, and

WHEREAS, the Employee chooses to resign and separate from employment with SLED no later than October 1, 2001, unless an exception to the retirement date has been approved by the Chief of SLED, and

WHEREAS, the Employee understands he/she may not be employed with the State Law Enforcement Division in an FTE position for a period of two (years) from the date of retirement. However, SLED may hire participating employees into temporary positions as the Division deems necessary, and

THEREFORE, the employee and SLED enter into the following Agreement:

1. **Employee's Voluntary Retirement.** The Employee voluntarily retires from employment with SLED and the State of South Carolina effective at the close of business on \_\_\_\_\_, 2001, and therefore voluntarily offers to resign employment with SLED effective that same date. SLED accepts the Employee's voluntary retirement and resignation.
2. **Incentive.** SLED agrees to purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, on behalf of the Employee not later than October 1, 2001 and not to exceed 70% of the

employee's base salary. SLED and Employee agree that SLED is purchasing this "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three pursuant either to S.C. Code Ann. Section 9-1-1140 or to S.C. Code Ann. Section 9-11-50. In order to purchase the "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, SLED and Employee agree that SLED will pay an amount up to 70% of base salary as an "Employer Contribution" to Employee's retirement account maintained by the South Carolina Budget and Control Board's Division of Retirement Systems. Employee affirms that he/she will be responsible for all tax liability, if any, resulting from his/her acceptance of this Incentive. SLED will make the purchase described in this Paragraph in a manner that will allow the Employee to retire on the date listed in Paragraph 1 of this Agreement.

3. **Release.** The Employee, for himself/herself and his/her heirs, executors, administrators, successors, and assigns, hereby releases the State and SLED, its present and past employees, agents, officers, successors, insurers, and assigns, from any and all, present or future claims by the Employee. This release specifically includes, but is not limited to, all claims which may have been asserted by or on behalf of the Employee against the State and SLED in any lawsuit, grievance, administrative proceeding, or charge of discrimination against the State and SLED, on account of any matter relating to the Employee's employment with SLED or his/her voluntary resignation from employment with SLED. This release excludes any existing Workers' Compensation claims filed by the employee. The Employee specifically includes in this release claims that may have been asserted by him/her or on his/her behalf under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA).
4. **Adequate Consideration.** The Employee affirms that the Incentive described in Paragraph 2 of this Agreement is adequate consideration for the release of claims described in Paragraph 3 of this Agreement. The Employee affirms that, absent this Agreement, he/she would not otherwise be entitled to the Incentive described in Paragraph 2 of this Agreement.
5. **Confidentiality.** SLED and the Employee will deem the terms, conditions, and circumstances of this Agreement confidential, except as required by law and as deemed necessary to enforce this Agreement.
6. **Voluntary Waiver.** The Employee affirms that he/she has carefully read and considered this Agreement, and that he/she fully understands the meaning and importance of its provisions, including his/her release of all claims under the Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA). The Employee also affirms that he/she is fully competent to sign and execute this Agreement and that he/she does so without any coercion, promise of reward, undue influence, threat, or intimidation of any kind or type.

7. Forty-Five Day Period. The Employee affirms that he/she has been afforded the opportunity to consider this Agreement for a forty-five (45) calendar day period.
8. Revocation Period. The Employee understands that he/she has seven (7) calendar days after signing this Agreement to revoke his/her acceptance of the Agreement, and that SLED will make the incentive payment described in Paragraph 2 of this Agreement only after the passage of these seven (7) calendar days and only after this Agreement comes into full and binding effect.
9. Governing Law. This Agreement is governed by the laws of the State of South Carolina.
10. The contents of this written document constitute the entire Agreement regarding the SLED Voluntary Retirement Incentive Program.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

FOR THE EMPLOYEE:

FOR SLED:

\_\_\_\_\_  
Employee Name (signature)

\_\_\_\_\_  
Lynn Hutto  
Human Resources Director  
S.C. Law Enforcement Division

\_\_\_\_\_  
Employee Name (print)

Sworn to and Subscribed to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2001

Sworn to and Subscribed to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2001

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

My commission expires:  
\_\_\_\_\_

**TAB B**

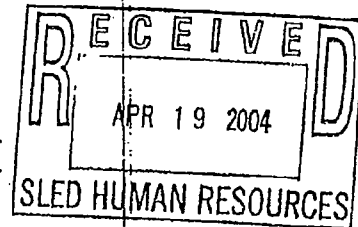
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK LANFORD  
Governor



ROBERT M. STEWART  
Chief

TO: Chief Robert M. Stewart  
FROM: SA Roger Jowers  
SUBJECT: REQUEST TO BE REHIRED  
DATE: April 19, 2004



I am requesting to be rehired with the South Carolina State Law Enforcement Division. I understand that if this does occur, the following provisions apply and I agree to them:

- Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).
- Accrual of annual and sick leave at current rate.
- Salary: 10.3% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.
- Employment not to exceed 18 months.
- No lump sum payment for annual leave upon second separation.
- Review date: twelve months after date of rehire.
- No probationary period.
- Must apply to this agency and receive permission to reenter retirement system as an active member.

04-19-04  
DATE

Rm Jowers  
SIGNATURE

011

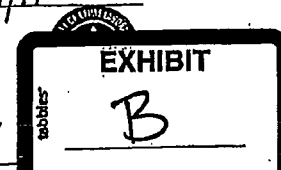
Approved for rehire:  
RMS/gab

SWORN TO BEFORE ME THIS 19th DAY OF April, 2004.

Jerka D. Cook  
My Commission Expires: 3/19/11



An Accredited Law Enforcement Agency  
P.O. Box 21408 / Columbia, South Carolina 29221-1408 / (803) 727-0000



TAB C

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION



MARK SANFORD  
Governor

ROBERT M. STEWART  
Chief

TO: Roger Jowers  
FROM: Lynn Hutto, Director  
Human Resources  
SUBJECT: Confirmation of Your Request to Rehire  
DATE: June 29, 2004

This is confirmation that your request to return to employment with the SC Law Enforcement Division has been approved based on your written acceptance of the following provisions:

- Status: FTE (full time equivalent employee) with no grievance or RIF (reduction-in-force) rights (at will employee).
- Accrual of annual leave will be at 21.50 hours a month. Accrual of sick leave will be at 10.75 a month. No lump sum payment for annual leave upon second separation.
- Your salary will be \$39,828 ( previous base salary plus 3% cost of living adjustment, less 13.6%) no longevity pay, additional reduction by cost of health insurance to agency if elected.
- Employment not to exceed 48 months.
- Review date: twelve months after date of rehire.
- No probationary period.
- Must apply to this agency and receive permission to reenter retirement system as an active member.

Because your last day of employment was June 1, 2004 and you were compensated for a total of 45 days of annual leave, your re-employment date will be July 19, 2004.

Please contact Margie Coker at 803-896-7205 to schedule a time to complete the employment processing. You will need your social security card and driver's license at the time of your meeting. Should you be unable to return by the date indicated above please contact Margie Coker.

Cc: Lt. Grimsley  
HR file

\* The adjustment amount changed effective July 2, 2004 due to an increase in the Retirement Systems surcharge.



An Accredited Law Enforcement Agency  
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)  
896-7041

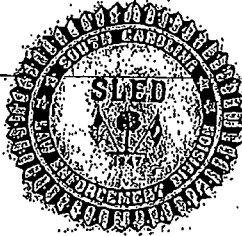


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TAB D

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



ROBERT M. STEWART  
Chief

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT

EMPLOYEE ORIENTATION FOR RE-EMPLOYMENT  
UNDER THE PORS RETIREMENT PROVISIONS

As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed on your benefits and employment status.

- > **EMPLOYMENT STATUS:** You will be an AT-WILL employee. (AT-WILL means that you can be separated from employment at any time for cause or for no cause.) You have no grievance or reduction in force (RIF) rights. You are eligible for all other rights of any permanent employee.
- > **SALARY:** You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5 % employee portion of retirement will no longer be deducted from your check. \$39,828
- > **INSURANCE:** You have the election to enroll in the insurance under SLED or continue coverage on the retiree group. If you elect to come under SLED's insurance your salary will be decreased by the amount of the state's portion of the premium.
- > **LEAVE:** You will accrue leave at the same rate you were accruing when you left employment. Your accrual rate was 21.50. You will begin accruing in the month of AUGUST. You will begin with a zero balance of sick and annual leave. You will not receive a pay out of annual leave at your second termination. You must complete leave slips for leave taken.
- > **TIME AND ATTENDANCE:** If you are a non-exempt employee you must complete time and attendance sheets (Dailies). If you are currently completing a time sheet as a temporary employee and are going into an exempt position, you will discontinue completing the time sheets on \_\_\_\_\_.
- > **DEDUCTION CHANGES:** If you wish to make any deduction changes now that you are a permanent employee, you must complete a P-4 withholding form.

My signature indicates that the above checked items were discussed with me during orientation.

[Signature]  
Employee Signature

\_\_\_\_\_  
Social Security Number

07-19-2004  
Date



An Accredited Law Enforcement Agency.  
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)  
896-7041



009

# TAB E

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



ROBERT M. STEWART  
Chief

## MEMORANDUM

**TO:** Jowers, Roger  
Dept: 54

**FROM:** Lynn Hutto, Director  
Human Resources

**DATE:** June 13, 2005

**SUBJECT:** 2005-2006 General Increase and LEO Study Pay - Retiree

This is to inform you that the 2005-2006 General Appropriation Act provided for a 4% general base pay increase for all classified employees in permanent full time equivalent positions effective 6/2/05. In addition to the general increase you will receive another 6% increase as a result of the 2004 Law Enforcement Pay Study. *Please note that both the 4% and the 6% have been adjusted by 13.55%.* These increases will be paid on the pay date of July 1, 2005 and will increase your annual salary to \$43,342.

Thank you for your dedicated work on behalf of the State Law Enforcement Division. Should you have questions concerning the information provided, please contact the Human Resource Office at 896-7199.

Previous Salary:	\$39,828
4% General Increase (-13.55%):	\$41,205
6% LEO Study (-13.55%):	\$43,342 (Salary on July 1, 2005)

Cc: HR File



012



An Accredited Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

TAB F

PURSUANT TO WARRANT OF  
 RICHARD ECKSTROM  
 COMPTROLLER GENERAL

STATE OF SOUTH CAROLINA  
**Office Of State Treasurer**  
 GRADY L. PATTERSON, JR.

STATE OF SOUTH CAROLINA EMPLOYEE'S EARNINGS STATEMENT							
DATE PAID 12/01/05				DOCUMENT NUMBER 933501166			
NAME ROGER M JOWERS				AGENCY D10		NET PAY 735.30	
STATE TAX	FEDERAL TAX	STATE TAX	FEDERAL TAX	STATE TAX	FEDERAL TAX	RETIREMENT	OTHER
1,805.91	000	128.13	000	61.95	138.15	117.58	
399	625.00						
40,895.46	3,035.55	1,462.21	3,128.50	1,056.45	14,375.00	17,837.75	

**VOLUNTARY DEDUCTIONS**

399 STATE STREET BANK-457 PLAN



TAB G



TAB H



# TAB I



STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Phillip D. Grimsley, Sr. and Roger M. )  
Jowers, on behalf of themselves and other )  
similarly situated, )

Plaintiffs, )

v. )

South Carolina Law Enforcement )  
Division and the State of South Carolina, )

Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

**AFFIDAVIT OF MARK KEEL**

Personally appeared before me, Mark Keel, duly sworn, who deposes and says the following:


1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. I am currently employed as the Chief of the South Carolina Law Enforcement Division, and have held that position since June 2011.
3. From December 2001 until November 2007, I served as Chief of Staff to Chief Robert Stewart, holding the rank of Major. From November 2007 until March 2008, I served as Interim Chief of SLED.
4. While I was Chief of Staff, I was generally familiar with the Retirement/Rehire program that was established by Chief Stewart in 2002 and under which Plaintiffs Grimsley and Jowers, among others, retired and were rehired by SLED.
5. I have reviewed the Affidavit of former Chief Stewart, to be submitted in this case. My recollection of the events described in that Affidavit is in accord with Chief Stewart's account of those events.
6. As a matter of policy, it is as true today as it was in 2002 that SLED derives great benefit from being able to rehire agents who have retired. As set forth in Chief Stewart's Affidavit, this practice offers the opportunity for the newer agents to continue to learn from the more experienced agents. The need to rehire SLED employees who have retired continues to this day.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Mark Keel

SWORN TO BEFORE ME THIS 23rd

DAY OF May, 2012.

 (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES:  
My Commission Expires July 5, 2015

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Phillip D. Grimsley, Sr. and Roger M. )  
 Jowers, on behalf of themselves and other )  
 similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 South Carolina Law Enforcement )  
 Division and the State of South Carolina, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

AFFIDAVIT OF ROBERT M. STEWART

Personally appeared before me, Robert M. Stewart, duly sworn, who deposes and says the following:

1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. I served as Chief of the South Carolina Law Enforcement Division from January 1988 until my retirement on November 30, 2007.
3. The present lawsuit was brought by two retired SLED agents who were members of the Police Officers Retirement System (PORS).
4. The TERI program, enacted in 2001 for state employees who were members of the State Retirement System, was never extended to PORS members, such as the Plaintiffs in this case.
5. In part as a result of there being no TERI program for PORS members such as SLED agents, and in part as a result of the General Assembly's lifting of salary caps (earnings limitations) for working retirees effective July 1, 2002, I decided to consider establishing a method that would permit some SLED employees who were eligible to retire to come back to work as working retirees.
6. During that time of substantial budget cuts, such a program would also benefit SLED by cost savings, mostly in the area of salaries. This assisted SLED in avoiding layoffs of any agents and in maintaining a basic level of law enforcement services to the citizens of South Carolina.
7. I began to look into the possibility of initiating the Retirement/Rehire program starting in the summer of 2002. The General Assembly, in Section 12 of Act No. 356 of 2002, which took effect on July 1, 2002, had amended S.C. Code Ann. §9-11-90 by removing the salary cap (earnings limitation) for PORS members who retired and then returned to employment after a separation of at least 15 calendar days.



8. In the course of considering whether to offer certain SLED employees the opportunity to return to work with SLED shortly after retiring, I consulted with certain staff of the Budget and Control Board, including Steven C. Osborne (then Chief of Staff of the Board and formerly its Human Resources Director), and Vance J. Bettis, Esq., an attorney who has often provided legal advice both to SLED and to the Board.

9. Following those consultations, I decided to offer to PORS members who were eligible for retirement an opportunity to retire and, at my option, be rehired as working retirees. This arrangement was internally described at times as the Retirement/Rehire program.

10. The Retirement/Rehire program served the important purpose of permitting more experienced employees to remain in service after they were eligible to retire, working alongside those agents with less experience. This in turn benefitted SLED and the public as well, because it offered the opportunity for the newer agents to continue to learn from the more experienced agents. At the same time, the retired agents also benefitted from having the ability to retire and return to work at salaries that were close to their pre-retirement salaries while collecting their retirement benefits at the same time. Finally, as already mentioned in Paragraph 6, the cost savings would assist SLED in avoiding layoffs and in maintaining a basic level of law enforcement services to the citizens of South Carolina.

11. Upon deciding to offer employees the option to retire and, at SLED's option, to be rehired, I then prepared the language regarding the conditions that would pertain to the rehiring of those employees who elected to retire, and who I elected to rehire. I instructed Lynn Hutto, then Director of Human Resources at SLED, to develop a series of forms that would be used for the Retirement/Rehire program.

12. The first persons to participate in the Retirement/Rehire program retired beginning in September, 2002, shortly after the salary cap (earnings limitation) for retirees was removed by the General Assembly effective on July 1, 2002.

13. The series of forms for Plaintiff Grimsley, attached hereto as Exhibits 1 through 4, are as follows:

- a. The first form in the sequence was one in which the agent would advise me that he planned to retire on a specific date. The agent also acknowledged that "if I wish to apply be rehired, by [SLED], I must be separated from employment for a period of time equal to my annual leave pay-out, but not less than fifteen days; and that if I am selected to be rehired, I can, if I wish to do so, volunteer my services for some, all or none of this [separation] period." Exhibit 1, attached.
- b. The second form was one directed to me in which the agent advised that he was "requesting to be rehired." Exhibit 2, attached. The form was executed under oath. In it, the retired agent acknowledged that the return to employment would be subject to a number of conditions. These included an acknowledgement that if rehired, the retiree would, among other things,

- i. Serve as a full-time (FTE) employee with no grievance rights<sup>1</sup>
  - ii. Continue to accrue annual and sick leave at the agent's current rate
  - iii. Return to work at a salary that was 13.6% less than the salary at the time of retirement
  - iv. Serve as a rehired employee for no longer than 48 months
- c. For those employees such as Plaintiffs who were offered the opportunity to return to work, the third form was a confirmation from the SLED Director of Human Resources that the individual would be rehired, subject to the terms therein listed. Exhibit 3. Those terms were the same as the ones in Exhibit 2, except that specific numbers applicable to salary and leave accrual rate for each employee were shown
  - d. The fourth and final form in the series was a document referenced as an employee orientation form. Exhibit 4. It contained the same conditions and specific information set forth in Exhibits 2 and 3. This form also stated that the percentage reduction in rehire salary was "a reduction of 13.6% of your salary, to cover the amount it will cost SLED to pay the employer portion of retirement." (Emphases added.)

14. The forms for Plaintiff Jowers are attached as Exhibits 5 through 8. They are identical to those for Plaintiff Grimsley, except for the different salary amounts and other information specific to Plaintiff Jowers.

15. In practice, if a PORS employee expressed an interest in the Retirement/Rehire program, he or she would discuss the effects of possible retirement with me prior to deciding whether to retire. I advised each employee that in light of future uncertainties, they should not choose to participate in the program unless they were ready to retire immediately and permanently.

16. As the forms referenced above indicate, the Plaintiffs' salaries upon their rehire to their previous positions were reduced by an amount equivalent to the amount of the employer contribution paid by SLED to the PORS, that is, 13.6% at the time in 2004 when Plaintiffs Grimsley and Jowers retired.

17. SLED has always paid the employer contributions for Plaintiffs and other rehired employees, both in connection with the pre-retirement salaries and in connection with the new salaries upon retirement.

18. I elected to reduce the retired employees' salaries upon rehire by the amount of the previous employer contributions to the Retirement System in order to reflect some degree of

---

<sup>1</sup> S.C. Code Ann. § 8-17-370(16) exempts PORS working retirees such as Plaintiffs from coverage under the state personnel grievance process. That section was enacted as part of Act No. 356 of 2002, the same statute that removed the earnings limitation for PORS working retirees.

savings to taxpayers as a result of rehiring retired agents. In addition, a reduction in the rehire salary by that amount reflected a uniform reduction percentage for participants in the Retirement/Rehire program.

19. The reduction of 13.6% in the new salary upon rehire after retirement was specifically shown on the forms attached as Exhibits 3 and 7. For example, Plaintiff Grimsley's salary was \$52,896 at the time of his retirement on June 30, 2004. Exhibit 3 specifically provided that his salary upon rehire on August 17, 2004 would be \$45,702.

20. I have reviewed Plaintiff Grimsley's W-2 and 1099-R forms for 2005, the first full year after his retirement. Those forms, Exhibit 9, attached, show that in 2005 his SLED salary was \$48,318.00, and his PORS retirement benefit was \$33,158.04. His combined salary and retirement income for 2005 therefore totaled \$81,472.04 in the first year after he retired. Had he not retired and been rehired, instead simply continuing as an existing employee, his total 2005 income from the State would be approximately \$55,000 (2004 salary plus COLA increase), rather than \$81,472.04. This information simply illustrates the extent to which working retirees benefitted from this optional Retirement/Rehire program that SLED was not required to offer.

21. There were no "deductions" for the employer contribution from the rehired employees' new salaries upon rehire, or at any other time. Plaintiffs' new salaries upon rehire were in fact 13.6% lower than their pre-retirement salaries, but the employer contribution has never been deducted from their paychecks. As set forth in the Affidavits of Don Royal and Teresa Kitchens, there is no such thing as a payroll deduction for the employer contribution to the PORS, because the employer contribution is paid from the amount appropriated to the agency for benefits funding, and not from the amount appropriated and used for employees' salaries.

22. There has never been a provision of law that required SLED to rehire agents who had retired. Nor has there ever been a requirement that SLED create a program such as the Retirement/Rehire program. If I had so chosen, I could have declined to take any steps to make arrangements for retired SLED agents to return to work as working retirees. I also could have elected, funds permitting, to rehire many retired agents, or only a few, or none at all.

23. I was not and am not aware of any legal requirement that any person who retires and is rehired as a working retiree under *S.C. Code Ann. § 9-11-90(4)* must be paid at the same salary they were earning prior to retirement. I could have elected to offer Plaintiffs rehire salaries that were reduced by more than 13.6%. They, of course, could have chosen to return to work at such additionally reduced salaries, or not, as they saw fit.

24. I did not require any employee who participated in the Retirement/Rehire program to retire. In other words, had any of those employees decided not to retire and be rehired, but instead chosen simply to continue as regular, non-retired, employees, they were permitted to do so. However, non-retired employees obviously did not obtain the benefit of drawing retirement and at the same time collecting a salary as a working retiree.

25. I was not aware that any rehired employee was dissatisfied with the percentage reduction of his rehire salary until the present case was filed, more than six years after the first employees retired and were rehired in September 2002, and more than four years after Plaintiffs Grimsley


and Jowers retired and were rehired in 2004. No dissatisfaction with the terms of re-employment was ever expressed to me by Plaintiffs or any other employees who retired and were rehired. Nor would I have expected them to express dissatisfaction, in light of the advantage to them in participating in the Retirement/Rehire program, as opposed to continuing to work as non-retired employees.

26. On May 2, 2006, I sent a memorandum, written by me personally, to all employees participating in the Retirement/Rehire program. That memorandum was sent at the time when the first rehired employees were approaching the end of their four-year period of employment under the program. In the memorandum, I advised that "a few" of the rehired employees would be given the opportunity to return a second time, based on "the unique and special needs of the Division at the time." Exhibit 10, attached. Plaintiffs Grimsley and Jowers were among those who received that letter.

27. I understand that Plaintiffs Grimsley and Jowers did not return to SLED employment in mid-2008, when their original 48-month period of employment expired, but I was not Chief of SLED at that time. As a result, I am not personally familiar with what occurred with respect to those individuals in mid-2008, other than the fact that they did not return to SLED employment at that time.

28. Finally, I would call attention to certain provisos in Appropriations Acts starting in 2010. See, for instance, Act No. 291 of 2010, Part 1B, Section 89.144 (GP: Cost Savings When Filling Vacancies Created by Retirements). In those annual provisos, the General Assembly has mandated that whenever classified FTE positions become vacant because of employee retirements, the vacant positions must be managed so that in the aggregate, there should be a cost savings of 25% when managing those positions. This is the same general cost savings approach that was part of the Retirement/Rehire program, except that now, the mandated percentage reduction for managing the filling of the vacancies is 25%, instead of the 13.6% reduction that was applied to Plaintiffs Grimsley and Jowers.

FURTHER AFFIANT SAYETH NOT.

  
Robert M. Stewart

SWORN TO BEFORE ME THIS 23rd

DAY OF May, 2012.

Shelley E. Stafford (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 6-13-15

**Exhibit 1 to Affidavit of Robert F. Stewart**

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



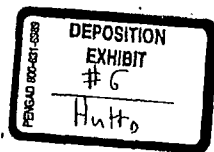
ROBERT M. STEWART  
Chief

TO: Chief Robert M. Stewart  
FROM: Lt. Phil Grimsley  
REFERENCE: RETIREMENT  
DATE: May 20, 2004

I am writing to notify you that I plan to enter retirement status effective June 30, 2004. I understand that if I wish to apply to be rehired by the South Carolina State Law Enforcement Division, I must be separated from employment for a period of time equal to my annual leave pay-out, but not less than fifteen (15) days; and that if I am selected to be rehired, I can, if I wish to do so, volunteer my services for some, all or none of this period.

5-20-04  
DATE

SIGNATURE



An Accredited Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7043

8022-A-001

**Exhibit 2 to Affidavit of Robert F. Stewart**

UHK

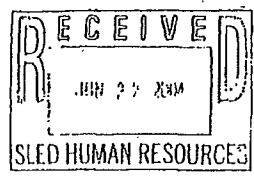
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



ROBERT M. STEWART  
Chief

TO: Chief Robert M. Stewart  
FROM: Lt. Phil Grimsley  
SUBJECT: REQUEST TO BE REHIRED  
DATE: June 21, 2004



I am requesting to be rehired with the South Carolina State Law Enforcement Division. I understand that if this does occur, the following provisions apply and I agree to them:

- Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).
- Accrual of annual and sick leave at current rate.
- Salary: 13.6% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.
- Employment not to exceed 48 months.
- No lump sum payment for annual leave upon second separation.
- Review date: twelve months after date of rehire.
- No probationary period.
- Must apply to this agency and receive permission to reenter retirement system as an active member.

6/21/04  
DATE

Phil Grimsley  
SIGNATURE

Approved for rehire:  
RMS/gab

SWORN TO BEFORE ME THIS 21<sup>st</sup> DAY OF June, 2004.

Alerda Booth  
My Commission Expires: 3/13/11



An Accredited Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041



8022-A-002

**Exhibit 3 to Affidavit of Robert F. Stewart**

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



ROBERT M. STEWART  
Chief

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

TO: Phillip Grimsley  
FROM: Lynn Hutto, Director  
Human Resources  
SUBJECT: Confirmation of Your Request to Rehire  
DATE: July 27, 2004

COPY

This is confirmation that your request to return to employment with the SC Law Enforcement Division has been approved based on your written acceptance of the following provisions:

- > Status: FTE (full time equivalent employee) with no grievance or RIF (reduction-in-force) rights (at will employee).
- > Accrual of annual leave will be at 21.50 hours a month. Accrual of sick leave will be at 10.75 a month. No lump sum payment for annual leave upon second separation.
- > Your salary will be \$45,702 (previous base salary less 13.8%) no longevity pay, additional reduction by cost of health insurance to agency if elected.
- > Employment not to exceed 48 months.
- > Review date: twelve months after date of rehire.
- > No probationary period.
- > Must apply to this agency and receive permission to reenter retirement system as an active member.

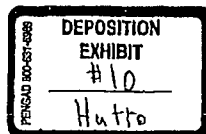
Because your last day of employment was June 30, 2004 and you were compensated for a total of 45 days of annual leave, your re-employment date will be August 17, 2004.

Please contact Margie Coker at 803-896-7205 to schedule a time to complete the employment processing. You will need your social security card and driver's license at the time of your meeting. Should you be unable to return by the date indicated above please contact Margie Coker.

Cc: Capt. Drakeford  
HR file



An Accredited Law Enforcement Agency  
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)  
896-7041



8022-A-003

69

**Exhibit 4 to Affidavit of Robert F. Stewart**

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



ROBERT M. STEWART  
Chief

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT

EMPLOYEE ORIENTATION FOR RE-EMPLOYMENT  
UNDER THE PORS RETIREMENT PROVISIONS

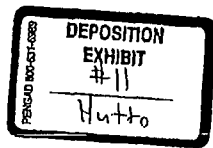
As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed on your benefits and employment status.

- > **EMPLOYMENT STATUS:** You will be an AT-WILL employee. (AT-WILL means that you can be separated from employment at any time for cause or for no cause.) You have no grievance or reduction in force (RIF) rights. You are eligible for all other rights of any permanent employee.
- > **SALARY:** You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5 % employee portion of retirement will no longer be deducted from your check.
- > **INSURANCE:** You have the election to enroll in the insurance under SLED or continue coverage on the retiree group. If you elect to come under SLED's insurance your salary will be decreased by the amount of the state's portion of the premium.
- > **LEAVE:** You will accrue leave at the same rate you were accruing when you left employment. Your accrual rate was 21.50. You will begin accruing in the month of September. You will begin with a zero balance of sick and annual leave. You will not receive a pay out of annual leave at your second termination. You must complete leave slips for leave taken.
- > **TIME AND ATTENDANCE:** If you are a non-exempt employee you must complete time and attendance sheets (Dallies). If you are currently completing a time sheet as a temporary employee and are going into an exempt position, you will discontinue completing the time sheets on \_\_\_\_\_.
- > **DEDUCTION CHANGES:** If you wish to make any deduction changes now that you are a permanent employee, you must complete a P-4 withholding form.

My signature indicates that the above checked items were discussed with me during orientation.  
Employee Signature: [Signature] Social Security Number: [Redacted] Date: 8/18/14



An Accredited Law Enforcement Agency  
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)  
896-7041



8022-A-004

**Exhibit 5 to Affidavit of Robert F. Stewart**

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



ROBERT M. STEWART  
Chief

TO: Chief Robert M. Stewart  
FROM: SA Roger Jowers  
REFERENCE: RETIREMENT  
DATE: April 19, 2004

I am writing to notify you that I plan to enter retirement status effective June 1, 2004. I understand that if I wish to apply to be rehired by the South Carolina State Law Enforcement Division, I must be separated from employment for a period of time equal to my annual leave pay-out, but not less than fifteen (15) days; and that if I am selected to be rehired, I can, if I wish to do so, volunteer my services for some, all or none of this period.

04-19-04  
DATE

  
SIGNATURE

013



An Accredited Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

**Exhibit 6 to Affidavit of Robert F. Stewart**

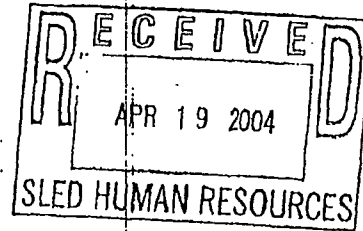
SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK LANFORD  
Governor



ROBERT M. STEWART  
Chief

TO: Chief Robert M. Stewart  
FROM: SA Roger Jowers  
SUBJECT: REQUEST TO BE REHIRED  
DATE: April 19, 2004



I am requesting to be rehired with the South Carolina State Law Enforcement Division. I understand that if this does occur, the following provisions apply and I agree to them:

- Status: FTE (full time employee) with no grievance or RIF (reduction-in-force) rights (at-will employee).
- Accrual of annual and sick leave at current rate.
- Salary: 10.3% less than previous base salary (no longevity pay), reduction of health insurance cost to agency if utilized.
- Employment not to exceed 48 months.
- No lump sum payment for annual leave upon second separation.
- Review date: five months after date of rehire.
- No probationary period.
- Must apply to this agency and receive permission to reenter retirement system as an active member.

04-19-04  
DATE

[Signature]  
SIGNATURE

011

Approved for rehire:  
[Signature]

SWORN TO BEFORE ME THIS 19th DAY OF April, 2004.

[Signature]  
My Commission Expires: 3/3/11



**Exhibit 7 to Affidavit of Robert F. Stewart**

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



ROBERT M. STEWART  
Chief

TO: Roger Jowers  
FROM: Lynn Hutto, Director  
Human Resources  
SUBJECT: Confirmation of Your Request to Rehire  
DATE: June 29, 2004

This is confirmation that your request to return to employment with the SC Law Enforcement Division has been approved based on your written acceptance of the following provisions:

- **Status:** FTE (full time equivalent employee) with no grievance or RIF (reduction-in-force) rights (at will employee).
- Accrual of annual leave will be at 21.50 hours a month. Accrual of sick leave will be at 10.75 a month. No lump sum payment for annual leave upon second separation.
- Your salary will be \$39,828 (previous base salary plus 3% cost of living adjustment, less 13.6%) no longevity pay, additional reduction by cost of health insurance to agency if elected.
- Employment not to exceed 48 months.
- Review date: twelve months after date of rehire.
- No probationary period.
- Must apply to this agency and receive permission to reenter retirement system as an active member.

Because your last day of employment was June 1, 2004 and you were compensated for a total of 45 days of annual leave, your re-employment date will be July 19, 2004.

Please contact Margie Coker at 803-896-7205 to schedule a time to complete the employment processing. You will need your social security card and driver's license at the time of your meeting. Should you be unable to return by the date indicated above please contact Margie Coker.

Cc: Lt. Grimsley  
HR file

\* The adjustment amount changed effective July 2, 2004 due to an increase in the Retirement Systems surcharge.



An Accredited Law Enforcement Agency  
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)  
896-7041

010

**Exhibit 8 to Affidavit of Robert F. Stewart**

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANTORD  
Governor



ROBERT M. STEWART  
Chief

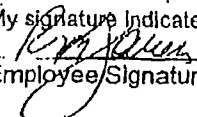
THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT

EMPLOYEE ORIENTATION FOR RE-EMPLOYMENT  
UNDER THE PORS RETIREMENT PROVISIONS

As a retiree being re-employed by SLED, items listed below are being discussed with you so you will be informed on your benefits and employment status.

- > EMPLOYMENT STATUS: You will be an AT-WILL employee. (AT-WILL means that you can be separated from employment at any time for cause or for no cause.) You have no grievance or reduction in force (RIF) rights. You are eligible for all other rights of any permanent employee.
- > SALARY: You will have a reduction of 13.6% in your salary to cover the amount it will cost SLED to pay the employer portion of retirement. The 6.5% employee portion of retirement will no longer be deducted from your check \$39,828
- > INSURANCE: You have the election to enroll in the Insurance under SLED or continue coverage on the retiree group. If you elect to come under SLED's insurance your salary will be decreased by the amount of the state's portion of the premium.
- > LEAVE: You will accrue leave at the same rate you were accruing when you left employment. Your accrual rate was 21.50. You will begin accruing in the month of AUGUST. You will begin with a zero balance of sick and annual leave. You will not receive a pay out of annual leave at your second termination. You must complete leave slips for leave taken.
- > TIME AND ATTENDANCE: If you are a non-exempt employee you must complete time and attendance sheets (Dailies). If you are currently completing a time sheet as a temporary employee and are going into an exempt position, you will discontinue completing the time sheets on \_\_\_\_\_.
- > DEDUCTION CHANGES: If you wish to make any deduction changes now that you are a permanent employee, you must complete a P-4 withholding form.

My signature indicates that the above checked items were discussed with me during orientation.

  
Employee Signature

  
Social Security Number

07-19-2004  
Date



An Accredited Law Enforcement Agency.  
P.O. Box 21398/ Columbia, South Carolina 29221-1398/ (803) 737-900/ Fax (803)  
896-7041

009

**Exhibit 9 to Affidavit of Robert F. Stewart**

OMB No 1545-0045

a Control number		1 Wages, tips, other compensation 46,971.02	2 Federal income tax withheld 4,555.23
3 Social security wages 48,316.00		4 Social security tax withheld 2,995.72	
5 Medicare wages and tips 48,316.00		6 Medicare tax withheld 700.61	

c Employer's name, address, and ZIP code  
**COMPTROLLER GENERAL  
STATE OF SOUTH CAROLINA  
1200 SENATE STREET ROOM 505  
COLUMBIA, SC 29201  
69-0570001-008**

7 Social security tips	8 Allocated tips	9 Advance EIG payment 0.00
10 Dependent care benefits 0.00	11 Nonqualified plans	

b Employer identification number  
57-600286

d Employee's social security number  
[REDACTED]

12a See instructions for box 12		12c	
C	0.00	G	0.00
D	0.00	T	0.00
E	0.00	W	0.00

13  Statutory employee  Retirement plan  Third-party sick pay  Other

a Employee's name, address, and ZIP code  
**PHILLIP D GRIMSLEY  
[REDACTED]  
LAKE CITY SC 29560-2160**

15 State Employer's state I.D. No. SC 25030665-4	16 State wages, tips, etc. 46,971.02
17 State income tax 2,607.34	18 Local wages, tips, etc.
19 Local income tax	20 Locality name

**2005** W-2 Statement Copy For EMPLOYEE'S State, City, or Local Income Tax Return

Department of the Treasury-Internal Revenue Service

Form 1099-R  CORRECTED (If checked) OMB No. 1545-0119 **2005**

1 Gross distribution 33,168.04	2a Taxable amount 33,056.16	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
2b Taxable amount not determined	Total distribution	

PAYER'S name, street address, city, state, and ZIP code  
**S. C. POLICE OFFICERS  
RETIREMENT SYSTEM  
PO BOX 11980  
COLUMBIA, SC 29211-1980**

PAYER'S Federal identification number 57-6041552	RECIPIENT'S identification number [REDACTED]	
3 Capital gain (included in box 2a)	4 Federal income tax withheld 2,614.00	5 Employee contributions or insurance premiums 101.88
6 Net unrealized appreciation in employer's securities	7 Distribution code 7	8 Other <input type="checkbox"/> %
9a Your percentage of total distribution	9b Total employee contributions %	

RECIPIENT'S name, street address (incl. apt. no.), city, state and ZIP code  
**PHILLIP D GRIMSLEY  
[REDACTED]  
LAKE CITY SC 29560**

Account number (see instructions)	10 State tax withheld 1,350.00
11 State/Payer's state number SC 25264192-2	12 State distribution
13 Local tax withheld	14 Name of locality
	16 Local distribution

**Copy C For Recipient's Records** Department of the Treasury Internal Revenue Service  
This information is being furnished to the Internal Revenue Service

**Exhibit 10 to Affidavit of Robert F. Stewart**

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



ROBERT M. STEWART  
Chief

MEMORANDUM

TO: Agents Participating in Retirement / Rehire Program

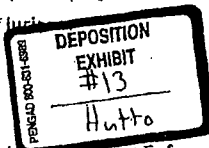
FROM: Robert M. Stewart *MS*

SUBJECT: Continued Employment

DATE: May 2, 2006

I would like to thank everyone who is participating in the Law enforcement retirement plan. Keeping experienced agents for up to an additional four years is of great advantage to the Division and the citizens of South Carolina. We are realizing that time passes very quickly. Some agents who took advantage of the 48 month program are nearing the end of this time period. Several issues have been raised which I will try to address in this letter.

As to the question of continued employment, a few agents will be offered the opportunity to return after a brief break in service. The decision will be based entirely on the unique and special needs of the Division at the time. No one will return with rank in a supervisory position. At the inception of the program everyone was told not to participate unless they were ready to retire immediately. All participants are advised to be prepared to leave full time employment at the end of the 48 month period unless they have been notified otherwise by me. This notification will be made as soon as practicable, but not less than sixty days before the date of separation. Others may be able to work by the hour on special projects to train replacements, conduct background investigations, or sequester funds.



007



An Authorized Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

---

As to accrued leave, the law does not permit a second annual leave payout. Annual leave should be taken throughout the year to avoid loss if so desired. Toward the end of the 48 month period, those with accrued annual leave remaining, as a general rule, will be required to work at least two days per week so that the agency's day to day operations are not impeded. Naturally, sick leave can only be taken for illness and a doctor's excuse may be required for extended periods or if otherwise necessitated.

Retired agent's commissions and credentials are available and it is hoped that all members of the SLED family will remain close to the Division and participate in appropriate training and other functions. If there are any questions please feel free to call.

R.F.

008

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated, )

Plaintiffs, )

v. )

South Carolina Law Enforcement Division and the State of South Carolina, )

Defendants. )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

**AFFIDAVIT OF TERESA C. KITCHENS**


Personally appeared before me, Teresa C. Kitchens, duly sworn, who deposes and says the following:

1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. I am currently employed as the Director of Human Resources at the South Carolina Law Enforcement Division, and have held that position since January 2012.
3. Prior to my employment with SLED, I served as Director of Human Resources at the Department of Public Safety from 2005 through 2012.
4. I have reviewed the personnel and payroll records pertaining to Plaintiffs Grimsley and Jowers.
5. Exhibit 1, attached, is a pay stub (earnings statement) for Plaintiff Jowers dated August 16, 2004. This was his first pay stub upon his return to employment. As can be seen, the amount for the "Retirement" deduction was \$0.00. This reflected the fact that at the time, there was no deduction even for an employee contribution of a working retiree.
6. While there is a deduction category for "Retirement" on the pay stub of every actively employed State employee, including Plaintiffs Grimsley and Jowers and as shown on Exhibit 1, the only deductions that are ever made using that category are deductions of the employee contribution to the PORs of 6.5% of gross salary, at such times as those deductions were made.
7. There is no deduction category on the pay stub that would show a deduction from the employee's salary for the employer contribution to the PORs, because the employer contribution is never deducted from the gross salary of the employees. Instead, and as

shown in more detail in the Royal Affidavit, the employer contribution is paid to the PORS as a lump sum amount and is not broken down by specific employee.

8. On April 29, 2008 and June 2, 2008, when Plaintiffs Jowers and Grimsley were nearing the completion of 48 months of employment as working retirees, they were informed in letters from then-Director Lloyd that their employee status would terminate on July 1, 2008 and June 16, 2008, respectively. Exhibits 2 and 3, attached.

FURTHER AFFIANT SAYETH NOT.

  
Teresa C. Kitchens

SWORN TO BEFORE ME THIS 22nd  
DAY OF 20th, 2008.

 (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES:  
My Commission Expires July 5, 2011

**Exhibit 1 to Affidavit of Teresa C. Kitchens**

PURSUANT TO WARRANT OF  
 RICHARD ECKSTROM  
 COMPTROLLER GENERAL

STATE OF SOUTH CAROLINA  
**Office Of State Treasurer**  
 GRADY L. PATTERSON, JR.

STATE OF SOUTH CAROLINA EMPLOYEE'S EARNINGS STATEMENT						
DATE PAID 08/16/04			DOCUMENT NUMBER 822901166			
NAME ROGER M JOWERS			AGENCY D10		NET PAY 848.68	
STATE	FEDERAL	STATE	FEDERAL	STATE	FEDERAL	STATE
1,809.50	000	150.23	000	72.17	138.42	0.00
399	600.00					
32,688.59	2,836.47	1,724.98	2,457.62	2,007.14	2,572.80	21,089.58

**VOLUNTARY DEDUCTIONS**

399 STATE STREET BANK 957 PLAN

**Exhibit 2 to Affidavit of Teresa C. Kitchens**

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
*Governor*



REGINALD I. LLOYD  
*Director*

April 29, 2008

S/A Roger W. Jowers

Summerton, SC 29148-0627

Re: Law Enforcement Retirement/Retention Plan

Dear S/A Jowers:

Thank you for participating in the Law Enforcement Retirement/Retention Plan and your many years of service to SLED. Your 48 month period ends on July 1, 2008. Please contact Lynn Hutto in the office of Human Resources concerning your availability to work by the hour on special projects or to train replacements, conduct background investigations, or sequester jury.

Yours very truly,

Reginald I. Lloyd, Director  
South Carolina Law Enforcement Division

RIL:mc

Cc: Lynn Hutto  
Lynn Rollin  
Major Stacey Drakeford

COPY



An Accredited Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-2622

**Exhibit 3 to Affidavit of Teresa C. Kitchens**

7

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD  
Governor



REGINALD I. LLOYD  
Director

June 2, 2008

Phillip D. Grimsley  
[REDACTED]  
Lake City, SC 29560

COPY  
COPY

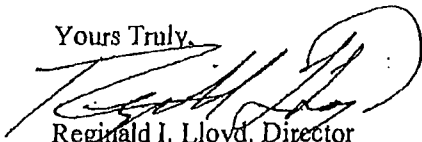
Re: Law Enforcement Retirement/Retention Status

Dear Lt. Grimsley:

Thank you for participating in the Law Enforcement Retirement/Retention Plan and for the many years in which you served the citizens of the State of South Carolina. In accordance with your signed agreement your at will status as an employee of the SC Law Enforcement Division will terminate June 16, 2008.

Please contact Lynn Hutto in the Office of Human Resources if you wish to work sequestered juries, conduct background investigations or other special projects in retiree status.

Yours Truly,



Reginald I. Lloyd, Director  
S.C. Law Enforcement Division

Cc: Lynn Hutto  
Deputy Chief Neal Dolan  
Assistant Chief Timothy James  
Inspector Richard Hunton



An Accredited Law Enforcement Agency  
P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Phillip D. Grimsley, Sr. and Roger M. )  
 Jowers, on behalf of themselves and other )  
 similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 South Carolina Law Enforcement )  
 Division and the State of South Carolina, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

AFFIDAVIT OF DONALD R. ROYAL

Personally appeared before me, Donald R. Royal, duly sworn, who deposes and says the following:

1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. I am presently employed as the Director of Administration at SLED, and have held that position since October 2011.
3. Prior to coming to SLED, I served as Chief Financial Officer for the Department of Public Safety from 2001 until 2011.
4. In the course of my employment, I have become familiar with the state appropriations process, including the matters set forth herein.
5. For a number of years, extending at least as far back as the 2001-2002 fiscal year, the annual Appropriations Acts have contained a line in each agency's appropriations generally described as "Employee Benefits." Under that is a line designated "State Employer Contributions." See, for instance, the 2001-2002 Appropriations Act, Part IA, Section 56B. Exhibit 1, attached.
6. The "total funds" amount set forth in that line item is a single figure that combines the total appropriation for all employee fringe benefits. For SLED, the approximate amount of fringe benefits for each employee's salary is 35% of the employee's salary. It includes such items as health insurance, workers' compensation, and the employer contribution to the Police Officers' Retirement System.
7. The 35% total approximate fringe benefit figure, including the employer contribution to the Police Officers' Retirement System, is not part of the employee's

*DR*

salary. Instead, it represents an amount that is appropriated to the agency over and above the salary paid to the employee. In other words, using round figures, if an agency has an employee with a salary of \$100,000, the fringe benefits for the employee would be approximately an additional \$35,000, so that the total cost to the agency for that employee would be \$135,000.

8. The employer contribution to the Police Officers' Retirement System, like all fringe benefits in state government, is not included within the salary of the employee, and therefore is not deducted from the salary of the employee. Instead, it is paid from the fringe benefit amount appropriated to the agency.

9. To put it another way, the employee never sees the employer contribution in his or her paycheck or reflected in the amount of his or her salary, because it is not in fact a part of the salary. Instead, the employer contribution to the Police Officers' Retirement System, like employer contributions for workers' compensation, health insurance, and other fringe benefits, is completely separate from, and in addition to, the amount of the employee's salary.

10. In July and August 2004, when Plaintiffs Grimsley and Jowers returned to work as working retirees, the employer contribution to the Police Officers' Retirement System was 13.6% of the individual's salary, that is, slightly more than one-third of all employer-paid fringe benefits.

11. The amounts appropriated for fringe benefits are based on estimates by the agencies as to the agencies' needs for the next fiscal year. Those estimates do not attempt to be so precise as to try to make the amount appropriated for the employer contribution to the PORS equal to the employer contribution percentage (13.6% in 2004) of the salary base for the next year.

12. The method for remitting the employer contribution is that the employer contribution of SLED, like other agencies, is periodically transferred to the PORS in an amount equal to the appropriate percentage (13.6% in 2004) of the total salary amount actually paid. The remittance is a lump sum payment of the appropriate employer contribution percentage (13.6% in 2004) of that total salary amount. It is not itemized on an employee-by-employee basis.<sup>1</sup>

13. In the course of a given fiscal year, there are a number of events that could cause some portion of the amounts budgeted for fringe benefits to remain unexpended. For instance, a position might remain vacant for several months or longer. In addition, a position could be vacated and then re-filled at a lower salary, which is precisely what occurred in the situations of Plaintiffs Grimsley and Jowers.

---

<sup>1</sup> At the time of the Hutto deposition in 2009, and earlier, SLED made this lump sum remittance on a quarterly basis. Beginning in 2010, the lump sum payment of the employer contribution was made automatically at each semimonthly pay period. There was no change in the nature of the lump sum payment as a specific percentage of payroll, which was over and above the amount paid as salary to the employees.

*Don*

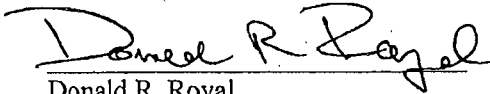
14. The disposition of agency funds of any kind that are unexpended at the end of a fiscal year is governed by the provisions of each year's Appropriations Act. Those provisions have varied from year to year and are normally found in the General Provisos of Part 1B of each year's Appropriations Act.

15. For instance, the 2004-2005 Appropriations Act, Act No. 248 of 2004, Part 1B, Section 72.30 (GP: Carry Forward), Exhibit 2 attached, provided that agencies could carry forward up to ten percent of unspent general fund appropriations from the prior fiscal year into the current fiscal year, up to a maximum of ten percent of their original general fund appropriations less any appropriation reductions for the current fiscal year.

16. SLED has always duly paid, as part of its periodic lump sum remittances, the employer contributions to the PORS for the salaries of Plaintiffs Grimsley and Jowers, both in connection with their original pre-retirement salaries, and in connection with their new salaries upon rehire. With respect to remittances for Plaintiffs' rehire salaries as working retirees, SLED has therefore complied with *S.C. Code Ann. 9-11-90(4)(b)*, which requires that "An employer shall pay to the system the employer contribution for active members prescribed by law with respect to any retired member engaged to perform services for the employer. . . ."

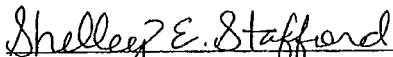
17. Had SLED not made the employer contribution for the salaries of those employees, an event that is essentially unheard of when the employer is a state agency, another provision of §9-11-90(4)(b) would have required the amount of the employer contribution to be deducted from any funds payable to the employer by the State. Again, however, there was no nonpayment by SLED that would have triggered that provision.

FURTHER AFFIANT SAYETH NOT.

  
Donald R. Royal

SWORN TO BEFORE ME THIS 23rd

DAY OF May, 2012.

 (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires 05-13-15

**Exhibit 1 to Affidavit of Donald R. Royal**

**South Carolina General Assembly**

**General Appropriations Bill H. 4878 for the fiscal year beginning July 1, 2002**

SEC. 56B GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION	TOTAL FUNDS	GENERAL FUNDS
<b>I. ADMINISTRATION</b>		
PERSONAL SERVICE:		
CHIEF	122,765	122,765
	(1.00)	(1.00)
CLASSIFIED POSITIONS	1,620,878	1,620,878
	(45.62)	(45.62)
OTHER PERSONAL SERVICES	42,187	42,187
<b>TOTAL PERSONAL SERVICE</b>	<b>1,785,830</b>	<b>1,785,830</b>
	(46.62)	(46.62)
OTHER OPERATING EXPENSES	759,079	759,079
<b>TOTAL ADMINISTRATION</b>	<b>2,544,909</b>	<b>2,544,909</b>
	(46.62)	(46.62)
<b>II. PROGRAMS AND SERVICES:</b>		
<b>A. ENFORCEMENT AND INVESTIGATION</b>		
<b>1. REGIONS</b>		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	3,237,507	3,237,507
	(95.00)	(95.00)
OTHER PERSONAL SERVICES	127,342	127,342
<b>TOTAL PERSONAL SERVICE</b>	<b>3,364,849</b>	<b>3,364,849</b>
	(95.00)	(95.00)
OTHER OPERATING EXPENSES	209,527	209,527
<b>TOTAL REGIONS</b>	<b>3,574,376</b>	<b>3,574,376</b>
	(95.00)	(95.00)
<b>2. DRUG ENFORCEMENT</b>		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	1,163,766	1,163,766
	(35.00)	(35.00)
OTHER PERSONAL SERVICES	32,612	32,612
<b>TOTAL PERSONAL SERVICE</b>	<b>1,196,378</b>	<b>1,196,378</b>
	(35.00)	(35.00)
OTHER OPERATING EXPENSES	94,503	94,503
<b>TOTAL DRUG ENFORCEMENTS</b>	<b>1,290,881</b>	<b>1,290,881</b>
	(35.00)	(35.00)
<b>3. ARSON/BOMB</b>		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	972,659	972,659
	(24.00)	(24.00)

PAGE: 236

SEC. 56B GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION	TOTAL FUNDS	GENERAL FUNDS
OTHER PERSONAL SERVICES	19,329	19,329
<b>TOTAL PERSONAL SERVICE</b>	<b>991,988</b>	<b>991,988</b>
	(24.00)	(24.00)
OTHER OPERATING EXPENSES	103,508	103,508
<b>TOTAL ARSON/BOMB</b>	<b>1,095,496</b>	<b>1,095,496</b>
	(24.00)	(24.00)
<b>4. VEHICLE THEFT</b>		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	627,341	579,341
	(18.00)	(17.00)



OTHER PERSONAL SERVICES	23,704	23,704
TOTAL PERSONAL SERVICE	651,045 (18.00)	603,045 (17.00)
OTHER OPERATING EXPENSES	33,775	33,775
TOTAL VEHICLE THEFT	684,820 (18.00)	636,820 (17.00)
=====		
5. STATE GRAND JURY		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	467,831 (9.00)	467,831 (9.00)
OTHER PERSONAL SERVICES	9,756	9,756
TOTAL PERSONAL SERVICE	477,587 (9.00)	477,587 (9.00)
OTHER OPERATING EXPENSES	20,385	20,385
TOTAL STATE GRAND JURY	497,972 (9.00)	497,972 (9.00)
=====		
6. CHILD FATALITY		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	105,851 (3.00)	105,851 (3.00)
OTHER PERSONAL SERVICES	835	835
TOTAL PERSONAL SERVICE	106,686 (3.00)	106,686 (3.00)
OTHER OPERATING EXPENSES	4,466	4,466
TOTAL CHILD FATALITY	111,152 (3.00)	111,152 (3.00)
=====		
7. ALCOHOL ENFORCEMENT		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	1,454,121 (57.00)	1,365,121 (46.00)

PAGE: 237

SEC. 56B GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION	TOTAL FUNDS	GENERAL FUNDS
OTHER PERSONAL SERVICES	8,310	7,310
TOTAL PERSONAL SERVICE	1,462,431 (57.00)	1,372,431 (46.00)
OTHER OPERATING EXPENSES	528	528
TOTAL ALCOHOL ENFORCEMENT	1,462,959 (57.00)	1,372,959 (46.00)
=====		
8. PROTECTIVE SERVICES		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	404,335 (10.00)	404,335 (10.00)
OTHER PERSONAL SERVICES	9,646	9,646
TOTAL PERSONAL SERVICE	413,981 (10.00)	413,981 (10.00)
OTHER OPERATING EXPENSES	34,512	34,512
TOTAL PROTECTIVE SERVICES	448,493 (10.00)	448,493 (10.00)
=====		
9. MISSING PERSONS		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	294,886 (8.00)	294,886 (8.00)
OTHER PERSONAL SERVICES	8,633	8,633
TOTAL PERSONAL SERVICE	303,519 (8.00)	303,519 (8.00)
OTHER OPERATING EXPENSES	8,376	8,376
TOTAL MISSING PERSONS	311,895	311,895

	(8.00)	(8.00)
=====		
10. SUPPORT SERVICES		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	2,597,325	2,597,325
	(57.87)	(51.87)
OTHER PERSONAL SERVICES	573,322	204,322
TOTAL PERSONAL SERVICE	3,170,647	2,801,647
	(57.87)	(51.87)
OTHER OPERATING EXPENSES	3,202,722	345,192
SPECIAL ITEMS:		
AGENTS OPERATIONS	92,625	92,625
IMPLIED CONSENT	89,855	89,855
SUPERVISED HEALTH	48,750	48,750
DNA DATABASE PROGRAM	301,301	1

PAGE: 238

SEC. 56B GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION	TOTAL FUNDS	GENERAL FUNDS
BREATHTESTING SITE VIDEOTAPING	210,000	
TOTAL SPECIAL ITEMS	742,531	231,231
TOTAL SUPPORT SERVICES	7,115,900	3,378,070
	(57.87)	(51.87)
=====		
TOTAL ENFORCEMENT AND INVESTIGATIONS	16,593,944	12,718,114
	(316.87)	(298.87)
=====		
B. FORENSIC SERVICES		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	3,694,749	3,694,749
	(118.00)	(118.00)
OTHER PERSONAL SERVICES	104,035	104,035
TOTAL PERSONAL SERVICE	3,798,784	3,798,784
	(118.00)	(118.00)
OTHER OPERATING EXPENSES	1,693,332	499,474
CASE SRVC/PUBLIC ASSISTANCE		
PUBLIC ASSISTANCE PAYMENTS:		
HOSPITAL SERVICES	3,173	3,173
TOTAL CASE SRVC/PUB ASST	3,173	3,173
TOTAL FORENSIC SERVICES	5,495,289	4,301,431
	(118.00)	(118.00)
=====		
C. CRIME INFORMATION		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	2,608,425	2,608,425
	(107.00)	(107.00)
OTHER PERSONAL SERVICES	45,340	45,340
TOTAL PERSONAL SERVICE	2,653,765	2,653,765
	(107.00)	(107.00)
OTHER OPERATING EXPENSES	5,497,614	2,139,319
TOTAL CRIME INFORMATION	8,151,379	4,793,084
	(107.00)	(107.00)
=====		
D. REGULATORY		
PERSONAL SERVICE:		
CLASSIFIED POSITIONS	1,119,684	1,119,684
	(31.00)	(31.00)
OTHER PERSONAL SERVICES	38,328	38,328
TOTAL PERSONAL SERVICE	1,158,012	1,158,012
	(31.00)	(31.00)

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SEC. 56B GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION	TOTAL FUNDS	GENERAL FUNDS
OTHER OPERATING EXPENSES	383,136	43,136
TOTAL REGULATORY	1,541,148 (31.00)	1,201,148 (31.00)
TOTAL PROGRAMS AND SERVICES	31,781,760 (572.87)	23,013,777 (554.87)
=====		
III. EMPLOYEE BENEFITS		
C. STATE EMPLOYER CONTRIBUTIONS		
EMPLOYER CONTRIBUTIONS	7,128,966	6,990,093
TOTAL FRINGE BENEFITS	7,128,966	6,990,093
TOTAL EMPLOYEE BENEFITS	7,128,966	6,990,093
=====		
GOVERNOR'S OFF-STATE LAW ENFORCEMENT DIVISION		
TOTAL FUNDS AVAILABLE	41,455,635	32,548,779
TOTAL AUTHORIZED FTE POSITIONS	(619.49)	(601.49)
=====		

PAGE: 240

This web page was last updated on Thursday, June 25, 2009 at 11:17 A.M.

**Exhibit 2 to Affidavit of Donald R. Royal**

**Act No. 248 of 2004 (Appropriations Act), Part 1B, Section 72.30**

**72.30. (GP: Carry Forward)** Each agency is authorized to carry forward unspent general fund appropriations from the prior fiscal year into the current fiscal year, up to a maximum of ten percent of its original general fund appropriations less any appropriation reductions for the current fiscal year. Agencies shall not withhold services in order to carry forward general funds.

This provision shall be suspended if necessary to avoid a fiscal year-end general fund deficit. For purposes of this proviso, the amount of the general fund surplus/deficit must be considered after all appropriations from the Capital Reserve Fund have been allowed and before any transfers from the General Reserve. The amount of general funds needed to avoid a year-end deficit shall be reduced proportionately from each agency's carry forward amount.

Agencies which have separate general fund carry forward authority must exclude the amount carried forward by such separate authority from their base for purposes of calculating the ten percent carry forward authorized herein. Any funds that are carried forward as a result of this provision are not considered part of the base of appropriations for any succeeding years. State agencies and institutions are allowed to provide selected employees a one-time lump sum bonus, not to exceed two thousand dollars, based on objective guidelines established by the Budget and Control Board. This payment is not a part of the employee's base salary and is not earnable compensation for purposes of employee and employer contributions to respective retirement systems.

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated, )

Plaintiffs, )

v. )

South Carolina Law Enforcement Division and the State of South Carolina, )

Defendants. )

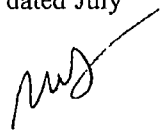
IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

REPLY AFFIDAVIT OF ROBERT M. STEWART

Personally appeared before me, Robert M. Stewart, duly sworn, who deposes and says the following:

1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. My previous affidavit in this case, dated May 23, 2012, is incorporated herein by reference.
3. I have reviewed the affidavits dated May 22, 2012, of the two Plaintiffs in this case
4. Paragraph 1 of each Plaintiff's affidavit is factually incorrect to the extent it suggests that the 2001 program referenced in Exhibit A to each Plaintiff's affidavit was the program under which each Plaintiff retired in 2004.
5. Instead, Exhibit A to each Plaintiff's affidavit pertained to a completely different program that was in effect only for Fiscal Year 2001-2002. That program was known as the "Voluntary Retirement Incentive" program. It represented the implementation of an option that the General Assembly had made available for that fiscal year in the 2001-2002 General Appropriations Act (H. 3687), Part 1B, Sec. 72.75. (Exhibit 1, attached.)
6. The General Assembly in that proviso required Budget and Control Board approval for "Voluntary Retirement Incentive" programs for those agencies that chose to implement such programs.
7. The 2001 "Voluntary Retirement Incentive" program pre-dated by a year the removal of salary caps or earnings limitations that was one factor in the creation of the Retirement/Rehire program first offered to SLED personnel in 2002.
8. The Board approved SLED's request for a Retirement Incentive Plan by letter dated July 26, 2001. Exhibit 2, attached.



9. As indicated on the first page of the Board-approved July 31, 2001 Memorandum that I sent to certain SLED personnel (Exhibit A to Plaintiffs' affidavits and part of Exhibit 2, attached), an individual who wanted to participate in the 2001-2002 "Voluntary Retirement Incentive" program was required to sign the "Agreement and Release" for that program on or before September 15, 2001. Plaintiffs retired in 2004 under a different program, the Retirement/Rehire program that took effect in 2002, as described in my previous affidavit in this case.

10. A number of SLED employees did retire pursuant to the 2001-2002 "Voluntary Retirement Incentive" program. I elected to rehire approximately ten of those retirees in temporary hourly positions in which they were paid upon rehire at a rate that was 70% of their prior salaries.

11. With respect to Paragraphs 2 and 3 of the affidavit of each Plaintiff, asserting that their "cost to return to work was being increased," I would note that Plaintiffs were paid to return to work, not charged a cost to return to work.

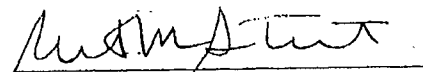
12. The reason for the change in the salary reduction between May 2004, when Plaintiffs requested to be rehired, and the dates after July 1, 2004 when Plaintiffs returned to work, was that on July 1, 2004, the percentage figure for the PORS employer contribution changed from 10.3% to 13.6%. (This was the percentage figure I used to create cost savings due to budget cuts.)

13. The document referenced in Paragraph 4 of the Jowers affidavit (Exhibit D thereto) was not an "agreement" to be rehired by SLED, as Plaintiff Jowers states, but instead was simply a confirmation that the items referenced in that form had been discussed with Mr. Jowers during his orientation.

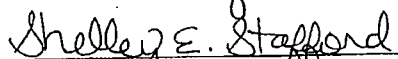
14. If Plaintiffs, or either of them, had advised me in 2004 that they believed they had a legal claim for the amount of the difference between their old salaries and their new salaries, I would not have offered them the opportunity to participate in the Retirement/Rehire program in 2004, because I would not have wanted SLED to be subject to a later claim for the cumulative amount of the difference.

15. Plaintiffs did not "lose" a percentage of their former salaries annually, as they assert. They were free to continue working at their former salaries, without reduction, as long as they chose not to retire or be rehired.

FURTHER AFFIANT SAYETH NOT.

  
Robert M. Stewart

SWORN TO BEFORE ME THIS 30th  
DAY OF May, 2012.

 (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 10-13-15

**Exhibit 1 to Reply Affidavit of Robert M. Stewart**

**2001-2002 General Appropriations Act (H. 3687), Part 1B, Sec. 72.75.**

**72.75.** (GP: Downsizing/Realigning Resources) State agencies may implement, in consultation with the Office of Human Resources of the Budget and Control Board, a program to realign resources to include provisions for a separation incentive payment for employees which may include the employer portion of health and dental benefits not to exceed one year. Positions that become vacant due to an employee exercising a separation incentive may not be refilled and must be deleted. Employees participating in such program shall not be eligible to participate in the Teacher and Employee Retention Incentive (TERI) program or the LEORI program for employees in the Police Officer Retirement System. Any program developed under this provision will involve voluntary participation from employees and will be funded within existing appropriations. The program must be approved by the agency head and the Director of the Division of Budget and Analyses based on ability to demonstrate recurring cost savings for realignment and/or permanent downsizing. State agencies shall report the results to the Budget and Control Board by August 15, 2002. The Budget and Control Board shall report to the Senate Finance Committee and the House Ways and Means Committee on these results.

**Exhibit 2 to Reply Affidavit of Robert M. Stewart**

STATE OF SOUTH CAROLINA  
*State Budget and Control Board*  
DIVISION OF BUDGET AND ANALYSES  
OFFICE OF HUMAN RESOURCES

JIM HODGES, CHAIRMAN  
GOVERNOR

GRADY L. PATTERSON, JR.  
STATE TREASURER

JAMES A. LANDER  
COMPTROLLER GENERAL



1201 MAIN STREET, SUITE 1000  
COLUMBIA, SOUTH CAROLINA 29201  
(803) 737-0900

DONNA G. TRAYWICK  
DIRECTOR

HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

ROBERT W. HARRELL, JR.  
CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK FUSCO  
EXECUTIVE DIRECTOR

July 26, 2001

Chief Robert M. Stewart, Director  
South Carolina Law Enforcement Division  
Post Office Box 21398  
Columbia, South Carolina 29221-1398

Dear Chief Stewart:

The Division of Budget and Analyses has approved the South Carolina Law Enforcement Division's request for a Retirement Incentive Plan. This approval is based on the authority delegated to the Division of Budget and Analyses on June 12, 2001, by the Budget and Control Board. This authority allows the Division of Budget and Analyses to approve retirement incentive plans within the guidelines approved by the Budget and Control Board. We have enclosed a copy of the approved Plan.

Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Donna G. Traywick".

Donna G. Traywick  
Director

Enclosure

DGT/tmb

FAX (803) 737-0968

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION

JIM HODGES  
Governor



ROBERT M. STEWART  
Chief

## MEMORANDUM

TO: SLED Personnel

FROM: Robert M. Stewart *gds*

SUBJECT: SLED Voluntary Retirement Incentive Program

DATE: July 31, 2001

As a result of a budget shortfall, SLED has been exploring opportunities to address financial needs while maintaining critical service levels. The legislature offered agencies an opportunity to develop retirement incentive programs specifically designed to create savings within agencies to address the FY2001-2002 budget cuts. SLED has developed a VOLUNTARY RETIREMENT INCENTIVE Program whereby the agency will purchase either "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, not to exceed 70% of base salary, for eligible participants. This Program is completely voluntary and can benefit employees who are interested in retiring and who are eligible to retire with 25 years service credit in the PORS or 28 years service credit in the SCRS on or before October 1, 2001.

Because you are eligible to retire under the requirements of the SLED VOLUNTARY RETIREMENT INCENTIVE Program, you are receiving this package of information. Please complete the enclosed "Acknowledgement of Receipt" form and return it to Lynn Hutto as soon as practicable. Should you desire to participate in the Program, you are also required to complete and have notarized the three (3) page "Agreement and Release" form and return it to Lynn Hutto on or before September 15, 2001.

Some employees may be eligible to return to temporary employment with the State Law Enforcement Division. Factors influencing decisions to rehire may include the availability of funds, recommendations from supervisory staff, and the needs of the agency. In accordance to legislation passed by the General Assembly and signed by the



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

Governor in May 2001, state employees retiring from employment with the State of South Carolina must wait for a period no less than sixty (60) calendar days before returning to employment with the state. During the sixty (60) calendar day period, executive staff will be determining rehire decisions based upon availability of funds, the needs of the agency, and supervisory recommendations. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

As stated above, *all* employees receiving this document must return the "Acknowledgement of Receipt" form to Lynn Hutto as soon as practicable. Signing and returning the "Acknowledgement of Receipt" form only indicates that you have received notification of the Program. Those individuals choosing to participate in the SLED VOLUNTARY RETIREMENT INCENTIVE Program must complete and return the "Agreement and Release" form on or before September 15, 2001.

**NOTICE OF THE  
2001  
SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED)  
VOLUNTARY RETIREMENT INCENTIVE PROGRAM**

**PURPOSE**

As a result of a budget shortfall, the South Carolina Law Enforcement Division has been exploring opportunities to address financial needs while maintaining service levels and commitment to personnel. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in the SLED Voluntary Retirement Incentive Program.

SLED is funding this Program with existing funds and will use a reduced rehire salary to offset the cost of the Incentive. Savings can be realized with any level of participation in the Program.

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Retirement Incentive Program simply because you have received this notice.

Employees who decide to participate in the SLED Voluntary Retirement Incentive Program will be required to sign the attached "Agreement and Release" form, which will also release any and all claims the employee could bring against the State or SLED, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. The employee and a representative of the agency must sign the agreement.

The Chief of SLED shall develop the SLED Voluntary Retirement Incentive Plan in consultation with the Office of Human Resources and the South Carolina Retirement Systems, and upon approval by the Division of Budget and Analysis shall implement the Program. All decisions regarding the Retirement Incentive Program are the responsibility of the Chief of SLED, are final, and are not grievable or appealable. Questions and applications for the Retirement Incentive Program should be referred to Lynn Hutto in the SLED Office of Human Resources.

## RETIREMENT INCENTIVE PROGRAM

Participation in the SLED Voluntary Retirement Incentive Program is entirely voluntary. You are not required to participate in the Program simply because, as an employee, you have received this notice.

This notice explains the provisions that govern the SLED Voluntary Retirement Incentive Program, and includes an "Agreement and Release" ("Agreement") that you will use should you decide to participate in the Program. The "Agreement" includes the employee's release of any and all claims that the employee could bring against the State Law Enforcement Division, including claims under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA), excluding existing Workers' Compensation claims filed by the employee. An "Acknowledgement of Receipt" is also included in your receipt of the documents in this package. Please sign and return the Acknowledgement when you receive this notice. Signing the "Acknowledgement of Receipt" form does not indicate participation in the Program.

If you have any questions about the SLED Voluntary Retirement Incentive Program, please contact Lynn Hutto, Division Director of Human Resources at 803/896-7168.

The SLED Voluntary Retirement Incentive Program works as follows:

1. Eligibility

- A. Employees who are currently eligible to retire with twenty-eight (28) years service credit under the South Carolina Retirement System (SCRS) or with twenty-five (25) years service credit with the Police Officers Retirement System (PORS), or who will become eligible to retire with these respective years of service credit as of October 1, 2001, are eligible to participate in this Program.
- B. Employees who cannot purchase enough service credit in addition to service credit available under the "Incentive," defined below, to retire as of October 1, 2001, are not eligible to participate in this plan.
- C. Employees participating in a voluntary separation program in accordance with the provision of the State Appropriation Act, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- D. Employees who are taking part in the TERI plan or any equivalent program for law enforcement officers, are not eligible to participate in this Program.

- E. Employees who have submitted a notice of resignation which has been accepted by the agency prior to the effective date of the Program, are not eligible to participate in the SLED Voluntary Retirement Incentive Program.
- F. Employees who are eligible through service, or who are able to purchase service credit to become eligible by October 1, 2001, may participate in this Program.
- G. Only employees in FTE positions may be eligible to participate in this Program.
- H. Employees choosing to participate in this Program must declare to retire from service with the State of South Carolina no later than September 15, 2001. The effective date of retirement shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date; in such a case, the specific retirement date must be approved by the Chief of SLED.
- I. Employees choosing to participate in this Program cannot be rehired with the State in a temporary position for a period of sixty (60) calendar days from the date of retirement.
- J. Employees choosing to participate in this Program cannot become employed with the agency in an FTE position for a period of at least two (2) years from the date of separation.
- K. The Chief of SLED may declare an employee or categories of job classes ineligible to participate in the Program due to financial considerations or business needs in order for the agency to continue its mission.
- L. Under no circumstances will age, race, color, religion, creed, national origin, sex, disability, military status, or political affiliation be employed by any SLED official in making any decision under this Program.

2. The "Incentive"

SLED will provide to the employee the following:

The Division will purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three not to exceed 70% of base salary (if approved and as defined by the South Carolina Retirement System) on behalf of an employee electing to participate in the Program and who is

currently eligible to retire, or who will become eligible to retire as of October 1, 2001, as a result of participating in the Program.

3. Limit on the "Incentive"

- A. Under no circumstances will the Division pay for the purchase of "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three for any employee in an amount in excess of 70% of the employee's base salary.
- B. SLED shall make payment for unused annual leave as directed by Human Resource Regulations.

4. Timing of Acceptance and Notice Provisions

- A. Employees eligible to participate in the "SLED Voluntary Retirement Incentive Program" may accept participation in this Program beginning August 1, 2001.
- B. Eligible employees may have forty-five (45) calendar days to consider whether to participate in this Program. The final date to declare participation in this Program is September 15, 2001.
- C. After an eligible employee chooses to participate in the Program, the employee will have seven (7) calendar days from the date of his/her acceptance to revoke his/her acceptance.
- D. All employees who choose to participate in this Program must declare to retire and separate from employment with the State of South Carolina no later than September 15, 2001. The effective date of retirement and separation shall be established no later than October 1, 2001, unless the South Carolina Retirement System is unable to verify and process the employee for retirement as of that date.
- E. Employees who choose to participate in the SLED Voluntary Retirement Incentive Program must acknowledge that they would not otherwise be entitled to the Program but for their participation in the Program.
- F. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program will receive a list of 1) all job titles and ages of

employees eligible to participate and 2) ages of all individuals in the same job class not eligible to participate.

- G. All employees choosing to participate in the SLED Voluntary Retirement Incentive Program must submit a signed written agreement (which is attached) with full release of claims including Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA)(excluding existing Workers' Compensation claims).
- H. All employees receiving these documents must sign the attached "Acknowledgement of Receipt" form and return it immediately to Lynn Hutto of the SLED Office of Human Resources.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

AGREEMENT AND RELEASE

This Agreement and Release (hereinafter the Agreement) is agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between \_\_\_\_\_ (hereinafter the Employee) and the South Carolina Law Enforcement Division (hereinafter SLED).

WHEREAS, the Employee is currently employed by SLED, and

WHEREAS, SLED began offering the SLED Voluntary Retirement Incentive Program, which is attached to this Agreement, to eligible employees of SLED beginning August 1, 2001, and

WHEREAS, the time period in which eligible employees of SLED may choose to participate in the SLED Voluntary Retirement Incentive Program beginning August 1, 2001 and ending September 15, 2001, and

WHEREAS, the Employee is currently employed by SLED, is eligible to participate in the SLED Voluntary Retirement Incentive Program and chooses to participate in the Program in a timely manner, and

WHEREAS, the Employee chooses to resign and separate from employment with SLED no later than October 1, 2001, unless an exception to the retirement date has been approved by the Chief of SLED, and

WHEREAS, the Employee understands he/she may not be employed with the State Law Enforcement Division in an FTE position for a period of two (years) from the date of retirement. However, SLED may hire participating employees into temporary positions as the Division deems necessary, and

THEREFORE, the employee and SLED enter into the following Agreement:

1. **Employee's Voluntary Retirement.** The Employee voluntarily retires from employment with SLED and the State of South Carolina effective at the close of business on \_\_\_\_\_, 2001, and therefore voluntarily offers to resign employment with SLED effective that same date. SLED accepts the Employee's voluntary retirement and resignation.
2. **Incentive.** SLED agrees to purchase "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, on behalf of the Employee not later than October 1, 2001 and not to exceed 70% of the

employee's base salary. SLED and Employee agree that SLED is purchasing this "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three pursuant either to S.C. Code Ann. Section 9-1-1140 or to S.C. Code Ann. Section 9-11-50. In order to purchase the "qualified" service credit, "nonqualified" service credit, the cost to convert up to five years of SCRS earned service credit to PORS service credit, or a combination of these three, SLED and Employee agree that SLED will pay an amount up to 70% of base salary as an "Employer Contribution" to Employee's retirement account maintained by the South Carolina Budget and Control Board's Division of Retirement Systems. Employee affirms that he/she will be responsible for all tax liability, if any, resulting from his/her acceptance of this Incentive. SLED will make the purchase described in this Paragraph in a manner that will allow the Employee to retire on the date listed in Paragraph 1 of this Agreement.

3. **Release.** The Employee, for himself/herself and his/her heirs, executors, administrators, successors, and assigns, hereby releases the State and SLED, its present and past employees, agents, officers, successors, insurers, and assigns, from any and all, present or future claims by the Employee. This release specifically includes, but is not limited to, all claims which may have been asserted by or on behalf of the Employee against the State and SLED in any lawsuit, grievance, administrative proceeding, or charge of discrimination against the State and SLED, on account of any matter relating to the Employee's employment with SLED or his/her voluntary resignation from employment with SLED. This release excludes any existing Workers' Compensation claims filed by the employee. The Employee specifically includes in this release claims that may have been asserted by him/her or on his/her behalf under the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA).
4. **Adequate Consideration.** The Employee affirms that the Incentive described in Paragraph 2 of this Agreement is adequate consideration for the release of claims described in Paragraph 3 of this Agreement. The Employee affirms that, absent this Agreement, he/she would not otherwise be entitled to the Incentive described in Paragraph 2 of this Agreement.
5. **Confidentiality.** SLED and the Employee will deem the terms, conditions, and circumstances of this Agreement confidential, except as required by law and as deemed necessary to enforce this Agreement.
6. **Voluntary Waiver.** The Employee affirms that he/she has carefully read and considered this Agreement, and that he/she fully understands the meaning and importance of its provisions, including his/her release of all claims under the Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA). The Employee also affirms that he/she is fully competent to sign and execute this Agreement and that he/she does so without any coercion, promise of reward, undue influence, threat, or intimidation of any kind or type.

7. **Forty-Five Day Period.** The Employee affirms that he/she has been afforded the opportunity to consider this Agreement for a forty-five (45) calendar day period.
8. **Revocation Period.** The Employee understands that he/she has seven (7) calendar days after signing this Agreement to revoke his/her acceptance of the Agreement, and that SLED will make the incentive payment described in Paragraph 2 of this Agreement only after the passage of these seven (7) calendar days and only after this Agreement comes into full and binding effect.
9. **Governing Law.** This Agreement is governed by the laws of the State of South Carolina.
10. The contents of this written document constitute the entire Agreement regarding the SLED Voluntary Retirement Incentive Program.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

FOR THE EMPLOYEE:

FOR SLED:

\_\_\_\_\_  
Employee Name (signature)

\_\_\_\_\_  
Lynn Hutto  
Human Resources Director  
S.C. Law Enforcement Division

\_\_\_\_\_  
Employee Name (print)

Sworn to and Subscribed to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2001

Sworn to and Subscribed to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2001

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public

My commission expires:  
  
\_\_\_\_\_

My commission expires:  
  
\_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT  
OF THE  
2001  
SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED)  
VOLUNTARY RETIREMENT INCENTIVE PROGRAM**

I, the undersigned, have received the Notice and "Agreement and Release" explaining the provisions of the South Carolina Law Enforcement Division's (SLED) Voluntary Retirement Incentive Program, and I understand its contents. I understand that my participation in the Retirement Incentive Program is voluntary, and signing this "Acknowledgement of Receipt" form only indicates I have received notification of the Retirement Incentive Program.

Printed Name \_\_\_\_\_

Signature \_\_\_\_\_

Dept/Office \_\_\_\_\_

Date \_\_\_\_\_

***RETURN THIS ACKNOWLEDGEMENT TO LYNN HUTTO IN THE OFFICE OF  
HUMAN RESOURCES IMMEDIATELY.***

South Carolina Law Enforcement Division (SLED)  
**Voluntary Retirement Incentive Program Report**

Please provide the following information:

	<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
<b>A ~</b>		
Total salaries and fringe benefits of participating employees:	\$1,257,600	\$1,257,600
<b>B ~</b>		
Total costs of Retirement Incentive Plan: (Total cost of service credit purchased + Total cost of annual leave payout)	871,384	
Total cost of service credit purchased (Total Qualified + Total Non-qualified service credit)	\$672,000	
Total cost of annual leave pay out	199,384	
<b>C ~</b>		
Total costs of other expenditures:		
Total salaries and fringe benefits (paid through retirement date)	314,400	
Cost of re-filling positions (e.g., salaries and fringe benefits)	235,200	470,400
<b>D ~</b>		
Cost Savings:		
Current Fiscal Year Savings (A - B - C = D1)	(163,384)	
Next Fiscal Year Savings (A - C = D2)		787,200
Total Cost Savings (current and next fiscal years: D1 + D2)		\$623,816

- Number of employees who applied for the plan 118 eligible
- Number of employees approved to participate 118 eligible
- Number of employees re-hired into a temporary position \*16.52
- Number of affected FTEs to be re-filled \*16.52

\*(Cost analysis based upon approximately 118 eligible; re-hire rate estimated at 70%; assuming 20% participation = approx. 16.52 rehired)

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Phillip D. Grimsley, Sr. and Roger M. Jowers, on behalf of themselves and other similarly situated, )

Plaintiffs, )

v. )

South Carolina Law Enforcement Division and the State of South Carolina, )

Defendants. )

IN THE COURT OF COMMON PLEAS

Civil Action Number:08-CP-40-8854

REPLY AFFIDAVIT OF TERESA C. KITCHENS

Personally appeared before me, Teresa C. Kitchens, duly sworn, who deposes and says the following:

1. I am over 21 years of age and am personally familiar with the matters set forth herein.
2. I am familiar with the payroll records for Plaintiffs Grimsley and Jowers for the years set forth below.
3. The payroll records for those two individuals reflect that in Fiscal Years 2005-2006, 2006-2007, and 2007-2008, those individuals received the same cost of living increases that were applicable to state employees generally in those fiscal years.
4. The generally-applicable increases for state employees were 3% in FY 2005-2006, 3% in FY 2006-2007 and 1% in 2007-2008.
5. The salary increases for Plaintiffs Grimsley and Jowers in those years were not reduced in any way or by any percentage amount, such as 13.6%. Instead, those individuals received the full amount of the cost of living increases in those years.

FURTHER AFFIANT SAYETH NOT.

  
Teresa C. Kitchens

SWORN TO BEFORE ME THIS 30th

DAY OF May, 20 12.

Debra L. Matthew (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES:

My Commission Expires July 5, 2015

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of Richland	)	2008-CP-40-08854
	)	
Phillip D. Grimsley, Sr.,	)	
et al,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
South Carolina Law Enforcement	)	
Division and the State of	)	
South Carolina,	)	
	)	
Defendants ,	)	
	)	

June 7, 2012  
Columbia, South Carolina

BEFORE:

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

APPEARANCES:

A. CAMDEN LEWIS, ESQ.  
Attorney for the Plaintiff

KENNETH P. WOODINGTON, ESQ.  
Attorney for the Defendant SLED

EMORY SMITH, ESQ.  
Attorney for the State of South Carolina

AMINAH R. HARDY, RPR  
Official Court Reporter

EXHIBITS

No.	Description	Page
D-1	Amended memorandum	10

PROCEEDINGS

1  
2 MR. WOODINGTON: Your Honor, I'm Kevin Woodington for  
3 SLED. This is Emory Smith for the State, and you know the  
4 other characters, I suppose.

5 THE COURT: Yeah, I've had a lot of dealings with the  
6 whole cast of characters.

7 MR. WOODINGTON: We have before you a couple of  
8 cross-motions for summary judgment, and also a motion to  
9 amend by both party. Mr. Lewis has advised that he  
10 doesn't oppose the motions to amend the answer, so that's  
11 out of the case.

12 THE COURT: All right.

13 MR. WOODINGTON: And we just discussed it, and he  
14 said I could first, so I'm happy to go first, if that's  
15 all right with Your Honor.

16 THE COURT: Suits me.

17 MR. WOODINGTON: We did get the brief to Your Honor,  
18 I hope late last week in Camden.

19 THE COURT: That's fine. But I'm a speed reader.  
20 But I got 75 of these things that come in like this, you  
21 know.

22 MR. WOODINGTON: I under --

23 THE COURT: But I read yours this morning.

24 MR. WOODINGTON: Okay. Well, I understand.

25 THE COURT: But I haven't seen anything.

1 MR. WOODINGTON: They did file one the other day with  
2 the clerk.

3 THE COURT: Well, it would be in the file.

4 MR. WOODINGTON: I'm sure it is.

5 Well, I read my own brief yesterday getting ready for  
6 this, and I have a feeling I probably posed a challenge to  
7 your speed reading skills because it doesn't exactly read  
8 like a novel, I have to say. Nevertheless --

9 THE COURT: I even read affidavits from Robert  
10 Stewart, who used to be someone.

11 MR. LEWIS: He's here, Your Honor. This is  
12 Mr. Stewart.

13 THE COURT: I see him over there. That's why I said  
14 that.

15 MR. WOODINGTON: Chief Keel is still somebody under  
16 that analysis.

17 THE COURT: I know, I know.

18 MR. WOODINGTON: But he's interested -- they're both  
19 interested in this because it affects the way law  
20 enforcement can operate in the state.

21 THE COURT: I read the -- I looked at the pay stubs.  
22 I mean, I'm up with you, and I haven't read anything that  
23 Mr. Lewis has filed.

24 MR. WOODINGTON: Your Honor, I would propose to do  
25 this and kind of give you the short version of my argument

1 since you have read what we have. And I would like to  
2 address his in advance, if I may, or I can do it in reply.  
3 Either one.

4 Basically, I mean -- what's SLED position is, we  
5 provided a lot of information in those files, and there's  
6 no question about it. But this is -- it's -- sort of to  
7 cover the record, but it's really a very simple case.  
8 These people didn't get a raw deal; like I said, they got  
9 a great deal.

10 THE COURT: Looks like that got 48 months, didn't  
11 they?

12 MR. WOODINGTON: They got 48 months and --

13 THE COURT: I'm just saying that so you know I read  
14 it.

15 MR. WOODINGTON: I'm sorry, Your Honor.

16 THE COURT: No problem.

17 MR. WOODINGTON: I get a little serious sometimes.  
18 The -- they got a great deal for 48 months, and basically  
19 they came back at roughly 150 percent what they had been  
20 making previously. And basically, I mean, this was a  
21 triple win situation for everybody, basically. The  
22 plaintiffs, the agents who retired and elected to come  
23 back were making a lot more money during that four-year  
24 period or whatever period they came back for.

25 SLED, of course, had some savings involved that it

1 could use for the benefit of the taxpayers to enhance law  
2 enforcement with layoffs, and the retirement system,  
3 police officers' retirement system and everybody that  
4 was -- that's subject to being a beneficiary of the  
5 retirement system also got a benefit by statute in effect,  
6 because SLED did, in fact, pay the employer contribution  
7 on everybody. Always did, always has, always will, I  
8 assume.

9       So the essence of the complaint as presented -- well,  
10 in the complaint was that there had been a deduction from  
11 the salaries of these individuals for the employer  
12 contribution. We would just simply say there was not a  
13 deduction but rather a reduction of the salaries. And,  
14 you know, we cited -- like I said, I'm going to give you  
15 the short version, but basically what it is, there was no  
16 deduction of a salary. They quit at one salary; they came  
17 back at another one. There was no deduction.

18       If they had -- the Supreme Court did offer the  
19 opinion that the complaint stated a cause of action as it  
20 was phrased by the complaint really didn't facts  
21 correctly, because it alleged that there had been a  
22 deduction from their salary, when in fact, as I said it  
23 was a reduction, not a deduction.

24       Things might have been different, might have been  
25 different if these agents had come back at a salary of

1 let's say \$50,000, and after they came back, SLED came up  
2 to them, tapped them on the shoulder so to speak and said,  
3 "Okay, your new salary is \$50,000. And by the way, we  
4 want to take 13 percent out of that new salary, the rehire  
5 salary and apply it to the employer contribution. That's  
6 not what happened. It didn't happen at all. There was  
7 simply nothing deducted from their new salary, not even  
8 the employee contribution for the first year or two until  
9 the general assembly changed the law.

10 As I say, there was certainly -- the Supreme Court  
11 held in the Aarons case (phonetic) that we cited that  
12 there's no right to come back, and basically at the option  
13 of the employer to come back at all. So if you have no  
14 right to come back, you certainly have no right to come  
15 back at your old salary or any other particular salary.

16 We raised a bunch of other affirmative defenses, such  
17 as waiver, estoppel, consent, et cetera.

18 THE COURT: Basically you're moving that there was no  
19 deduction --

20 MR. WOODINGTON: There was no deduction.

21 THE COURT: -- from whatever salary they were paid,  
22 and they were at-will employees once they came back.

23 MR. WOODINGTON: You got it. That's it. Basically  
24 that's it.

25 THE COURT: All right. That's your position.

1 MR. WOODINGTON: And, you know, if you get farther  
2 than that, if there was a property interest created, which  
3 we deny, they waived it. They basically abandon it.

4 THE COURT: All right.

5 MR. WOODINGTON: And it's old and it's barred by the  
6 statute, and that's basically -- I can go into the --  
7 basically their argument is that the SLED took, quote,  
8 unquote their money and did something else with it. But  
9 all that argument is is a claim that they have an interest  
10 in what happens to the salary that they used to have  
11 before they quit and got rehired. They don't have any  
12 interest in that. They don't have any standing to address  
13 that. If there was a problem with that, it was for the  
14 general assembly, and not for them, to address. So  
15 they --

16 THE COURT: All right.

17 MR. WOODINGTON: So I'll keep it short. I think you  
18 understand the position, but...

19 THE COURT: I understand the position, but I'm not  
20 ruling.

21 MR. WOODINGTON: I understand.

22 THE COURT: I just understand the position, but I  
23 hadn't heard anything from Mr. Lewis, who works on  
24 contingency. So, you know, he usually doesn't bring  
25 things unless he thinks he's going to win, so I'll listen

1 to him.

2 MR. WOODINGTON: Well, I'll just say this. He's  
3 brought a lot of retirement cases, and he had success in  
4 some and not in others.

5 THE COURT: I know.

6 MR. WOODINGTON: This one, we submit is a bridge too  
7 far. This one is not -- shouldn't be a winner for him.  
8 He and I both used to represent the retirement system; him  
9 first and then me in the '70s in the Attorney General's  
10 office, for what it's worth.

11 THE COURT: You know, he had a big hit on the over 85  
12 case. I know that. One percent sales tax.

13 MR. WOODINGTON: You win some; you lose some.  
14 Mr. Smith is for the State too.

15 MR. SMITH: Your Honor, I think -- I hadn't asked  
16 Mr. Lewis and Ms. King, but I think it would probably be  
17 more logical for the State to go on ahead and put up its  
18 motion also as far as concurrence to Mr. Woodington's  
19 motion. But I've got just two short additional points to  
20 address. If Your Honor would see my memorandum in support  
21 of the State's motion for summary judgment.

22 THE COURT: I do.

23 MR. SMITH: I made a -- I've got an amended  
24 memorandum to it. I noticed in reading it this morning  
25 that I had been putting it together and inadvertently

1 deleted a footnote, which appears at Number 2 on page 3,  
2 and I added a sentence about the Harleysville case. I  
3 have -- I'm going to hand the original over here to Madam  
4 Court Reporter, if this may be received as an exhibit for  
5 the state, Your Honor, since I haven't file it with the  
6 Clerk of the Court.

7 First of all, as to taking that last argument first,  
8 Your Honor, the State concurs in the legal arguments set  
9 forth by Mr. Woodington on behalf of SLED and his argument  
10 and in his memorandum. The State's position goes beyond  
11 that, Your Honor. The State does not need to be a party.  
12 It's typical, as Your Honor probably knows from other  
13 litigation, for a dispute between plaintiff and a public  
14 official or a plaintiff and a -- in this case, a State  
15 agency in some of those cases for the plaintiffs to add on  
16 the State as a defendant. It's not only redundant, Your  
17 Honor, and unnecessary, there's a failure to state a cause  
18 of action against the State.

19 This is not a suit like involving the  
20 constitutionality of a state statute that's been enacted  
21 by the general assembly, signed into law by the governor,  
22 has a statewide effect. In fact, they allege not that  
23 there's an unconstitutional statute, they allege that SLED  
24 has failed to follow a state statute.

25 (Defendant's Exhibit 1 was marked.)

1 MR. LEWIS: Excuse me, Your Honor, I think we can  
2 shorten this. If he -- Mr. Emory Smith says it is  
3 redundant to have the State in there, then I don't need  
4 the State. Because they're saying it's the same --  
5 they're going to -- the State adds nothing, no money is  
6 necessary, they're just redundant, then I'm happy to have  
7 him gone.

8 THE COURT: All right.

9 MR. SMITH: Well, I'm not sure I -- I like the part  
10 about happy to have the State gone. By redundancy, I  
11 didn't mean that an award against SLED in this case would  
12 automatically be one against the State. If the State is  
13 not a party, the State is not liable in any ruling in this  
14 action, Your Honor. By redundancy, I meant that there was  
15 no need to bring in the State as a party. And there's  
16 failure to state a cause of action against the State.

17 THE COURT: Mr. Lewis just says if he wins against  
18 SLED, he'll be happy. So why don't you just sit down?

19 MR. SMITH: If he's happy with that, but I just want  
20 the Court to be clear that a ruling against SLED does not  
21 pose an obligation beyond that against SLED in this case.  
22 If Mr. Lewis is satisfied with that and is willing to  
23 consent to summary judgment for the State, then I'll  
24 certainly be happy to sit down.

25 MR. LEWIS: I consent to dismissing them because if

1 they're -- if he says they're not a necessary party, the  
2 State's been tricked. And if the State doesn't care and  
3 he -- they're not a necessary party and so they're  
4 redundant, I don't care that they're gone.

5 THE COURT: Just prepare an order.

6 ATTORNEY3: I will, Your Honor. Thank you.

7 THE COURT: Okay. Who is opposed? Are you opposed  
8 to anything?

9 MR. LEWIS: I'm opposing it.

10 THE COURT: All right.

11 MR. LEWIS: And we have a memo. Did you hand it up?

12 THE COURT: She just handed it up.

13 MR. LEWIS: And Your Honor, this case has already  
14 been to the Supreme Court.

15 THE COURT: Yeah.

16 MR. LEWIS: And the Supreme Court found that there  
17 was a cause of action for a taking. And he found -- they  
18 found that the cause of action was for a taking for  
19 failure to follow 9-11-90 which says, "An employer shall  
20 pay to the system the employer contribution for active  
21 members prescribed by law."

22 Now, in this case, they want to rest on deduction  
23 versus reduction. Well, that has nothing -- what your pay  
24 stub is the end result of what you do. It is not whether  
25 you -- it -- all it shows is what you're going to get FICA

1 withholding and different things like that on. What you  
2 do to the salary of the employee before the pay stub is a  
3 different story. And let me explain that, because it's  
4 very clear in their memorandum at footnote Number 13 that  
5 what they do is they get from the appropriations bill  
6 the -- under employee money and under contributions for  
7 the employer to the retirement system, they get money  
8 based upon the pre-13.6 deduction or reduction. They get  
9 that money. It comes to them. It comes to them to pay  
10 the employee the full amount. It comes to them to pay the  
11 retirement system the employer contribution for the full  
12 amount. So we have in the record the fact that our  
13 employers, our SLED agents, have been given by the  
14 appropriations their full salary and the contributions to  
15 the retirement system.

16 After that's done, the -- SLED comes in under this --  
17 I think it's a -- I don't know what you call it. A kind  
18 of a program outside of any retirement or system or  
19 anything else. It's a SLED program. They come in and  
20 they snitch 13.6 percent, and then they use the reduced  
21 salary to pay the retirement system. If you look at that  
22 footnote, it says that by doing that for this particular  
23 individual, they say they get to save \$4,600 on the  
24 salary, and they have \$600 off the benefits. So \$5,200  
25 SLED ends up to the profit that the State gave them, which

1 \$4,600 should have gone to my client and \$600 to the  
2 retirement system.

3 And we're saying -- and to say reduction/deduction,  
4 it doesn't matter. The fact is we have the right to have  
5 the money that was appropriated for our position when  
6 we're in that position, and we can find that in the law,  
7 and when we look at the different statutes that cover what  
8 you can do with appropriations. When appropriations come  
9 for a specific purpose, you can't change that purpose.  
10 You can't snatch it and send it over here and --

11 THE COURT: All right. So what you're basically  
12 saying is they called it a reduction, but they took the  
13 reduction to them and then paid the 13.6.

14 MR. LEWIS: That's correct.

15 THE COURT: I'm with you.

16 MR. LEWIS: And they can't do that, and the Supreme  
17 Court says I have a cause of action.

18 THE COURT: Maybe, maybe not. So y'all just prepare  
19 me two orders, and I got to read all this stuff. I mean,  
20 I don't know.

21 MR. LEWIS: All right.

22 THE COURT: I do understand the issues, I think,  
23 don't I?

24 MR. LEWIS: Yes, you do. You always do.

25 MR. WOODINGTON: Your Honor, could I just hand up a

1 couple legal things for you?

2 THE COURT: Why don't you just send them to me when  
3 you send the proposed order?

4 MR. WOODINGTON: Okay. It's just basically some  
5 provisos and appropriations --

6 THE COURT: I understand. I will read everything  
7 because, you know, if I rule for you, he's going to  
8 appeal, you know.

9 MR. WOODINGTON: We're fine.

10 THE COURT: If I rule against you, he goes forward.

11 MR. WOODINGTON: Is there any chance we could go  
12 to -- I'm kind of all tied up next week, on vacation the  
13 following week. Could we go to the end of the --  
14 basically the end of this month for proposed orders?

15 MR. LEWIS: Your Honor, I think he should have to  
16 work through his vacation.

17 THE COURT: Here is -- I'm in Camden next week  
18 holding court. Friday, I'm taking my grandchild to San  
19 Diego. I always take them after they finish third grade  
20 so they can go to the zoo and all, and that makes them  
21 happy. So I'll be gone the next week. So just get it to  
22 me July 10th, something like that.

23 MR. WOODINGTON: Thank you, Your Honor.

24 MR. LEWIS: Thank you, Your Honor.

25 (Whereupon, the proceedings were concluded.)



State of South Carolina ) Court of Common Pleas  
 )  
 County of Richland ) No.: 2008-CP-40-08854

Phillip D. Grimsley, Sr., )  
 and Roger M. Jowers, on )  
 behalf of themselves and )  
 others similarly situated,)

Plaintiffs, )

vs. )

South Carolina Law )  
 Enforcement Division and )  
 The State of South )  
 Carolina, )

Defendants. )

) Deposition of  
 ) 30(B)(6) Witness  
 ) LYNN HUTTO

) October 26, 2009

Deposition on oral examination of LYNN HUTTO,  
 reported by Brad H. Thomas, Certified Realtime  
 Reporter and Notary Public in and for the State of  
 South Carolina; said deposition taken pursuant to  
 agreement and in accordance with the South Carolina  
 Rules of Civil Procedure, at the Offices of Lewis &  
 Babcock, LLP, 1513 Hampton Street, Columbia, South  
 Carolina, on October 26, 2009, at the hour of 1:10  
 p.m.

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\* \* \* \* \*

1                   This deposition is taken in  
2 accordance with the South Carolina Rules of Civil  
3 Procedure.

4                   It is agreed and stipulated by the  
5 Deponent and respective counsel that the reading and  
6 signing of the deposition by the Deponent is  
7 expressly waived.

8                   WHEREUPON:

9                   LYNN HUTTO, being duly sworn and  
10 cautioned to speak the truth, the whole truth and  
11 nothing but the truth, testifies as follows:

12                   EXAMINATION

13 BY MR. HARLING:

14           Q.    Would you state your full name for the  
15 record?

16           A.    My name is Lynn Iris Hutto.

17           Q.    Is Iris with one N or two N's?

18           A.    You mean Lynn?

19           Q.    Yes. What did I say? Iris?

20           A.    Yeah.

21           Q.    I apologize.

22           A.    Two N's.

23           Q.    L-y-n-n?

24           A.    Yes.

25           Q.    Iris like the flower, I-r-i-s?

1 A. Yes. I use the middle initial I.

2 Q. Okay. H-u-t-t-o?

3 A. Yes.

4 Q. Okay. Ms. Hutto, my name is Jonathan  
5 Harling. We met a few minutes earlier when you  
6 walked in. I represent Phillip D. Grimsley, Sr. and  
7 Roger M. Jowers in a lawsuit they brought against  
8 South Carolina Law Enforcement Division and the  
9 State of South Carolina.

10 You have been identified by SLED,  
11 Defendant SLED, as a 30(B)(6) designee to offer  
12 testimony on some various issues. In a couple of  
13 minutes I'm going to mark the 30(B)(6) deposition  
14 notice as a exhibit to it and then just go through  
15 the areas. I'm just going to ask you if you are the  
16 most qualified person to answer questions on those  
17 topics.

18 Basically a 30(B)(6) deposition is an  
19 entity nominates someone to offer testimony on some  
20 specific issues. We'll get to that in a second. I  
21 just want to get a little bit of background  
22 information from you before we get going. Okay?

23 A. Okay.

24 MR. WOODINGTON: Off the record for a  
25 second.

1 (Off-the-record discussion.)

2 BY MR. HARLING:

3 Q. Let me run through a few ground rules with  
4 you. Brad went through a few with you before we got  
5 started, but first and foremost if you need to take  
6 a break for any reason, let me know and we'll stop.  
7 This isn't an endurance test. We're getting started  
8 right around 1:00. I hope we can get everything  
9 taken care of this afternoon, but if you need a  
10 break for any reason, please let me know and we'll  
11 stop and accommodate whatever you need to do.

12 A. I will.

13 Q. Okay. The second thing is, as Brad said,  
14 please answer the questions I'm asking you out loud.  
15 Try and stay away from uh-huh's and huh-uh's. I'll  
16 know what you mean because I'll see your head going  
17 up and down or sideways, but on the record we want  
18 to have yeses and nos so it will be clear on the  
19 record.

20 And finally if you -- please make sure you  
21 understand the question I'm asking you. If you  
22 don't understand it for any reason, stop me and ask  
23 me to rephrase it. I'll be more than happy to do  
24 that. If you answer a question, I'm going to assume  
25 you understood it. Does that sound fair?

1 A. That's fair.

2 Q. All right. What is your date of birth?

3 A. My date of birth is January 12, 1960.

4 Q. Where do you live?

5 A. I live in Columbia. Do you need my  
6 address?

7 Q. Yeah, that's fine.

8 A. I just recently moved. So let me  
9 remember. I think I'm 155 River Hill Circle,  
10 Apartment 124.

11 Q. And you said you just moved. How long  
12 have you lived there?

13 A. I've lived there about three weeks now.

14 Q. Okay. How long have you --

15 A. But I've been in Columbia all my life.

16 Q. Okay. Where did you go to high school?

17 A. I went to W. J. Keenan High School.

18 Q. Since we're on the subject, what's your  
19 educational background?

20 A. My educational background is, of course, I  
21 completed high school. I went to the University of  
22 South Carolina and majored in journalism,  
23 advertising, public relations, and I've had several,  
24 you know, different courses in HR and related issues  
25 over the years.

1 Q. Okay. Did you -- excuse me. Did you  
2 graduate from USC?

3 A. I graduated from USC with a bachelor's in  
4 1985.

5 Q. And you said you've taken various courses  
6 in human resources?

7 A. Yes.

8 Q. Do you hold any certifications of any  
9 type?

10 A. No, not at this time.

11 Q. Have you ever held any certifications?

12 A. Yes. I've been a certified purchasing  
13 officer with the State. There's been several things  
14 over the years. I can't recall. I'm sorry.

15 Q. That's fine. And let me stop you --

16 A. I didn't come prepared to do that.

17 Q. I understand. And when I ask you  
18 questions, it's just to the best of your ability.

19 A. Okay.

20 Q. Okay. Let's run through your employment  
21 history. How long have you been employed at SLED?

22 A. I've been employed at SLED since April 2,  
23 1998. Prior to SLED I was employed as an assistant  
24 director of human resources at the Department of  
25 Education.

1 Q. Is that the South Carolina --

2 A. South Carolina Department of Education.

3 Q. How long were you there?

4 A. I was there approximately five years. I  
5 started in 1992 and left in '98 to go to SLED.

6 Q. Okay.

7 A. Prior to the Department of Education I  
8 worked for the South Carolina Land Resources  
9 Commission, which has now merged with the Department  
10 of Natural Resources.

11 Q. Okay. How long were you at the Land  
12 Resources Commission?

13 A. I was at Land Resources for seven years.

14 Q. What did you do there?

15 A. I was -- when I left I was the director of  
16 administration, which encompassed human resources as  
17 well.

18 Q. Okay.

19 A. Prior to Land Resources I was with the  
20 Department of Health and Human Services Finance  
21 Commission.

22 Q. How long were you with the Department --

23 A. I was with them -- I went with them when  
24 they first started in 1983. Left them -- gosh, I  
25 can't remember. I don't quite remember, but I was

1 there for probably about three years maybe.

2 Q. Okay.

3 A. Prior to Health and Human Services I was  
4 with the South Carolina Budget and Control Board.

5 Q. Okay. How long were you there?

6 A. I was there maybe about two -- two to  
7 three years.

8 Q. What did you do for them?

9 A. I was just administrative support there  
10 and human resources, office of human resources.

11 Q. Okay.

12 A. Prior to that I was with the South  
13 Carolina Employment Security Commission. I started  
14 there in 1979.

15 Q. And what did you do at the Employment  
16 Security Commission?

17 A. I was clerical.

18 Q. Okay. And that takes us back to when you  
19 first started working full-time?

20 A. Exactly.

21 Q. Okay.

22 A. Well, that was state government. Prior to  
23 that I was with Allstate Insurance Company.

24 Q. Okay. How long were you with Allstate?

25 A. A little less than a year.

1 Q. What did you do there?

2 A. Clerical.

3 Q. Let's talk about what you do currently at  
4 SLED. You said you were -- you're the director of  
5 human resources?

6 A. I'm the director of human resources, yes.

7 Q. And as director of human resources --  
8 first of all, how long have you been a director of  
9 human resources?

10 A. Since I started in 1998.

11 Q. Okay. What does that include? What do  
12 your job duties entail?

13 A. I am responsible for the hiring and  
14 recruiting of all SLED employees. I'm responsible  
15 for the maintenance of all -- and administration of  
16 all benefits and insurance, retirement. I'm  
17 responsible for classification and compensation.

18 Q. When you say classification, what does  
19 that mean?

20 A. That's making sure employees are properly  
21 classified within the State system and that pay --  
22 dealing with pay equities and making sure people are  
23 brought in and paid according to their competencies.

24 Q. What are the different classifications  
25 that you deal with?

1           A.    Several of them.  With law enforcement the  
2 primary ones are a law enforcement officer  
3 classification.

4           Q.    Okay.

5           A.    Those are the primary ones.  And  
6 criminalist.

7           Q.    Okay.

8           A.    The other various functional support  
9 classifications.

10          Q.    Okay.  What else do your duties involve?

11          A.    Employee relations, benefits.  There's so  
12 many different things.  I'll tell you those are the  
13 primary functions.

14          Q.    Got it.  If you remember something else  
15 that you do, just let me know.  I think I've got a  
16 good feel for what you do.

17          A.    I'll put it like this.  Whatever nobody  
18 else wants to do sometime, that's my job.

19          Q.    That's kind of like me.  Whenever they  
20 tell me to do something I do.  The primary -- the  
21 primary area I want to talk to you about today  
22 involves a retirement program that is -- that is at  
23 SLED.  And I want to make sure that we're talking  
24 about the same thing.  When I say that we're here  
25 talking about the retirement program, I mean the

1 retirement program that Mr. Grimsley and Mr. Jowers  
2 participated in that is the subject of this  
3 litigation. Are you familiar with that -- with what  
4 I'm talking about?

5 MR. WOODINGTON: Let me interpose.  
6 Every time you use that phrase, the SLED retirement  
7 program or something like that, in every discovery  
8 thing I've objected and said, "Well, it's not really  
9 a retirement program. It's the program that was  
10 created and that they are under or whatever, the  
11 system, whatever you want to call it."

12 Just so I don't have to pop up like a  
13 jaybird throughout this thing I would just like to  
14 object to the use of that term, to the form of the  
15 question and use of the term SLED retirement  
16 program, running throughout the deposition, if  
17 that's okay with you.

18 MR. HARLING: That's fine.

19 MR. WOODINGTON: And/or just agree  
20 that we are using that informally and not as a term  
21 of art.

22 MR. HARLING: Yeah.

23 BY MR. HARLING:

24 Q. And I guess what I'm trying to do is  
25 figure out what you would call it. Does it have a

1 name?

2 A. There's not a formal name for it. It's  
3 just a method in which we processed and allowed SLED  
4 employees to return after retirement to work.

5 Q. If I used -- if I referred to it as the  
6 program informally, would you understand what I'm  
7 talking about? Throughout this deposition is it  
8 okay for me to call it the program?

9 A. Yes.

10 MR. WOODINGTON: Subject to that  
11 objection.

12 MR. HARLING: I understand.

13 BY MR. HARLING:

14 Q. And you described it as a method of  
15 bringing back SLED employees after they retired?

16 A. Yes.

17 Q. Does that method -- does that just apply  
18 to law enforcement or does it apply to law  
19 enforcement and non-law enforcement employees?

20 A. Well, where Grimsley and Jowers are  
21 concerned it just refers to the law enforcement  
22 because the TERI program is the way we've handled  
23 other non-sworn, as we call it, employees. These  
24 are law enforcement employees in which we treated  
25 this way.

1 Q. Okay.

2 (Exhibit No. 1 was marked for  
3 identification.)

4 BY MR. HARLING:

5 Q. Ms. Hutto, I'm going to hand you what's  
6 been marked as Deposition Exhibit No. 1. I'm going  
7 to ask you to take a look at that document and,  
8 first of all, ask you have you ever seen that  
9 before?

10 MR. WOODINGTON: Off the record  
11 again.

12 (Off-the-record discussion.)

13 THE WITNESS: I can't say  
14 specifically that I've actually seen it.

15 BY MR. HARLING:

16 Q. Are you familiar with it?

17 A. Let me see what it says. Yes.

18 Q. Okay. On the first two pages of that is  
19 the notice of 30(B)(6) deposition. On Page 2 of  
20 that document there are five areas that are listed.

21 Are you the person at SLED that's most  
22 knowledgeable regarding the creation of the SLED  
23 retirement program at issue in this matter?

24 A. The person at SLED left most  
25 knowledgeable.

1 Q. Okay. I was going to ask you is there a  
2 former employee that would be -- that would have  
3 more knowledge regarding that?

4 A. Probably not more knowledgeable, but as  
5 knowledgeable.

6 Q. Who would that be?

7 A. Chief Robert Stewart.

8 Q. Okay.

9 A. Cindy Konduros and Margie Coker.

10 Q. Margie Coker. I'll tell you what. I'll  
11 run through each of these things and then we'll come  
12 back and talk about the former employees.

13 Are you the person most knowledgeable of  
14 the administration of the SLED retirement program at  
15 issue in this matter?

16 A. Yes.

17 Q. Are you the person most knowledgeable  
18 regarding the deductions made from the salaries of  
19 the participants in the SLED retirement program at  
20 issue in this matter?

21 A. We did not make any deductions to any  
22 salaries on the participants.

23 Q. Okay. Are you the person most  
24 knowledgeable regarding the number of SLED employees  
25 participating in the program at issue in this

1 matter?

2 A. Yes.

3 Q. Are you the person most knowledgeable  
4 regarding amounts paid to the Retirement System on  
5 behalf of the SLED employees participating in the  
6 retirement program at issue in this matter?

7 A. Yes.

8 Q. Going back to No. 1, the creation of the  
9 program/method, you said that Chief Robert Stewart,  
10 Cindy Konduros, and Margie Coker were as  
11 knowledgeable regarding the creation of it as you?

12 A. Now, as far as the creation, it would be  
13 Cindy Konduros and Chief Stewart, Robert Stewart.

14 Q. And what would Ms. Coker have knowledge  
15 of?

16 A. Ms. Coker was our retirement benefits  
17 counselor at the time and, of course, she was  
18 responsible for actually the administrative  
19 processing of all the retirees.

20 Q. Is there a person in that position now or  
21 is that you?

22 A. You're looking at them. It's me.

23 Q. Okay. And Chief Stewart is retired now?

24 A. Chief Stewart is retired, yes.

25 Q. And Ms. Konduros, did she retire?

1 A. She actually resigned.

2 Q. Do you know when she resigned?

3 A. She resigned around the time that Chief  
4 left. It would have been between November of '08  
5 and December of '08.

6 Q. Do you know where she's presently  
7 employed?

8 A. I do not.

9 Q. And Ms. Coker, did she resign or did  
10 she --

11 A. She retired.

12 Q. Retired. A couple of pages back into that  
13 there is a subpoena attached to it that talks  
14 about -- it's requesting that you bring any  
15 documents with you today -- first of all, did you  
16 bring any documents with you today?

17 A. No, I did not bring any documents.

18 Q. Okay. Page 5 of that. Throughout this  
19 litigation we've been requesting documents from  
20 SLED. And what I'm just trying to do is make sure  
21 that we've got all the documents that are related to  
22 this matter.

23 What I want to do is I'm just going to run  
24 through this list and just ask you if it's your  
25 understanding that all the documents related to

1 these requests have been provided through your  
2 attorney. Okay. The first one is all documents  
3 related to the retirement program at issue in this  
4 matter?

5 A. Yes.

6 Q. Okay. All documents related --

7 MR. WOODINGTON: Excuse me. Before  
8 we got on the record we mentioned subject to that  
9 objection we're not giving you every piece of  
10 personnel file information on every non-certified  
11 class member.

12 MR. HARLING: Right. Right.

13 MR. WOODINGTON: You understand that?

14 MR. HARLING: Right.

15 MR. WOODINGTON: Okay. Sorry. Okay.

16 BY MR. HARLING:

17 Q. Second one is all documents related to the  
18 administration of the retirement program at issue in  
19 this matter?

20 A. Yes.

21 Q. All documents related to the salaries paid  
22 to the SLED employees participating in the  
23 retirement program at issue in this matter?

24 A. Yes.

25 Q. All documented related to the deductions

1 made from the salaries paid to the SLED employees  
2 participating in the retirement program at issue in  
3 this matter?

4 A. I'll go back and I'll say there were no  
5 deductions made to the salaries.

6 Q. Okay. If there were, would all the  
7 documents related to that --

8 A. Yes.

9 Q. Okay. All documents related to the  
10 creation of the retirement program at issue in this  
11 matter?

12 A. Yes.

13 Q. All documents related to the amounts paid  
14 to the Retirement System on behalf of the  
15 participants in the retirement program at issue in  
16 this matter?

17 A. Yes.

18 Q. All documents provided to or received from  
19 the South Carolina Budget and Control Board related  
20 to the retirement program at issue in this matter?

21 A. Yes.

22 Q. It's your understanding that all  
23 responsive documents have been provided through your  
24 counsel to us during this litigation?

25 A. Yes. To the best of my understanding.

1 Q. Right. Right. Right.

2 MR. HARLING: And subject to the  
3 exception that the individual employee files of the  
4 non-certified class members have not been provided  
5 to us?

6 MR. WOODINGTON: Right.

7 MR. HARLING: But everything else has  
8 been?

9 MR. WOODINGTON: Yeah. I mean, and  
10 now that I think about it, there may be some papers  
11 in the files of the two named plaintiffs that we  
12 haven't given you, but I'm not sure. I guess I need  
13 to ask her to look through that.

14 MR. HARLING: Yeah.

15 MR. WOODINGTON: But we've given you  
16 most of it, if not all of it.

17 MR. HARLING: We need to get all of  
18 it.

19 MR. WOODINGTON: Yeah. Let's make a  
20 note. I'll make a note to do that and make sure we  
21 get that. Two named plaintiffs.

22 MR. HARLING: And subject to that we  
23 may need to hold the deposition open if there are  
24 additional documents in there.

25 MR. WOODINGTON: Sure.

1 BY MR. HARLING:

2 Q. Let me ask you did you keep a file on this  
3 method, this program, that was yours individually?

4 A. Yes.

5 Q. Can you tell me what the contents of that  
6 file were?

7 A. It wasn't very much. Some of the  
8 information we were dealing with was primarily what  
9 the Budget and Control Board had on their Web site  
10 where retirees are concerned because a lot of what  
11 we were dealing with was primarily driven by the  
12 rules, regulations, and policies and procedures of  
13 the Budget and Control Board Retirement System as  
14 well as the office of human resources.

15 Q. What else was in that file?

16 A. There were -- there was a memo from Chief  
17 Stewart in '06, May of '06, regarding the employees  
18 nearing -- some of the employees nearing the  
19 termination of the four-year period in which we --  
20 they agreed to work upon.

21 There was a couple of documents where we  
22 did drafts of the notices that we would give the  
23 employees when they signed on to the program. And  
24 that's just so we would have something, you know,  
25 kind of a prototype type of format.

1 Q. And the drafts of the notices, what was --  
2 what information was contained in those notices?

3 A. It was just the same thing that we gave --  
4 we had them to sign that basically -- when they  
5 first signed on when they went to go talk to Chief  
6 Stewart about the program.

7 Q. Okay. Blank documents?

8 A. Blank. Exactly.

9 Q. Okay.

10 A. That was primarily it. It wasn't very  
11 much in there. Just maybe some duplicate copies of  
12 the same.

13 Q. Okay. And did you provide that file to  
14 your attorney and to provide to us?

15 A. I provided everything, yes.

16 Q. Did anyone else maintain a file that was  
17 at SLED on this method/program?

18 A. Margie Coker did. And it was primarily  
19 the same thing. She actually sent me what she had.

20 Q. Okay. And that was given to your attorney  
21 and given to us?

22 A. Exactly.

23 Q. Okay. Anyone else have a file?

24 A. Not to my knowledge. I don't know if  
25 Chief or Cindy actually kept a file.

1 MR. HARLING: Ken, can you check and  
2 see if Chief Stewart maintained a file and  
3 Ms. Konduros?

4 MR. WOODINGTON: Off the record.  
5 (Off-the-record discussion.)

6 BY MR. HARLING:

7 Q. Mr. Woodington and I discussed this  
8 earlier. There are no documents that are being  
9 withheld pursuant to the attorney/client privilege  
10 that predate this litigation; is that correct?

11 A. No.

12 Q. No, that's correct or, no, that's not  
13 correct? I'm sorry.

14 A. That's correct.

15 Q. Okay.

16 A. No documents withheld.

17 Q. Thank you. How many employees does SLED  
18 have right now?

19 A. SLED has approximately -- permanent  
20 employees that would be subject to this or just  
21 total?

22 Q. Total?

23 A. Approximately 550.

24 Q. That's a lot. That's a lot to keep up  
25 with, isn't it?

1 A. It really is.

2 Q. Approximately 550 total employees  
3 statewide?

4 A. Yes.

5 Q. How many of those are law enforcement and  
6 how many of those are just regular?

7 A. There's approximately 280 that are  
8 permanent law enforcement officers. There may be  
9 another five or six of them that may be temporary  
10 law enforcement officers. So we're looking at maybe  
11 about 290 that are law enforcement officers.

12 Q. Okay. And the remainder would be?

13 A. Technical, IT, administrative support,  
14 program manager type positions.

15 Q. Got it. What is the primary function out  
16 at SLED?

17 A. Primary function is to provide law  
18 enforcement services to the state of South Carolina.

19 Q. You said that this method/program that  
20 we're talking about today was a way to bring back  
21 retired law enforcement so they could come back to  
22 SLED and work?

23 A. Well, the purpose was to -- SLED had a  
24 population of employees that were starting to age  
25 out of the work force. Many of them were nearing

1 retirement and, like other state agencies, we had  
2 not prepared for them all to be gone. So there was  
3 several specialty type employees who, of course, had  
4 years of experience that would be aging out of the  
5 system, so to speak.

6           So this was a method where we could bring  
7 these employees -- instead of them retiring and  
8 going on to work other places, which many of them  
9 would often do because they were still young even  
10 though they were actually eligible for retirement,  
11 this gave us an opportunity to bring them back and  
12 have them work with some of the younger employees  
13 and hopefully impart some of the knowledge that they  
14 had.

15           Q. For an employee that had not retired from  
16 SLED that was law enforcement can you explain to me  
17 how the retirement contributions worked from the  
18 standpoint of what the employee was responsible for  
19 paying and what the employer was responsible for  
20 paying?

21           A. You said for an employee that did not  
22 retire?

23           Q. Right. Right. For an employee -- just  
24 say a law enforcement guy who had been there five  
25 years who was just a regular member of the Police

1 Officer Retirement System?

2 A. There was no difference in the two. The  
3 retirees' and the employees' retirement was handled  
4 the same.

5 Q. Tell me how the -- just the regular  
6 employees' retirement was handled.

7 A. Now, when you say how it was handled, tell  
8 me exactly what you mean in terms of handling.

9 Q. How was -- take me through the process  
10 where the employee paid in his contribution to the  
11 Retirement System and the employer paid its  
12 contribution to the Retirement System. How did that  
13 work?

14 A. When an employee starts to work for the  
15 State of South Carolina it's understood and we  
16 counsel them upon their employment that there will  
17 be a six percent reduction or contribution to the  
18 Retirement System. And that's a mandatory  
19 contribution. And I say that because many of the  
20 employees want to opt out, but they can't. That's  
21 something that's mandated by the State. They have  
22 to contribute.

23 On the other hand, the employer has a  
24 contribution that they must make to the Retirement  
25 System as well. And that percentage for a law

1 enforcement officer is different than from a non-law  
2 enforcement officer. There's two different systems.  
3 As a law enforcement officer they go into the police  
4 officers' retirement. And as a non-law enforcement  
5 they would go into what we call the State  
6 retirement, which is SCRS.

7 Q. Right.

8 A. They have a contribution made from -- the  
9 State pays according to its payroll. So if -- they  
10 don't do it on an individual like basis. What  
11 happens is the State has a rate. Well, they have a  
12 contribution rate that's kind of broken into three  
13 different tiers.

14 You have the basic contribution rate for  
15 the retirement. Then you have an accidental death  
16 percentage, a small percentage. And then there's a  
17 group life percentage that's grouped together to  
18 come up with a total percentage. I think right now  
19 it's ranging about 14 plus percent. And that's the  
20 employer contribution. That's handled the same way  
21 for both the retirees, whether they are retired or  
22 not retired. Did that answer your question?

23 Q. Well, close, but I'll have a few  
24 follow-ups. You said it was 14 percent that's the  
25 employer contribution?

1           A.    It's approximately 14 -- total 14 plus  
2 percent.  And that rate is revisited every July 1 of  
3 each year.  So it could change.

4           Q.    And is the -- is the employer  
5 contribution, is that made on a monthly basis, a  
6 yearly basis?

7           A.    It's made based -- I think it's paid  
8 quarterly.  It is paid quarterly.

9           Q.    Who is that paid to?

10          A.    It's paid to the State Retirement System.

11          Q.    State or -- is it -- is there one payment  
12 to the State and another payment to the Police  
13 Officers System or is it --

14          A.    When I say the State, it's the State  
15 Retirement System handles both the police officers  
16 as well as the non-police officer programs.

17          Q.    Got it.  And it's paid quarterly to the  
18 Retirement System?

19          A.    Yes.

20          Q.    Okay.

21          A.    And it's based on the total payroll for  
22 those particular segments of employees.

23          Q.    Okay.  What is the -- what's the mechanism  
24 for making that payment?  Is there a check that is  
25 written or is it --

1           A.    It's an IDT process.  They send us a  
2 report and we just process it through our finance  
3 and then we reflect -- they reflect the total  
4 payroll that it would be based on.  And, of course,  
5 it's just a transfer among State agencies.

6           Q.    Okay.  SLED would transfer it to the  
7 Retirement System?

8           A.    Yes.  And let me be fair.  Because I'm not  
9 in finance I can't tell you exactly how that actual  
10 financial transaction takes place, but as far as the  
11 documentation is concerned, that's the way it works.

12          Q.    Okay.  Who at the -- who at -- I  
13 apologize.  For some reason I've lost the ability to  
14 speak this afternoon.  I'm sorry.

15          A.    No problem.

16          Q.    Who at SLED -- or, first of all, is there  
17 a SLED finance division?

18          A.    There is a SLED finance division.

19          Q.    Who is the person at SLED Finance that  
20 would be most knowledgeable regarding that transfer  
21 of funds you talked about?

22          A.    Let's see.  Let me just say Steve Birnie.  
23 He's our director of administration.

24          Q.    Steve Birnie?

25          A.    Birnie, B-i-r-n-i-e.

1 Q. B-i-r-n-i-e. Okay. So for a police  
2 officer who is not retired who is with SLED, he  
3 would have a six percent reduction in his salary for  
4 his contribution to the Retirement System; is that  
5 correct?

6 A. That's correct.

7 Q. And then SLED would make its contribution  
8 for the employer part of 14 plus percent to the  
9 Retirement System; is that correct?

10 A. Yes. And let me just say that it's a  
11 quarterly -- it's a total -- it's not broken down  
12 into specific employees. It's based on a total  
13 payroll.

14 Q. Okay.

15 A. So there's no differentiation between  
16 employees.

17 Q. Got it. The six percent that is the  
18 employee's share, where does that figure come from?  
19 Who is -- who tells SLED that that's the amount?

20 A. It's dictated by the law as far as the  
21 Retirement System.

22 Q. And is the same true for the employer's  
23 share as well?

24 A. Yes. That's legislated.

25 Q. Okay. The employees' share, that is

1 deducted from their paychecks?

2 A. Yes.

3 Q. And they are paid on a biweekly basis?

4 A. Yes.

5 Q. What paperwork is generated to document  
6 the deduction or -- I guess, the deduction or  
7 reduction in the employee's paycheck? Is it just on  
8 the stub that they get?

9 A. Yes. It's on the stub. Because it's  
10 mandated by the State that's all handled through the  
11 comptroller general's office and the treasurer's  
12 office.

13 Q. Okay.

14 A. So there's no transactional paperwork on  
15 our part.

16 Q. Okay. Are you aware of any paperwork or  
17 documentation generated showing the payment of the  
18 employer's share?

19 A. Am I aware of any?

20 Q. Yes, ma'am.

21 A. Yes.

22 Q. Tell me about that.

23 A. It's a report that's generated, I think,  
24 by the treasurer's office, either the treasurer or  
25 the comptroller general's office, I'm not sure, but

1 it's basically almost like a receipt to show us  
2 what's actually been transferred or transacted where  
3 those funds are concerned.

4 Q. Okay. Is there anything generated by SLED  
5 that shows that?

6 A. No, there's not.

7 Q. Okay.

8 A. We get it on a quarterly basis. We review  
9 it and we keep it in a file for future reference.

10 Q. Does SLED have a -- does SLED have an  
11 operating budget?

12 A. Yes, SLED has an operating budget.

13 Q. Does that budget have line items on it?

14 A. I don't want to speak to the budget  
15 because I don't handle it.

16 Q. Okay. Who handles the budget at SLED?

17 A. The budget is handled by Steve Birnie and  
18 his staff.

19 Q. Okay. Do you know how salaries are  
20 budgeted at SLED?

21 A. I don't want to speak to that because I  
22 don't get involved in that process.

23 Q. Okay. On the retirement program that  
24 we're talking about, when was that program/method,  
25 when was that created?

1           A.    I can't give you an exact date.  I'll just  
2 tell you I started getting involved in the process  
3 sometime in 2002.

4           Q.    What was your earliest involvement with  
5 it?

6           A.    I can't give you an exact date.

7           Q.    No.  What was it?  What did they have you  
8 doing with it?

9           A.    Well, Chief Stewart and Cindy had  
10 obviously sat down and planned what it is they were  
11 going to do.  Obviously there had been some  
12 legislation or a presentation of a similar program  
13 to TERI.  And after that there was conversation  
14 about obviously developing a method for SLED or for  
15 law enforcement officers to do something similar.

16                    In 2002 when it was time for us to start  
17 to process the first employee, of course, my staff  
18 and I were told to bring -- and I can't even -- I  
19 can't remember who the first individual was, but to  
20 bring an employee in.  They were going to resign,  
21 had agreed to resign, and would agree to come back  
22 and work for a reduced salary.

23                    The objective, as I was told, was to  
24 provide a cost savings to the agency to participate  
25 in -- for the whole program to work as it would was

1 to save the agency some money while we participated  
2 in this program.

3 Q. So the program was created to save SLED  
4 money?

5 A. No, the program was not created to save  
6 money. The program was created to bring employees  
7 back that we would normally lose to retirement.  
8 That was the whole idea of the program, but one of  
9 the objectives of the program was to -- was a cost  
10 savings, but that was not the ultimate point of the  
11 program.

12 Q. Okay. Did budget shortfalls have anything  
13 to do with the creation of this program?

14 A. I can't answer that.

15 Q. Do you know who at SLED could?

16 A. At SLED right now nobody. Chief Stewart  
17 and Cindy Konduros would probably be best to answer  
18 those questions.

19 Q. Do you know specifically who created this  
20 program?

21 A. To say who created the program, I don't  
22 necessarily would say that it was a creation of a  
23 program, but Chief Stewart authorized the processing  
24 of employees the way we did.

25 Q. Did he, to your knowledge, consult with

1 anyone before he made this authorization?

2 A. To my best of my knowledge, yes, he did  
3 consult with some members of the Budget and Control  
4 Board.

5 Q. Do you know specifically which members?

6 A. I can't tell you. Those took place before  
7 I got involved in it.

8 Q. To your knowledge, did Chief Stewart --  
9 excuse me. To your knowledge, did former Chief  
10 Stewart consult with any attorneys before he  
11 authorized the process of his employees?

12 A. I guess I'm hesitating because Chief  
13 Stewart didn't do a whole lot sometimes without  
14 consulting with attorneys. I can't say specifically  
15 that he did.

16 Q. Okay. Did former Chief Stewart obtain any  
17 approval of the Budget and Control Board?

18 A. I wasn't privileged to those  
19 conversations. I can't say what took place. I  
20 would just say that Chief probably would not have  
21 proceeded, if he consulted with them, without their  
22 approval.

23 Q. How were the -- how were the SLED  
24 employees notified of this program or method?

25 A. There was a meeting. Chief called -- if I

1 recall, I think he called the captains, some of the  
2 lieutenants, the ranked employees in and some of the  
3 supervisors to let them know what he was going to be  
4 allowing some of the employees to do.

5 Q. Okay. Were you present at that meeting?

6 A. Yes, I was. I was present.

7 Q. Do you recall the presentation that was  
8 given at the meeting?

9 A. To call it a presentation, I don't know  
10 that I would go that far, but Chief stood up and he  
11 just told them what he was thinking about doing. I  
12 don't -- it's been so long. I don't recall all the  
13 details.

14 Q. Did he cite a particular statutory change  
15 that allowed this?

16 A. No, not to my knowledge. I don't know  
17 that he would have been speaking in those terms with  
18 the State.

19 Q. At any point during your conversation with  
20 former Chief Stewart regarding the implementation of  
21 this process method/program did he ever say,  
22 "There's a statute that allows us to do this"?

23 A. No, not specifically.

24 Q. Did he say anything -- did he use words to  
25 that effect?

1           A.    About actual statute? Not specifically a  
2   statute, but I know during the time frame we were --  
3   I'm trying to think when that period was. There was  
4   a cap on salaries for PORS employees to participate  
5   in the Retirement System if they returned to work.  
6   That cap was lifted. And I think that had some  
7   bearing on the situation.

8           Q.    Okay.

9           A.    But to have him state a specific statute,  
10  no, I don't recall having those conversations.

11          Q.    Does SLED have in-house attorneys?

12          A.    SLED has an in-house attorney, yes.

13          Q.    During this time frame that we're talking  
14  about do you know who the in-house attorney was?

15          A.    SLED had Mark Keel, who is currently the  
16  director of public safety, Department of Public  
17  Safety at the time. He functioned as our chief of  
18  staff and he was an attorney.

19          Q.    Okay. Were there any -- his job was chief  
20  of staff at SLED?

21          A.    His job was chief of staff.

22          Q.    Were there any people whose job title was  
23  like attorney one, attorney two?

24          A.    No, not at that time.

25          Q.    SLED doesn't have general counsel that's

1 out there?

2 A. SLED has general counsel now, but at that  
3 time SLED did not have general counsel.

4 Q. Who is SLED's general counsel now?

5 A. His name is Christopher Hagins.

6 Q. H-a-g-e-n-s?

7 A. H-a-g-i-n-s.

8 Q. I'm terrible at spelling.

9 A. That's all right.

10 Q. How long has he been general counsel?

11 A. He started with us in July of '08.

12 Q. Was he the first general counsel that SLED  
13 had?

14 A. I can't speak to that. Since I've been  
15 there he's been the first general counsel.

16 Q. Okay. And I think we've already started  
17 going down this road a little bit, but how was the  
18 program implemented?

19 A. After the meeting with Chief it was  
20 everybody's understanding that if they wanted to  
21 participate, that they had to schedule a meeting  
22 with the chief and he would meet with them. They  
23 would discuss the parameters in which they would be  
24 retiring. Some of them had conversations with Chief  
25 and chose not to take the program because of various

1 reasons only that maybe they know for sure, but if  
2 they did not believe that Chief could bring them  
3 back to work, then they did not elect to retire.

4           If there was an agreement that Chief would  
5 and could bring them back and could use their  
6 skills, then they would then retire and then they  
7 would sign that agreement and then they would leave  
8 service. With that agreement they would return to  
9 work at a reduced salary. That was how it was  
10 implemented. It was all on a voluntary basis.  
11 Nobody was pegged or urged or designated for the  
12 program.

13           Q. The parameters that they discussed with  
14 former Chief Stewart, do you know who established  
15 those parameters?

16           A. No, I don't. And when I say parameters, I  
17 mean -- you know, parameters may not have been a  
18 good word to use, but there was a discussion of  
19 their employment with Chief. And like I said, if  
20 Chief felt like he could use them returning, he  
21 would bring them back, but if he felt like he could  
22 not bring them back, if there was no agreement for  
23 them to come back, then again they wouldn't retire.  
24 So I can't tell you what those parameters or what  
25 those discussions were.

1 Q. Okay. Do you know were there any  
2 guidelines for the program as far as eligibility?

3 A. The only eligibility was that they would  
4 be eligible to retire. Anybody that was eligible to  
5 retire was eligible to volunteer to take the  
6 program.

7 Q. Okay. Was it your understanding that --  
8 was there a negotiation that was entered into  
9 between the agent who was eligible to retire and  
10 Chief Stewart or was it -- or was there a set of  
11 guidelines that he was looking at using or was it  
12 done on a case-by-case basis?

13 A. It was done on a case-by-case basis. I  
14 would say there was not -- I wouldn't think there  
15 was negotiation. Some of the discussions that I  
16 believe took place were -- had to do with  
17 employment.

18 Of course, we had some employees who had  
19 had a good employment record and then we had others  
20 who may not have. And those who may not have had a  
21 good employment record were not going to be  
22 recommended to come back. And they had those  
23 conversations. They knew what they were and that's  
24 the way it worked.

25 Q. Right. Was Chief Stewart, was he the

1 final say on who could participate or who could not  
2 participate?

3 A. Yes, Chief was the final say on the  
4 authorization.

5 Q. So tell me what -- when a person agreed to  
6 participate in the program what were they agreeing  
7 to do?

8 A. They were agreeing first to retire on the  
9 premise that they would be allowed to return at a  
10 reduced salary.

11 Q. Was there a specific amount of time they  
12 had to sit out from employment?

13 A. The State requires that they take a 15-day  
14 break. They could not return prior to that 15-day  
15 period.

16 Q. On the -- after the 15-day period were  
17 they rehired? Were they reinstated? What term  
18 would you use to describe their return to work?

19 A. Rehire. And for most of those people  
20 ended up being more than a 15-day break. One of the  
21 things that Chief required, because we had to pay  
22 out on the annual leave when they terminated, we  
23 paid out on the annual leave, but they had to -- if  
24 they were paid out, say, 45 days, then they had to  
25 take a 45-day break.

1 Q. Okay. What was the purpose of making them  
2 do that?

3 A. The Chief did not want to cost the State  
4 any additional money in doing -- allowing these  
5 employees to return to work. And so if we paid them  
6 for 45 days, then we gave them a 45-day break. So  
7 whatever period of time we paid them out. So the  
8 State mandates the 15-day period, but we asked them  
9 to stay out for the 45.

10 Q. And you said they came back at a reduced  
11 salary?

12 A. They came back at a brand new salary  
13 actually. We rehired them at a new salary.

14 Q. Rehired at a new salary. What was that  
15 salary -- how was that new salary calculated?

16 A. Initially the new salary was calculated  
17 based on -- I think we figured it at 13.6 percent.  
18 And that was what we -- the contribution for the  
19 retirement.

20 Q. When you said it was 13.6 percent, what  
21 does that mean?

22 A. The retirement contributions that you  
23 inquired about earlier and how it was broken down,  
24 that was the employer contribution rate.

25 Q. Were they -- was the new salary 13.6

1 percent less than their previous salary?

2 A. Yes.

3 Q. So if a person wanted to participate in  
4 the program and they were eligible and they went and  
5 met with the Chief and the Chief said, "Okay. You  
6 can do this," and they were making \$50,000 a year at  
7 the time, they would have sat out for 15 days and  
8 then their new salary would have been 13.6 percent  
9 lower than the 50,000?

10 A. Yes.

11 Q. Okay.

12 MR. HARLING: We've been going about  
13 an hour. You all want to take a break?

14 MR. WOODINGTON: That's fine. Let's  
15 take a break.

16 (A recess transpired.)

17 BY MR. HARLING:

18 Q. Ms. Hutto, before we took the break we  
19 were talking about the example where a person was  
20 making \$50,000, retired, came back, and had the  
21 reduction in their salary. The 13.6 percent that it  
22 was reduced, you said that was done initially?

23 A. When you say initially, what do you mean?

24 Q. Well, I believe when you answered the  
25 question earlier you said that initially it was

1 reduced by 13.6 percent. Is it still reduced that  
2 amount or is it reduced by a different amount now?

3 A. You mean if we do anybody today?

4 Q. Yes, ma'am.

5 A. No, we don't do that. Actually we have a  
6 new director and he does things a little bit  
7 differently. He looks at the function. And, of  
8 course, we're in a different economic climate as  
9 well. So if we have someone to come back, there's a  
10 different way of doing it. I mean, the salary is  
11 obviously going to be a lot less when they return.

12 Q. Okay. Who is the new director?

13 A. The new director is Reginald I. Lloyd.

14 Q. Chief Lloyd? Is he the chief or is he the  
15 director?

16 A. Director. Director Lloyd.

17 Q. When did they stop calling them the chief?

18 A. When Reggie became in charge.

19 Q. No disrespect to --

20 A. That was his -- I understand. That was  
21 his preference.

22 Q. No disrespect to Judge Lloyd. Nice fellow  
23 and I didn't -- I just -- when you said director, I  
24 thought there was another position that was created  
25 and he was the chief and that --

1           A.    No.  No.  So when you hear me refer to --  
2   that's why I still call Chief Stewart Chief Stewart.

3           Q.    Okay.

4           A.    It's former Chief Stewart.

5           Q.    Okay.  Got it.  And you said that the  
6   method/program is implemented in a different manner  
7   since?

8           A.    Yes.  We are in a climate now where, of  
9   course, we don't have as many retirees as we had  
10  previously.  We actually are only doing it in -- I  
11  want to say with almost critical positions.  And so  
12  it's not done as often.

13                    We've only done it probably four or five  
14  times since Reggie has been in place, again with  
15  critical positions.  He looks at the job.  And  
16  because the ones that he's brought back have  
17  functioned in similar situations, he's looking at  
18  pay equity.  And he brings them in approximately  
19  around the same salary.

20           Q.    Same salary as they had had prior to when  
21  they retired?

22           A.    No.  When I say same salary, I mean  
23  similar salaries.

24           Q.    Oh, okay.

25           A.    So that we don't --

1 Q. Okay.

2 A. -- throw off any inequities.

3 Q. Okay. Okay. I understand. So what  
4 you're saying is Director Lloyd, when and if he lets  
5 someone participate, there's a set salary that is  
6 paid to the person who participates, it's not based  
7 on their previous salary, it's this new salary  
8 that's predetermined?

9 A. It's not necessarily predetermined. It's  
10 determined based on the position. For instance, if  
11 we have a person that functioned as a captain  
12 before, we look at what we've done with the other  
13 captains who may have participated in the program.

14 Q. Okay.

15 A. And we bring them back at a similar  
16 salary.

17 Q. Okay. And under the new method the  
18 employer's contribution is paid by SLED?

19 A. Under the new method the contributions are  
20 handled exactly the same. There's no change in how  
21 those contributions are handled.

22 Q. They are made by SLED?

23 A. Say that again.

24 Q. But they are made by SLED?

25 A. I don't understand what you mean.

1 Q. The employer's contribution under the new  
2 method, that contribution is made by SLED?

3 A. Yes. The same as it was before.

4 Q. Okay.

5 A. You did say employer?

6 Q. Yes, ma'am.

7 A. Yes.

8 Q. Employer's, yes, ma'am. You're saying  
9 it's the same as it was before?

10 A. When I say the same, I mean it's handled  
11 the same way as it has been before. There's no  
12 change in the handling of that contribution.

13 Q. Well, let's back up. How was it handled  
14 before?

15 A. Well, as we spoke earlier, it's based on  
16 the payroll and it's paid quarterly through the  
17 treasurer's office.

18 Q. The reduction that used to take place, the  
19 reduction of the 13 percent, where did that money  
20 go?

21 A. When you say where did the money go?

22 Q. Yes.

23 A. There was really no -- there was no  
24 deduction of salary. There was an agreement that  
25 the salary when they were rehired would be

1 different. So there was no place for the money to  
2 go, so to speak.

3 Q. So was SLED -- under the old method when  
4 the reduction of 13.6 percent was being made was  
5 SLED making the employer's contribution?

6 A. Yes. Yes. If I can just clarify that  
7 earlier question when you were talking about where  
8 the money can go?

9 Q. Please.

10 A. Of course, if there's less salary, then  
11 there's less payroll to calculate that percentage  
12 against. So if that helps clarify that some.

13 Q. Okay. To the best of your knowledge, how  
14 many employees have participated in the program?

15 A. To the best of my knowledge, approximately  
16 90 employees.

17 Q. Do you know -- we talked a little bit  
18 about the financing portion of it and I asked you  
19 about the budgeting of salaries. I think you said  
20 Mr. Birnie was the person who would --

21 A. He's in charge of our budget currently.

22 Q. Okay. And you may not know the answer to  
23 this question, but when -- under Chief Stewart,  
24 former Chief Stewart, when the 13.6 reduction was in  
25 place mechanically how did that work? Was SLED

1 allocated a sum of money for the salary and the  
2 salary was reduced by 13.6 percent and that  
3 reduction was taken to pay the employer portion? Is  
4 that how it worked or do you know?

5 A. SLED is allocated a certain amount of  
6 money for salaries, period, overall. There was no  
7 reduction, as I said earlier. You know, when we  
8 hire people we agree to hire them at a set salary  
9 and we pay the contribution against that salary.  
10 So, of course, it's just money that has not been  
11 spent, so to speak. So that's what I'm kind of  
12 struggling with, where the money went.

13 Q. Okay.

14 A. It's just not money coming out of the pot.

15 Q. Okay. How long can someone continue to  
16 work at SLED once they participate in the program?

17 A. The way we agreed with these employees to  
18 return to work, they accepted an agreement to work  
19 in four-year increments.

20 Q. Okay. Can a person participate in the  
21 program and then come back and do it again?

22 A. Yes. And my yes is contingent upon the  
23 way it functioned in the past. We have a new  
24 director now. So he will be dictating how that will  
25 work.

1 Q. Okay. I've got some documents I want to  
2 ask you some questions about.

3 (Exhibit No. 2 was marked for  
4 identification.)

5 BY MR. HARLING:

6 Q. I'll hand you what's been marked  
7 Deposition Exhibit No. 2. Take a look at that and  
8 tell me if you recognize it.

9 A. I do.

10 Q. Can you tell me what that is?

11 A. This is a segment that was taken from the  
12 online Retirement System Web site regarding the  
13 Police Officer Retirement System and our earnings  
14 limitation.

15 Q. Let me ask you -- up on the top left-hand  
16 corner there's some handwriting. Do you know whose  
17 handwriting that is?

18 A. That handwriting is my handwriting.

19 Q. And it looks like it says 9-11-90?

20 A. Yes.

21 Q. Do you know what that is, 9-11-90?

22 A. 9-11-90 is the section from the code of  
23 laws that refers to or addresses this issue.

24 Q. Okay. And underneath that it says 48  
25 month. Do you know what that's referring to?

1           A.    48 month there is a -- I don't recall  
2 specifically, but there is a 48-month stipulation,  
3 and I'm going off the top of my head, that talks  
4 about once a person has been in the -- as a retiree,  
5 once they return to work and work 48 months, then  
6 they would be eligible to go into the actual -- back  
7 into the Retirement System again.

8           Q.    Who is Travis Turner?

9           A.    Travis Turner is a representative from the  
10 State Retirement System.

11          Q.    He works for the State Retirement System?

12          A.    Yes.

13          Q.    Okay. And 7-7751 would be his phone  
14 number?

15          A.    His telephone number, yes.

16          Q.    Okay. Did he prepare this document?

17          A.    I don't know who prepared this document.

18 It was on the Web site. We just pulled it down and  
19 copied it.

20          Q.    Okay. When did you pull it down?

21          A.    I can't recall the exact date that I  
22 pulled this down.

23          Q.    Was it before or after this litigation?

24          A.    I can't -- oh, it was before.

25          Q.    Okay.

1 A. Before.

2 Q. This was something that would have been in  
3 your file?

4 A. Yes.

5 Q. Okay. When a person participates in the  
6 program we're talking about today do they continue  
7 to pay the employee's portion of the retirement?

8 A. Yes. That's dictated by the State. We  
9 don't have any say-so as an agency.

10 Q. Okay. They continue to do that when they  
11 get into the program? When they participate in --

12 A. When we return them to work as a retiree,  
13 yes.

14 Q. Right. Okay. They continue to pay the  
15 employee's portion?

16 A. Exactly.

17 (Exhibit No. 3 was marked for  
18 identification.)

19 BY MR. HARLING:

20 Q. Ms. Hutto, I'm going to hand you what's  
21 been marked as Exhibit 3 to your deposition. Why  
22 don't you take a look at that and tell me if you  
23 recognize it.

24 A. I do.

25 Q. Tell me what that is.

1           A.    In 2001 the agency allowed and opened up a  
2 retirement incentive program for employees who, if  
3 eligible, would elect to take the program and leave  
4 as an early -- kind of an early retirement  
5 incentive.

6           Q.    Okay. That's different from the one that  
7 we're here talking about today?

8           A.    It's totally different, yes, it is.

9           Q.    Okay. Was a -- and this is a document --  
10 let me put on the record that it's Bates labeled 055  
11 to 062. And the title of it, it says Notice of the  
12 2001 South Carolina Law Enforcement Division (SLED)  
13 Voluntary Retirement Incentive Program. Was a  
14 document similar to this produced for the retirement  
15 program we're here for today?

16          A.    No. Because that program was not an  
17 actual program. It was just kind of an allowance on  
18 a case-by-case basis.

19          Q.    Okay.

20                   (Exhibit No. 4 was marked for  
21 identification.)

22 BY MR. HARLING:

23          Q.    I'll hand you what's been marked as  
24 Exhibit 4. That is a document Bates labeled 053 to  
25 054. Do you recognize that document?

1 A. I do.

2 Q. Can you tell me what that is?

3 A. It's the announcement of the retirement  
4 incentive program that we spoke about in the  
5 Document 3.

6 Q. Okay. And again Exhibits 3 and 4 have  
7 nothing to do with the method/program we're talking  
8 about?

9 A. Correct.

10 (Exhibit No. 5 was marked for  
11 identification.)

12 BY MR. HARLING:

13 Q. I'll hand you what's been marked as  
14 Exhibit No. 5. That is a one-page document Bates  
15 labeled 011. I'll ask you to tell me if you  
16 recognize that.

17 A. I do.

18 Q. Tell me what that is.

19 A. This is the document that was generated  
20 after an employee went to see Chief Stewart to  
21 determine whether or not they would -- he would  
22 allow them to return to work as a retiree.

23 Q. Is this the document that got the process  
24 started for participating in the program we're  
25 talking about today?

1           A.    Yes.

2           Q.    So basically they are requesting that they  
3   be rehired with SLED and it states, "I understand  
4   that if this does occur, the following provisions  
5   apply and I agree to them:" The first is to be a  
6   full-time employee with no grievance or reduction in  
7   force rights. Was that different than what they had  
8   before they participated?

9           A.    Yes. As a non-retiree as long as they  
10   weren't in a position designated at-will that  
11   reported directly to the director or was designated  
12   by the State or the agency head as an at-will  
13   employee, they were with grievance rights.

14          Q.    Okay.

15          A.    And so when we talk about at-will we're  
16   talking about covered employees with rights.

17          Q.    Okay. Were any employees at SLED contract  
18   employees, had employment contracts, anyone?

19          A.    Actually to me as an HR director that  
20   word, contract employee, is kind of contrary to each  
21   other. I would have to say no. Anybody that we  
22   contracted with we contracted with for services.

23          Q.    Okay. Let me back up. SLED does not  
24   enter into written employment agreements with people  
25   who come to work for them, for agents, for law

1 enforcement?

2 A. Not for services.

3 Q. What would they do contracts for?

4 A. If they were working on a different --  
5 now, you said for agents?

6 Q. Right. For SLED agents, for the law  
7 enforcement personnel?

8 A. No. No, we wouldn't.

9 Q. Okay. There's a line item for salary. It  
10 says, "Salary: 10.3 percent less than previous base  
11 salary (no longevity pay), reduction of health  
12 insurance cost to agency if utilized." Can you tell  
13 me where that 10.3 percent figure comes from?

14 A. Actually when I was saying the 10.6, we're  
15 talking about over a period of time that figure  
16 fluctuated with the Retirement System.

17 Q. Okay.

18 A. Every July 1 possibly. That's where that  
19 10.3 came from.

20 Q. Okay. So that 10.3 would reflect the  
21 employer's contribution to the Retirement System as  
22 of April 19, 2004?

23 A. Yes.

24 Q. Okay. What does reduction of health  
25 insurance cost to agency if utilized mean?

1           A.    As a retiree, retirees are entitled to  
2 insurance benefits under the retiree program.  If  
3 they elected to take the active health insurance,  
4 then, of course, we would have to pay that cost and  
5 would then have to compensate for that.

6           Q.    That would be deducted from their salary  
7 if they decided to do it?

8           A.    Well, yes.  Yes.

9           Q.    If they were not in the program, would  
10 they still have to pay that cost?

11          A.    When you say if they --

12          Q.    Is the reduction of health insurance cost  
13 to agency if utilized item on this form, is that  
14 something different than what they were receiving or  
15 experiencing when they were just regular employees?

16          A.    Was that something different?  I'm sorry.  
17 I'm confused a little bit.

18          Q.    Yeah.  Let me ask it again.  On this form,  
19 the request to be rehired form, which is Exhibit No.  
20 5, it says, "The following provisions apply and I  
21 agree to them:"  And one of them is a line item that  
22 says, "Salary:  10.3 percent less than previous base  
23 salary (no longevity pay), reduction of health  
24 insurance cost to agency if utilized."

25                   Is that provision -- is that provision

1 different than what they were experiencing when they  
2 were employees of SLED and not retirees?

3 MR. WOODINGTON: Are you talking  
4 about just the reduction of health insurance cost  
5 part of it?

6 MR. HARLING: Yes.

7 BY MR. HARLING:

8 Q. Were they paying for their own health  
9 insurance or was SLED paying for it?

10 A. Well, there's two payments. You know,  
11 you've got the employer's share and then you've got  
12 the employee's share.

13 Q. For health insurance?

14 A. For health insurance you've got both.  
15 Under the retiree, of course, as a retiree, the  
16 State doesn't pay a contribution -- I mean, the  
17 agency doesn't pay a contribution share. Under the  
18 active the State would then -- would have to pay a  
19 employer's share.

20 Q. Okay.

21 A. Does that answer your question?

22 Q. Yes, it did.

23 A. Most of the items on this form is  
24 basically just a reiteration -- and I say most of  
25 them is a reiteration of what is allowed under the

1 provisions and code of laws of the State where  
2 retirees and employees are concerned.

3 Q. That's that 9-11-90 we talked about  
4 earlier?

5 A. Yes, it is.

6 MR. HARLING: Let's go off the record  
7 one second.

8 (Off-the-record discussion.)

9 (Exhibit No. 6 was marked for  
10 identification.)

11 BY MR. HARLING:

12 Q. I'll hand you what's been marked as  
13 Deposition Exhibit No. 6. That is a one-page  
14 document with the Bates label of 67 on it. And I  
15 believe it contains SLED's Bates number of  
16 8022-A-001. Will you take a look at that and tell  
17 me if you recognize it?

18 A. Yes, I do.

19 Q. Tell me what that is.

20 A. This is a letter that -- from Phil  
21 Grimsley. Obviously he had conversed with former  
22 Chief Robert Stewart and they had agreed that he  
23 would participate and retire. And then Chief agreed  
24 to bring him back. So this is his letter of  
25 resignation.

1 Q. Okay. Would a form like this have been  
2 done for everyone that was approved to participate?

3 A. Yes.

4 Q. Do you know who prepared this memo? It  
5 looks like a form memo that was --

6 A. It was probably done by Chief's  
7 administrative assistant.

8 Q. Okay. Who was that?

9 A. Let's see. In '04 would have been Glenda  
10 Booth.

11 (Exhibit No. 7 was marked for  
12 identification.)

13 BY MR. HARLING:

14 Q. I'll hand you what's been marked as  
15 Exhibit 7 to your deposition. That's a one-page  
16 document Bates numbered 68 on it. Take a look at  
17 that and tell me if you recognize it.

18 A. I do.

19 Q. Tell me what it is.

20 A. This is a document from Phil Grimsley.  
21 This is the document that he signed accepting the  
22 provisions to be -- to retire and return to work.

23 Q. Okay. This one references a 13.6 percent  
24 reduction in his previous base salary. Is that what  
25 we were talking about how that number fluctuated

1 over time?

2 A. Well, I'm looking at the date here. Yes,  
3 it could have been. It could have been. Phil  
4 actually participated -- he did it twice. He  
5 started and then he left employment and came back.  
6 He called Chief and asked if he could return to  
7 work.

8 Q. Okay.

9 A. And Chief allowed him to return to work.  
10 So this may be the difference in the two documents.  
11 And then there may be -- may have been some change.  
12 Even though that's the same fiscal year, we could  
13 have been operating on an old figure or something.  
14 I would have to look to see why those two numbers  
15 are different, but these are two different time  
16 periods from which Phil obviously participated in  
17 the program.

18 Q. Right.

19 (Exhibit No. 8 was marked for  
20 identification.)

21 BY MR. HARLING:

22 Q. I'll hand you what's been marked as  
23 Exhibit No. 8 to your deposition. That is a  
24 one-page document with a Bates number of 010. Do  
25 you recognize that?

1 A. I do.

2 Q. Can you tell me what that is?

3 A. This is a follow-up to the Exhibit No. 7,  
4 previous document. This is -- Exhibit 7 is the  
5 document that they sign when they request to be  
6 rehired. Once they have taken their break and they  
7 are coming back to work I had my staff to actually  
8 go in and do a confirmation of what they had agreed  
9 to. And it's just got the figures in terms of the  
10 accrual rate of the leave and also their actual  
11 salary.

12 Q. And there's a one-sentence paragraph that  
13 says, "Because your last day of employment was June  
14 1, 2004 and you were compensated for a total of 45  
15 days of annual leave, your re-employment date will  
16 be July 19, 2004." Is that what we were discussing  
17 earlier about the break in service?

18 A. That's exactly what we were discussing  
19 before. Because he had 45 days of leave we gave him  
20 more than a 15-day break and brought him back after  
21 the 45 days had been exhausted.

22 Q. I think you said the purpose for doing  
23 that was to save money for the State?

24 A. Well, it was almost like paying them  
25 twice, so to speak, if we only gave them a 15-day

1 break and we brought them back earlier than what we  
2 had paid out. Chief was very concerned about not  
3 costing the State any money to implement this  
4 program or this process. And so that was one of the  
5 things that he mandated is that if we paid them out  
6 for a period of time of leave, then they would not  
7 return until that -- those days had actually been  
8 exhausted.

9 Q. Okay. They weren't required to work  
10 during that time period?

11 A. No, they weren't required to work.

12 Q. They could volunteer if they wanted to?

13 A. If they wanted to, they could volunteer.

14 Q. Did people typically volunteer?

15 A. Some did, some didn't.

16 Q. When they volunteered what types of work  
17 would they do?

18 A. I would think they would do whatever was  
19 asked of them. I can't give you any specifics  
20 because, you know, I didn't have firsthand knowledge  
21 of it.

22 Q. When there was no -- there was no special  
23 position the volunteers were put in, they were just  
24 put back into whatever --

25 A. They weren't really put back into a

1 position.. They were told that if they -- you know,  
2 because some of these guys just want to stay in  
3 touch. And so they were just allowed to help out  
4 during that time period if they wanted to. And they  
5 did it understanding it was strictly a volunteer  
6 basis.

7 (Exhibit No. 9 was marked for  
8 identification.)

9 BY MR. HARLING:

10 Q. Ms. Hutto, I'm going to hand you what's  
11 been marked as Exhibit 9 to your deposition. It's  
12 got a Bates number on the bottom of 009. Take a  
13 look at that and tell me if you recognize it.

14 A. I'm sorry?

15 Q. Do you recognize that?

16 A. I do recognize it. I'm sorry.

17 Q. Tell me what that document is.

18 A. This document is almost the same document  
19 as the previous document, Exhibit 8. Throughout  
20 this entire process and especially during this time  
21 of year we're getting different policy changes,  
22 regulation changes, and whatnot. And it reflects a  
23 statement about the language of the document not  
24 creating -- necessarily creating a contract. And so  
25 we were just transferring that information over to

1 our documents at that point.

2 It's primarily the same thing as the  
3 previous document, No. 8, just in a different format  
4 where we actually explain to them that they were --  
5 had no grievance rights. And, of course, we then  
6 refer to it at-will and did a further explanation of  
7 what that was.

8 Q. Okay.

9 A. Provided them the salary and also detailed  
10 out for them what those contribution rates were and  
11 also outlined the leave and again the dates.

12 Q. Okay. Under the salary provision it says,  
13 "You will have a reduction of 13.6 percent in your  
14 salary to cover the amount it will cost SLED to pay  
15 the employer portion of retirement." Is that  
16 correct?

17 A. You're asking me if that's what it says?

18 Q. Yes.

19 A. Yes.

20 Q. And then next to that it says, "The 6.5  
21 percent employee portion of retirement will no  
22 longer be deducted from your check." Is that  
23 correct?

24 A. Yes.

25 Q. And the number that's written next to that

1 is a dollar figure of 39,828?

2 A. Yes.

3 Q. To the best of your knowledge, is that  
4 the -- is that the reduced salary that Mr. Jowers  
5 would have been paid for participating in the  
6 program?

7 A. This is the salary he returned -- he was  
8 rehired, yes. He would have been rehired at that  
9 salary.

10 Q. Okay. And it says there the reduction in  
11 the salary is to cover the amount it will cost SLED  
12 to pay the employer portion of retirement?

13 A. That's what it says, yes.

14 Q. Okay. That was No. 9.

15 (Exhibit No. 10 was marked for  
16 identification.)

17 BY MR. HARLING:

18 Q. I'll hand you what's been marked Exhibit  
19 No. 10. It's got a Bates No. 69 on the bottom of  
20 it. I'll ask you to take a look at that and tell me  
21 if you recognize that document.

22 A. I do.

23 Q. Tell me what that is.

24 A. This is another document. And I think  
25 this one may reflect a difference in time -- I know

1 it reflects a difference in time frame, but again I  
2 think, and I'm not sure because I don't have all of  
3 the information in front of me, but, as I said,  
4 Mr. Grimsley 'accepted the program initially, left,  
5 and came back.

6 Being that this document is after July 1,  
7 the salary difference may reflect a cost of living  
8 increase that may have been implemented after July  
9 1.

10 Q. Okay. Who is Captain Drakeford?

11 A. Captain Drakeford is Stacy Drakeford, who  
12 was Phil Grimsley's captain.

13 Q. Is Stacy Drakeford still at SLED?

14 A. Stacy Drakeford is retired also.

15 Q. Is he retired retired, like gone?

16 A. He's retired and gone, yes. You have to  
17 ask that question as retired and gone.

18 Q. Yeah.

19 (Exhibit No. 11 was marked for  
20 identification.)

21 BY MR. HARLING:

22 Q. I'm going to hand you what's been marked  
23 as Exhibit 11 to your deposition. It's got a Bates  
24 label of 70 on the bottom of it. Take a look at  
25 that and tell me if you recognize it.

1 A. Yes.

2 Q. Tell me what that is.

3 A. This is the follow-up document that would  
4 have followed Mr. Grimsley's return. I can't tell  
5 you which -- it had to be the latter time just in  
6 looking at the dates, but this would have been the  
7 confirmation after he had signed the initial  
8 agreement.

9 Q. And again next to the salary provision of  
10 that it says, "You will have a reduction of 13.6  
11 percent in your salary to cover the amount it will  
12 cost SLED to pay the employer portion of  
13 retirement." Is that correct?

14 A. That's correct. That's what it says.

15 (Exhibit No. 12 was marked for  
16 identification.)

17 BY MR. HARLING:

18 Q. Ms. Hutto, I'm going to hand you what's  
19 been marked Exhibit 12 to your deposition. It's got  
20 a Bates label of 012. If you'll take a look at that  
21 and tell me if you recognize that document.

22 A. I do.

23 Q. Tell me what that is.

24 A. This is a document, a letter that reflects  
25 a cost of living or a GI, general increase, that's

1 granted by the legislature to State employees. We  
2 sent this letter -- I sent this letter to Mr. Jowers  
3 just to confirm the changes in his salary. It also  
4 reflects the percentage amount that the law  
5 enforcement officers received as a result of a study  
6 in 2005.

7 Q. Is that where they had those consultants  
8 come through and ask everybody what they did and how  
9 much you got paid to do it and then they came back  
10 and did a presentation and said everyone is not  
11 making enough money and this is what you should be  
12 making?

13 A. Pretty much.

14 Q. I'm trying to remember the name of the guy  
15 that came out to Lexington and did one for us that  
16 time. It says that the -- this document is  
17 basically talking about raises that were given to  
18 SLED employees?

19 A. Yes.

20 Q. And it reflects the adjustments that were  
21 13.55 percent that were made to those raises?

22 A. Correct.

23 Q. Was that adjustment made at SLED?

24 A. Yes.

25 Q. Where did that money go?

1           A.    Where did the money go?  You ask that  
2 question again.

3           Q.    Well, the money was sent to SLED to pay  
4 the SLED agents; is that right?

5           A.    Uh-huh.

6           Q.    And the money was reduced by 13.55  
7 percent?

8           A.    Yes.

9           Q.    When that money was reduced there was  
10 money given -- SLED kept --

11          A.    It remained in the pot for other personal  
12 services.

13          Q.    Okay.

14                (Exhibit No. 13 was marked for  
15 identification.)

16 BY MR. HARLING:

17          Q.    I'm going to hand you what's been marked  
18 as Exhibit 13 to your deposition.  That is a  
19 two-page document with a Bates label of 007 through  
20 008.  If you'll take a look at that and tell me if  
21 you recognize it.

22          A.    I do.

23          Q.    Is that the memo you talked about earlier  
24 in your deposition from Chief Stewart?

25          A.    It is.

1 Q. Tell me what the purpose of that memo was.

2 A. The purpose of the document, I think, was  
3 to clarify some issues and some concerns that agents  
4 had with the coming of the end of the first  
5 four-year period for those who were participating  
6 and who had retired and come back to work.

7 Rank was a issue that had come up among  
8 some of the younger staff agents because they felt  
9 if the agents who were participating in the program  
10 were going to be allowed to keep returning, then  
11 they would lose their opportunity to -- and would  
12 not get the opportunity to have rank.

13 And so Chief addressed that here in  
14 notifying them that when a person -- if a person was  
15 allowed to return the second time, that they would  
16 not be returning with rank in a supervisory  
17 capacity. And that was one of the main concerns of  
18 this document.

19 It was also to let the staff know that  
20 there was going to be more scrutiny in terms of who  
21 was going to be allowed to come back and that we  
22 were going to be looking at definitely -- even  
23 though the intent of the program was to secure, you  
24 know, and to maintain and retain some specialized  
25 skills, that we were going to be retaining even.

1 more -- being more -- having more scrutiny with that  
2 process.

3 Q. Right. Just because somebody got to  
4 participate in the program the first time doesn't  
5 mean they are going to get to do it the second time?

6 A. Exactly.

7 Q. Look on the second page of that up at the  
8 top, up at the top of the first paragraph. It says,  
9 "As to accrued leave, the law does not permit a  
10 second annual leave payout." Is that what it says?

11 A. Yes.

12 Q. Okay. So the first time you want to go  
13 and get paid out you had to sit out for the number  
14 of days you were paid out for?

15 A. Yes.

16 Q. Second time you don't get paid for any  
17 annual leave. So you either use it or lose it?

18 A. Exactly.

19 Q. Okay. And then if you came through the  
20 second time, was it the 15 days like the statute  
21 says that you had to sit out?

22 A. Yes.

23 Q. Okay.

24 (Exhibit No. 14 was marked for  
25 identification.)

1 BY MR. HARLING:

2 Q. I'll hand you what's been marked Exhibit  
3 14. It's a one-page document with a Bates number of  
4 014 on it. I'll ask you to take a look at that and  
5 tell me if you recognize it.

6 A. I do.

7 Q. Tell me what that is.

8 A. This is just an acknowledgment statement  
9 that the agents who were participating in the  
10 retiree program had received the document, the  
11 letter from Chief that was marked Exhibit 13. This  
12 was just to make sure that we had an acknowledgment  
13 that they received the information.

14 Q. All right. In the -- I guess in the  
15 sentence there are -- there's a phrase that's in  
16 parentheses that says, "Agents Participating in  
17 Retirement/Rehire Program." Is that the name of  
18 this program? Is that what it was called?

19 A. That's what they referred to it as. It's  
20 hard -- I still say it's not -- it wasn't actually a  
21 program because there were no specific things  
22 outlined. It was just a method by which we  
23 processed retirees in and out, but that's what it  
24 was referred to in this document.

25 Q. Okay.

1                   (Exhibit No. 15 was marked for  
2                   identification.)

3                   BY MR. HARLING:

4                   Q.     I'll hand you what's been marked as  
5                   Exhibit 15.  It's a one-page document with a Bates  
6                   label of 046 on it.  Take a look at that and tell me  
7                   if you recognize that.

8                   A.     I do.

9                   Q.     Tell me what that is.

10                  A.     This is a document that was written and  
11                  generated by me to retirees.  We had several  
12                  people -- several of our retirees start to kind of  
13                  bombard our office wanting copies of these documents  
14                  and it was really putting a lot of added stress on  
15                  the staff.

16                                So what we decided to do is just in one  
17                                full sweep we went through the files of all the  
18                                retirees and pulled those documents and made them  
19                                available to them as a way of kind of to manage that  
20                                activity.

21                  Q.     And the CC on the bottom of that is to  
22                  Major Mark Keel.  And that's the person referred to  
23                  as the chief of staff earlier?

24                  A.     Yes, it is.

25                  Q.     And he was the attorney?

1 A. Yes.

2 Q. Thank you.

3 (Exhibit No. 16 was marked for  
4 identification.)

5 BY MR. HARLING:

6 Q. Ms. Hutto, I'm going to hand you what's  
7 been marked as Exhibit 16 to your deposition. I'm  
8 going to ask you to take a look at that and tell me  
9 if you recognize it.

10 A. I do.

11 Q. Tell me what that is.

12 A. This is a letter that was given to  
13 Mr. Grimsley from our director, Reginald Lloyd, in  
14 June of '08. We -- and I say we as an agency. We  
15 decided to separate several of these at-will  
16 employees. And this was the letter of notification  
17 to those individuals.

18 Q. Why was the decision made to separate  
19 these employees?

20 A. I would have to relent to Mr. Lloyd on  
21 that.

22 Q. I understand. I understand. In this  
23 letter it describes it as the law enforcement  
24 retirement/retention plan; is that correct?

25 A. Yes. That's what the letter says.

1 Q. Okay.

2 A. But I think, as you can see, there's been  
3 different references to it and one of the reasons  
4 why is because it didn't actually have a name.

5 Q. Right. There's been some different  
6 terminology I've seen. How many people who were  
7 participating in this plan were let go at this same  
8 time period?

9 A. I didn't come prepared. I could provide  
10 that information to you later. I didn't come  
11 prepared to give you that today.

12 Q. Okay. Who is Deputy Chief Neal Dolan?

13 A. He's our deputy chief. He's an assistant  
14 of Reginald Lloyd.

15 Q. Is he an attorney?

16 A. No, he's not.

17 Q. Who is Assistant Chief Timothy James?

18 A. He's now former Assistant Chief Tim James.  
19 He was in the chain of command in the administrative  
20 offices.

21 Q. And Inspector Richard Hunton?

22 A. Richard is one of our inspectors. He's in  
23 charge of training and -- training and -- let's just  
24 say training. I'm sorry. I can't --

25 Q. That's fine. And you said --

1 A. Retain so much.

2 Q. You said Assistant Chief Timothy James is  
3 no longer with SLED?

4 A. Yes. He's former Chief James.

5 Q. Do you know where he is now?

6 A. He is working -- employed with Lexington  
7 County Hospital, which is where he came from.

8 Q. I believe he was over at Lexington County  
9 and then Cayce for a little while?

10 A. Yeah. He's been -- yeah. He's been  
11 around a little bit.

12 MR. HARLING: Off the record.

13 (Off-the-record discussion.)

14 (A recess transpired.)

15 (Exhibit No. 17 was marked for  
16 identification.)

17 BY MR. HARLING:

18 Q. I'll hand you what's been marked as  
19 Exhibit 17 to your deposition. Ms. Hutto, that is a  
20 copy of SLED's answers to our interrogatories we  
21 sent over when the case first got started.

22 If you will look at the response to  
23 Interrogatory No. 1. It references the names of  
24 persons known to the parties or counsel to be  
25 witnesses concerning the facts of the case it lists

1 out a couple of people. I think we've talked about  
2 a majority of them. We talked about former Chief  
3 Stewart. And he was involved with the creation of  
4 the program; is that correct?

5 A. Yes.

6 Q. And was he the primary person involved in  
7 the creation of it?

8 A. He and Cindy.

9 Q. And he was involved in speaking to each of  
10 the individual agents when the program was first  
11 created and made the final determination as to  
12 whether or not they could participate in it?

13 A. Yes.

14 Q. When did he leave SLED?

15 A. In November of 2008.

16 Q. Was former Chief Stewart hands on as far  
17 as the day-to-day operations of SLED?

18 A. Very, yes.

19 Q. Would you say he was very familiar with  
20 this program?

21 A. Yes. Now, one thing I will say now, in  
22 terms of the intricate details of processing it, of  
23 course, he probably was not because he -- once his  
24 decisions were made he left it to me and my staff to  
25 process it.

1 Q. And when you talk about the processing,  
2 what do you mean?

3 A. Once he had met with the employees and the  
4 documentation flow, getting them in and out of the  
5 agency would have been my responsibility.

6 Q. Got it. And the next one listed is  
7 Ms. Konduros, Cindy Konduros. And she was Chief  
8 Stewart's executive assistant?

9 A. Yes.

10 Q. And her level of knowledge would be  
11 similar to that of Chief Stewart's?

12 A. I would say yes.

13 Q. Would you say Ms. Konduros was more or  
14 less knowledgeable than you about this or about the  
15 same?

16 A. At the onset probably more.

17 Q. She would have more information about the  
18 creation of it?

19 A. Yes.

20 Q. Okay. But after the creation you all's  
21 level of knowledge would be similar?

22 A. Yes.

23 Q. And Mr. Keel we discussed earlier. He was  
24 the former chief of staff and he was also an  
25 attorney?

1 A. Yeah. He was an attorney.

2 Q. He was not -- he was an attorney, but he  
3 was not a SLED -- he was not SLED's attorney?

4 A. Right.

5 Q. Okay. Was he involved with the creation  
6 or do you know?

7 A. I don't know. I don't know how involved  
8 he would have been and whether or not he even -- how  
9 many -- I don't know.

10 Q. Okay.

11 A. I don't know.

12 Q. You don't know what level of knowledge  
13 he's got regarding the program?

14 A. Exactly. I don't know.

15 Q. Okay. Chief Lloyd is the next one. He  
16 would obviously know about the program as it exists  
17 today; is that correct?

18 A. Yes.

19 Q. As far as the creation of the program,  
20 would he have any knowledge regarding that?

21 A. I would say no.

22 Q. His knowledge base would pick up when he  
23 became director in late '08, early '09?

24 A. In February of '08. No. I'm sorry. This  
25 is '09. Yeah, February of '08.

1 Q. Okay. And did Chief Stewart leave in  
2 November 2007 then?

3 A. Exactly. I'm sorry.

4 Q. That's okay.

5 A. Please beg by pardon on that one.

6 Q. That's okay. He left in November of 2007  
7 and Mr. Lloyd came in in --

8 A. February of 2008.

9 Q. Okay. And that's when his knowledge base  
10 would pick up?

11 A. Yes.

12 Q. Okay. Obviously the next one is you.  
13 We've already discussed about your knowledge. The  
14 next one is Ms. Coker. And she was --

15 A. Ms. Coker was our benefits counselor. She  
16 handled our retirement.

17 Q. Right. Would she have knowledge of the  
18 creation of the program, do you think?

19 A. No, she would not.

20 Q. She would just know how it worked after it  
21 was created?

22 A. Exactly.

23 Q. Who is Rick Kelly?

24 A. Rick Kelly works at the University of  
25 South Carolina obviously. I'm not sure about his

1 participation unless he's somebody that Chief may  
2 have spoken to. I'm not sure.

3 MR. WOODINGTON: I'll tell you. He  
4 used to be with the Budget and Control Board.

5 MR. HARLING: Is he no longer with  
6 them?

7 MR. WOODINGTON: Yeah. Long gone.

8 THE WITNESS: No.

9 MR. WOODINGTON: Same with Osbourne.

10 BY MR. HARLING:

11 Q. Both of them used to be with the Budget  
12 and Control Board?

13 A. Yes.

14 Q. Other than that, do you have any  
15 independent knowledge of Mr. Kelly's information?

16 A. I don't.

17 Q. Is that true for Mr. Osbourne?

18 A. That's correct.

19 Q. Next witness listed is Vance J. Bettis,  
20 Esquire?

21 A. Vance is our outside attorney.

22 MR. WOODINGTON: I would remind the  
23 witness not to go into the substance of any  
24 conversation between Vance and yourself.

25 THE WITNESS: Okay.

1 MR. WOODINGTON: Or anybody else at  
2 the agency.

3 BY MR. HARLING:

4 Q. Without going into the substance of any  
5 communications that Mr. Bettis had with you, have  
6 you had prior to this litigation ensuing any  
7 conversations with Mr. Bettis regarding this program  
8 or plan, without going into the substance of it?

9 A. My first instinct is to say no, but Vance  
10 has been working with us a long time. So there may  
11 have been some casual conversations, but no.

12 Q. And again without going into the substance  
13 of anything that Mr. Bettis may have said or that  
14 you were told that he said, to your knowledge did  
15 Chief Stewart have any conversations or meetings  
16 with Mr. Bettis regarding this program?

17 A. I'd have to relent to Chief Stewart. I  
18 don't know.

19 Q. Is that true for any other employees at  
20 SLED as far as their potential interactions with  
21 Mr. Bettis?

22 A. Yes. He probably did, but I don't know  
23 for sure.

24 Q. Okay.

25 (Exhibit No. 18 was marked for

1 identification.)

2 BY MR. HARLING:

3 Q. I'll hand you what's been marked as  
4 Exhibit 18 to your deposition. Ms. Hutto, these are  
5 SLED's responses to our first request for production  
6 of documents. Basically it's a legal document where  
7 we sent over requesting certain documents be  
8 provided to us.

9 If you will flip to Request No. 8. What  
10 we've requested is all correspondence or E-mail to  
11 or from any party to this action. And it says,  
12 "Defendant is continuing to review computer  
13 information of former SLED officials in order to  
14 determine whether any other responsive information  
15 exists." Can you tell me what the status of  
16 reviewing that computer information is?

17 A. If I recall, this was in reference to  
18 whether or not Cindy or Chief would have had  
19 anything on their computer. And it's my  
20 understanding that there were no E-mails or  
21 documentation filed.

22 Q. Did you have any E-mails related to this?

23 A. Related to the --

24 Q. Program?

25 A. Correspondence in maybe answering

1 questions to employees or something like that. It's  
2 hard for me to say yes or no. In eight years I've  
3 probably had E-mails. I can't -- I don't want to  
4 say no because I don't want to lie, but I can't  
5 recall specifically.

6 Q. Have you checked your E-mail to see if you  
7 had anything?

8 A. Yes.

9 Q. Did you find anything?

10 A. What we had I think we sent to you guys.

11 MR. WOODINGTON: If that's the case,  
12 we didn't send you anything, to the best of my  
13 knowledge.

14 MR. HARLING: Yeah, I didn't get any  
15 E-mails.

16 MR. WOODINGTON: I think I read this,  
17 I'm not trying to get cute or anything, but this  
18 referred to E-mails -- correspondence and E-mails  
19 that went to -- outside the agency and not  
20 inter-agency.

21 THE WITNESS: That went outside the  
22 agency?

23 MR. WOODINGTON: From or to any --  
24 well, I guess you could say from SLED. I don't  
25 know.

1 BY MR. HARLING:

2 Q. Do you think you have E-mails that are  
3 related to the retirement program?

4 A. I'll have to look. I may. You're talking  
5 about eight years.

6 Q. Yes, ma'am.

7 A. I don't know that there's anything left on  
8 my computer. I mean, you know, over a period of  
9 time that stuff kind of disappears, the E-mails,  
10 because over an eight-year period they can't house  
11 all of that stuff. So I would --

12 MR. WOODINGTON: We'll add it to the  
13 list.

14 MR. HARLING: Yeah. And again  
15 subject to -- I think those may be very important  
16 and they may be highly trivial, but I'd like to --

17 MR. WOODINGTON: Well, regardless of  
18 what she remembers right here today, I'm pretty sure  
19 I asked her. So it's not like, oh, we just realized  
20 it. I would call this a double-check.

21 MR. HARLING: That's fine.

22 (Exhibit No. 19 was marked for  
23 identification.)

24 BY MR. HARLING:

25 Q. Ms. Hutto, I'll hand you what's been

1 marked as Exhibit 19. Again that is SLED's answer  
2 to our second set of interrogatories. Again those  
3 were questions that we sent over.

4           The first one we sent was, "Identify the  
5 statute or statutes SLED relied upon when creating  
6 the retirement program at issue in this matter." In  
7 the response we got there were some stated  
8 objections, but it says, "Subject to the objections,  
9 this Defendant would advise that the actions taken  
10 by SLED which are the subject of this litigation  
11 were taken pursuant to the normal statutory powers  
12 of the agency with respect to personnel, including  
13 S.C. Code annotated 8-15-10 and 23-3-10, and any  
14 pertinent regulations or policies issued thereunder.  
15 These actions were taken after consultation with the  
16 Budget and Control Board." Is that correct?

17           A. Are you asking me if that's what it says?

18           Q. Did I read that correctly? Yes, ma'am.

19           A. You did. Yes.

20           Q. Okay. Let me ask you this. What I just  
21 read, is that factually accurate?

22           A. I would have to relent to Chief Stewart  
23 and Cindy Konduros.

24           Q. Was the statute -- statutory section  
25 9-11-90 referenced at all, to your knowledge?

1 A. Again are you referring to the creation?

2 Q. Yes, ma'am.

3 A. I would have to relent to them. I don't  
4 know what they relied upon to create.

5 Q. Okay. How about the implementation of it  
6 or the administration of it?

7 A. Well, you're talking about in terms of  
8 what you just read when you say the implementation  
9 of it?

10 Q. Uh-huh. Was South Carolina Code Annotated  
11 Section 9-11-90 referenced at all in the  
12 implementation of this program, to your knowledge?  
13 That's the one that talks about the 48 months, the  
14 15 days.

15 A. Was it referenced in the creation?

16 Q. In the implementation?

17 A. In the implementation?

18 Q. Uh-huh.

19 A. Yes.

20 Q. Okay.

21 MR. WOODINGTON: If that's the case,  
22 it was an oversight on my part then.

23 BY MR. HARLING:

24 Q. And the second one is, "Identify the  
25 number of SLED employees who have participated in

1 the SLED retirement program at issue in this  
2 matter." And it's approximately 85 to 90 total have  
3 participated; is that correct?

4 A. That's correct.

5 Q. Okay.

6 A. I'm not sure -- I'm confused on --

7 Q. Let me try and clear it up. Tell me what  
8 your confusion is.

9 A. It referred to the statute. Never mind.  
10 I think I understand. Never mind.

11 Q. If you have any questions or if I can  
12 clear up anything, please let me know and I will do  
13 my best to clear up any confusion you may have. You  
14 don't have any questions for me?

15 A. No.

16 Q. Okay. I'm sorry. I thought you were --  
17 that's fine. And I think we already discussed this  
18 earlier, but the way records are kept at SLED, is it  
19 correct that the salary allocation amounts -- you  
20 can't speak to the salary allocation amount, that's  
21 what Mr. Birnie is the best person to talk to about  
22 that; is that correct?

23 A. Yes.

24 Q. Okay.

25 (Exhibit No. 20 was marked for

1 identification.)

2 BY MR. HARLING:

3 Q. I'm going to hand you what's been marked  
4 as Exhibit 20 to your deposition. That's got a  
5 Bates range from 296 to 307. Take a look at that  
6 document and tell me if you recognize it.

7 A. I do.

8 Q. Tell me what that is.

9 A. This is the report that I referred to  
10 earlier that I said came from either the comptroller  
11 general or the treasurer's office that recorded the  
12 transaction of the retiree contributions.

13 Q. Okay. This document or these documents,  
14 which appear to go from June 2003 to June 2009 -- if  
15 you'll check that and just make sure I'm right. It  
16 looks like they have run dates from June 2003 to  
17 June 2009?

18 A. That's correct.

19 Q. And this is the document that reflects how  
20 much is paid by SLED to the Retirement Systems for  
21 the police officers and for the regular employee  
22 retirement; is that correct?

23 A. That's correct.

24 Q. Okay. And on the first page that's Bates  
25 labeled 296 that is a run date of June 16, 2003; is

1 that correct?

2 A. That's correct.

3 Q. And it says, "Period ending date June 16,  
4 2003." Is this -- when this document is sent to  
5 SLED is that confirming the amount that has already  
6 been paid or is that telling SLED this is what you  
7 need to pay?

8 A. This is confirming what's already taken  
9 place.

10 Q. Okay. So for -- I guess fiscal year is  
11 probably not the right -- is that right?

12 A. Fiscal year.

13 Q. Okay. For the fiscal year of 2003,  
14 according to the document on Page 296, the South  
15 Carolina Retirement System employee contributions  
16 withheld were \$11,292.76; is that right?

17 A. Okay. Let me explain what we sent. If  
18 you notice, there's a handwritten -- right up under  
19 the run date there's a handwritten notation that  
20 should have 7-1 of that particular year.

21 Q. That says 7-1-03?

22 A. Yes.

23 Q. Okay.

24 A. Based on the inquiry or the  
25 interrogatories, what I provided was the first run

1 of the fiscal year so that the rate for that fiscal  
2 year could be reflected.

3 Q. Got it. Okay.

4 A. So that's what you have.

5 Q. Okay.

6 A. So you have the first one of the fiscal  
7 year. So based on the question that you asked, the  
8 answer would be no.

9 Q. Okay.

10 A. That does not reflect the entire year.

11 Q. Okay. That would just have been from  
12 January -- let me back up. I'm confusing me and  
13 you. Let's back up. What time frame is reflected  
14 in the document on Page 296?

15 A. The first pay period in that fiscal year.

16 Q. The first pay period in that fiscal year?

17 A. Yes. Each one of these should reflect the  
18 first pay period in each fiscal year. And that was  
19 to show the actual contribution rate.

20 Q. So this is just -- this doesn't show the  
21 annual contribution of SLED, this shows the  
22 contribution for SLED for --

23 A. That particular period.

24 Q. And are these available for every pay  
25 period?

1           A.    They should be.  We went back and found  
2   the first pay period of the fiscal year.

3           Q.    All right.  Let me do this.  Tell me what  
4   the numbers mean.  I thought those were annual  
5   numbers, but they seem --

6           A.    No.  The objective of what I -- when I  
7   found this report the objective was to show -- if  
8   you look at the contribution rates to the left, if  
9   you look at 1-B, it says contribution rate.

10           MR. WOODINGTON:  2-B.

11           THE WITNESS:  2-B.  I'm sorry.  2-B.  
12   You see the SCRS and then you see the PORS.  That's  
13   the contribution rate.  If you look at No. 3-B, you  
14   add that .2 on the PORS side, the accidental -- for  
15   the group life.  No. 4 is the accidental death  
16   contribution.  And you add that and you come up with  
17   a total contribution rate for that fiscal year.

18   BY MR. HARLING:

19           Q.    Okay.  The employee contribution withheld,  
20   No. 1 at the top, does that reflect just for one pay  
21   period?

22           A.    Yes, it does.

23           Q.    Okay.  So I know -- and I know this is an  
24   inaccurate way to get to this number, but  
25   technically if I multiplied that by 52, that would

1 give --

2 MR. WOODINGTON: No. Pay period is  
3 two weeks.

4 THE WITNESS: It would be --

5 MR. WOODINGTON: No. It's half of  
6 24.

7 BY MR. HARLING:

8 Q. 26. I'm sorry. 26.

9 A. 24. 24.

10 Q. Two a month?

11 A. Yes.

12 Q. 1st and 15th of every month?

13 A. 24, yes.

14 Q. Okay. Okay.

15 A. It would be difficult to do that  
16 calculation because with the employees coming in and  
17 out in terms of hiring and separations that number  
18 would fluctuate.

19 Q. How often are these reports generated?

20 A. Just based on my memory, because they are  
21 actually coming out of our payroll office, I recall  
22 quarterly, I believe, but I would have to  
23 double-check. I think quarterly.

24 Q. Can you check on that and get me as many  
25 of these as you can?

1 A. Yes.

2 Q. I was looking at them and I thought --

3 A. For the same period?

4 Q. From, I think, 2003 to 2009. If they are  
5 done -- if there's one for each pay period, then  
6 there should only be -- there should be 24 done a  
7 year. So that's like 150 pages.

8 A. Well, it may be -- yeah. I guess maybe I  
9 didn't understand what you were asking in the  
10 interrogatory. And I think we tried to -- I think  
11 we communicated back to try to get some  
12 clarification. And what I did was just provided you  
13 what I thought -- provided you with what you asked.

14 Q. Okay. What I was trying to get was the  
15 total amounts that were given per employee, but  
16 Mr. Woodington told me that that's not -- this is  
17 the only way the information is maintained?

18 A. Right. And that's why I provided you  
19 this, so you could see how it was maintained,  
20 because there's no way to get the per employee  
21 amount.

22 Q. But there's a way to get the per pay  
23 period amount though?

24 A. Yeah. I can -- yeah. I'll try. Whatever  
25 they -- whatever frequency they created, we'll get

1 it to you if that's what you want.

2 Q. Okay. Yeah. That's what I want. Thank  
3 you. Thank you. Because when I was looking at  
4 those numbers I thought they looked awful low, but,  
5 I mean, maybe there's --

6 MR. WOODINGTON: That's No. 4 on the  
7 list of things on the to do list.

8 THE WITNESS: Well, it was a start.  
9 I just -- like I said, I just didn't know what --

10 MR. HARLING: I understand. I  
11 understand.

12 MR. WOODINGTON: I didn't understand  
13 the question or the answer, to be honest with you,  
14 until today.

15 THE WITNESS: But do you see what I  
16 was trying to provide you?

17 BY MR. HARLING:

18 Q. Yes, ma'am. Yeah, I see where you're  
19 headed with it. You were trying to establish what  
20 the contribution -- the employer's contribution rate  
21 per fiscal year from 2003 to 2009?

22 A. Exactly. And it's also to show you how it  
23 was actually done so that you would not -- so you  
24 would know it wasn't done per employee.

25 Q. Right. Got it. Okay. I follow. And

1 this document is prepared by the comptroller?

2 A. Yes.

3 Q. And the comptroller gets the salary from  
4 SLED?

5 A. The comptroller processes the salary. So  
6 they have that information.

7 Q. Okay. So they basically take the total --

8 A. Because they actually send the information  
9 to the treasurer's office to cut the check.

10 Q. Okay. So the comptroller gets the --  
11 they've already got the SLED salary information,  
12 they know what all the salaries are?

13 A. Yes.

14 Q. They know the percentage?

15 A. Yes.

16 Q. And they just do some quick math and that  
17 comes up with these numbers and --

18 A. In other words, that's where the -- the  
19 comptroller's office is where the SLED payroll meets  
20 the Retirement System.

21 Q. Got it. Got it. Okay. Who do you deal  
22 with at the comptroller's office?

23 A. There's several people there. Our payroll  
24 person actually deals with the comptroller general's  
25 office unless there's some specialized question and

1 I will call them.

2 Q. Who is the person that would know the most  
3 about the SLED salaries out there at the  
4 comptroller's office?

5 A. Who would know the most about SLED  
6 salaries at the comptroller general's office?

7 Q. Yes, ma'am.

8 A. I can't answer that question.

9 Q. Who is your primary contact down there?

10 A. I would have to give you our contact in  
11 our office, Carol Templeton.

12 Q. Carol Templeton. And what is her title at  
13 SLED?

14 A. She's our payroll administrator.

15 Q. Okay. And these total salaries under the  
16 PORS, P-O-R-S, column, where would -- where would  
17 the participants in this program that we're talking  
18 about today, where would -- what line would they be  
19 under? Would they be under total members' salaries  
20 under A-1 or would they be under A-2 or would they  
21 be somewhere else?

22 A. They would be probably a combination of  
23 both. Under 2-A, that's the employer contribution  
24 and what the employer contribution would balance  
25 against. If you look at 2-A-2 --

1 Q. 2-A-2. Okay.

2 A. It says total retiree's salaries. That's  
3 where those salaries would be.

4 Q. That would be where the SLED -- like  
5 Mr. Grimsley --

6 A. Any retirees that we would have, their  
7 salaries would be in that amount.

8 Q. Okay. That would be where Mr. Grimsley  
9 and Mr. Jowers would be?

10 A. Yes. All SLED retirees.

11 Q. Okay. Would there be any other retirees  
12 in that number or would that just be all the program  
13 participants in that?

14 A. No. No. That's all retirees. There's no  
15 differentiation between those that, you know, take  
16 the program and those who -- that's them, anybody  
17 that's retired from SLED.

18 Q. That's retired and came back and went to  
19 work and got a paycheck?

20 A. TERI or --

21 Q. Okay. 2-A-2 on Page 296, that is going to  
22 have TERI?

23 A. That's going to have all retirees.

24 Q. All retirees?

25 A. Regardless of what they do or where they

1 came from.

2 Q. Got it. All of them. All retirees. So  
3 somewhere in that number is --

4 A. And this is regardless of whether they  
5 retire from us or anybody else.

6 Q. Got it. Got it. Okay.

7 A. Anybody that's retired from State  
8 government and working at SLED would be in that  
9 amount.

10 Q. Okay.

11 MR. WOODINGTON: Can we go off the  
12 record for a second?

13 MR. HARLING: Sure.

14 (Off-the-record discussion.)

15 BY MR. HARLING:

16 Q. Ms. Hutto, we were off the record for a  
17 second. We were talking about the lines and columns  
18 on Exhibit 20 on Page 1 or Bates No. 296 of Exhibit  
19 20. And we were discussing whether the people who  
20 were participating in the program at issue for  
21 today's purposes, they were on 2-A-2 as retirees and  
22 they would be under the column of PORS; is that  
23 correct?

24 A. That's correct.

25 Q. Okay.

1           A.    But I definitely want to make the note  
2   that all employees who were retired law enforcement  
3   from any entity in State government would be listed.

4           Q.    Okay.  What about -- there was some  
5   discussion about the ones who were TERI?

6           A.    The TERI employees would be under the SCRS  
7   designation.

8           Q.    Okay.  Is that true for law enforcement  
9   personnel that participate in the TERI program?

10          A.    Law enforcement persons cannot participate  
11   in the TERI program.

12          Q.    Okay.

13          A.    TERI is for non-law enforcement people.

14          Q.    Okay.  All right.  That would be regular  
15   SLED TERI employees under 2-A-2 SCRS.  All retirees  
16   under the police officers' system would be under  
17   PORS?

18          A.    That's correct.

19          Q.    Okay.  Got it.  And the contribution rate  
20   that was listed on 296 of Exhibit 20 was 13.45  
21   percent.  And that again reflects the employer's  
22   portion that needs to be paid to the Retirement  
23   System for PORS?

24          A.    Now, there's three different contribution  
25   rates.

1 Q. For the -- just for the retirement part,  
2 just for retirement; is that correct?

3 A. I'm sorry if I hesitate.

4 Q. No. That's fine.

5 A. When you say just for the retiree part,  
6 you have the group life and the accidental death.  
7 They also have a contribution rate.

8 Q. Okay. But just for the employer  
9 retirement contributions is that rate 13.45 percent?

10 A. That's correct.

11 Q. Okay. And then there's some other  
12 percentages that are related to group life  
13 contributions and accidental death contributions; is  
14 that correct?

15 A. That's correct.

16 Q. Were the plan -- or the program  
17 participants' salaries reduced to account for the  
18 group life contribution as well?

19 A. It's all combined into one. It's broken  
20 down for this particular report.

21 Q. Okay.

22 A. But the contribution rate is a combination  
23 of the three.

24 Q. Okay. So the entire SLED employer  
25 contribution for 2003 fiscal year ending June 2003

1 would have been 13.8 --

2 A. 45.

3 Q. Or it would have been 13.85 when you're  
4 adding the two?

5 A. Oh, when you add the other two, that's  
6 correct.

7 Q. Okay. So that's what SLED was statutorily  
8 obligated to pay the Retirement System in 2003 for  
9 the employer portion; is that right?

10 A. Correct.

11 Q. Okay. And it looks like in 2004 that  
12 amount contribution rate, is that 13 percent or it  
13 looks like -- I can't tell if that's a 13 or a 13  
14 and a number with a percentage sign over it.

15 A. I see 13, but I'm like you. I can't read  
16 that other.

17 Q. And so the percentage or, I guess, the  
18 employer contribution for 2004 would have been  
19 whatever that figure is for contribution rate, be it  
20 13 percent or 13.6 percent, it would have been that  
21 plus the .2 percent for group life and plus the .2  
22 percent for accidental death; is that right?

23 A. Correct.

24 Q. In 2005 it would have been 13.55 percent  
25 plus .2 percent plus .2 percent; is that right?

1           A.    That's correct.

2           Q.    Would have been 13.95 percent.  If you'll  
3 flip to Page 299 of that exhibit.  Can you tell me  
4 what that document is?  You're smiling.  So --

5           A.    The environment in employment over the  
6 last several years have evolved to the point where  
7 employees are not staying with employers for a  
8 period of time.  So they created the ORP.  And  
9 that's the optional retirement program.

10           The more recent employees that are  
11 retiring or coming into the system have an option to  
12 take in lieu of the SCRS and taking an optional  
13 retirement with these various carriers.  So they can  
14 opt to take one of those in lieu of the SCRS.  And  
15 so that's what that is, those few employees that are  
16 participating in that program.

17           And if you notice, the number of  
18 participants is listed here because that program is  
19 managed a little bit differently and what it allows  
20 for is the -- with that evolution of the type of  
21 employees or migration of employees so quickly from  
22 one employer to another it allows for a different  
23 type of administration and it's easier to port these  
24 programs into other systems.

25           Q.    Okay.

1           A.    That option was only given to the  
2 employees from that point in time.  Employees who  
3 were currently working could not go back and opt  
4 into this program.  So this would not reflect any of  
5 the retirees.

6           Q.    Okay.  This wouldn't be any of our people?

7           A.    No.

8           Q.    Okay.  In 2006 it looks like the  
9 contribution rate would have been 13.55 percent plus  
10 .2 percent plus .2 percent; is that correct?

11          A.    That's correct.

12          Q.    Total 13.95 percent.  And then on Page 301  
13 again there's the ORP contribution?

14          A.    And you will have that sheet from this  
15 point on because of the implementation of that  
16 program.

17          Q.    Okay.  Doesn't look like it's very  
18 popular?

19          A.    Well, the younger folks don't quite  
20 understand it.

21          Q.    Page 302 is the 2007 contribution rate.  
22 So that would be 13.65 plus .2 plus .2.  That would  
23 have been 14.05 percent; is that correct?

24          A.    Yes.  I'm not adding.  So --

25          Q.    Okay.

1           A.    That's what the individual amounts are,  
2    yes.

3           Q.    In 2008 it's 13.72 percent for the  
4    contribution from the employer and then adding .2  
5    percent to that and then again adding .2 percent to  
6    that; is that correct?

7           A.    That's correct.

8           Q.    When the contribution rate went up to  
9    13.72 percent was there another adjustment to the  
10   participants' salaries?

11          A.    No.  After the initial onset of the  
12   program, if I recall, we may have adjusted it once.  
13   After that point we did not adjust it.

14          Q.    Then in 2009 it looks like the  
15   contribution rate has gone to 14.15 percent and then  
16   adding another .2 percent and another .2 percent; is  
17   that right?

18          A.    That's correct.

19                   (Exhibit No. 21 was marked for  
20   identification.)

21   BY MR. HARLING:

22          Q.    I'll hand you what's been marked Exhibit  
23   21 to the deposition.  The Bates numbers on that  
24   document are from 117 to 125.  Do you recognize  
25   that?

1 A. I do.

2 Q. Did you assist in preparing that?

3 A. I did.

4 Q. Tell me what this document is.

5 A. This document is just a reflection of the  
6 employees -- the retirees under the Police Officer  
7 Retirement System that retire and return to work.

8 Q. Okay.

9 A. And their salaries and the dates of their  
10 return and the status of their return.

11 Q. Okay. Can you go through -- well, let me  
12 ask you -- I'm just going to ask you some questions  
13 about the basic headings just to make sure I'm  
14 understanding what everything means. The name  
15 column on the far left-hand corner, there are  
16 numbers assigned to them; is that correct?

17 A. That's correct.

18 Q. And those numbers represent an individual  
19 participant in this program; is that correct?

20 A. That's correct.

21 Q. Okay. The last day prior to retirement,  
22 that is a --

23 A. That's the date they separated in their  
24 initial retirement from SLED.

25 Q. Okay. That's the date they would have

1 sent Chief Stewart the letter dated --

2 A. That's the date they actually retired from  
3 SLED.

4 Q. And that's the date that either -- that's  
5 the date that would have been reflected in Exhibit 6  
6 or a document similar to Exhibit 6?

7 A. Or retirement letter, yes.

8 Q. Yeah. Okay. That's the date they would  
9 have retired?

10 A. Yes.

11 Q. Got it. Salary at retirement is how much  
12 money they were making?

13 A. At the time of separation.

14 Q. Rehire date?

15 A. The date they would have been rehired.

16 Q. Okay. That's the date that would have  
17 been the minimum 15 days, but up to the full amount  
18 of leave time they were paid out for; is that  
19 correct?

20 A. Correct.

21 Q. Some of these, Nos. 1 through 11, are  
22 listed as temporary and there's a date next to that.  
23 What does that mean?

24 A. Those employees would have been the  
25 employees that participated in that retirement

1 incentive program.

2 Q. That's the one that was listed in --

3 A. Yes.

4 Q. Okay.

5 A. That is totally separate from the way we  
6 process the others.

7 Q. And that is the program that is referenced  
8 in Exhibit 4 to your deposition; is that correct?

9 A. That is correct. You notice all of them  
10 have the '01 retirement date.

11 Q. Right. Correct. Salary at rehire is the  
12 salary that they were rehired at when they entered  
13 into the program?

14 A. Yes.

15 Q. Okay. Date EMPMT term, that's the date  
16 employment terminated?

17 A. Yes.

18 Q. And that is the date that they -- is that  
19 the date they left the program?

20 A. Yes. That's the date they left after we  
21 were -- after rehire.

22 Q. Okay. And then the salary at term means  
23 salary at termination?

24 A. That's correct.

25 Q. And then it says employment -- return

1 employment date?

2 A. That date would have been reflected if  
3 they came back after that point.

4 Q. And then rehire salary?

5 A. Would have been the salary that we would  
6 have rehired them the second time if they returned.

7 Q. Okay. And the following date employment  
8 terminated would have been the second time they --  
9 and then it just kind of goes on. It goes out -- it  
10 goes out from there. They would terminate, get  
11 rehired, work their prescribed period, terminate,  
12 rehire, go out from there?

13 A. Correct.

14 Q. Okay. If you would turn to -- turn to  
15 Page 120. There are several employees that -- for  
16 example, if you look at the second column -- or the  
17 second row down where it says salary at term 33,187  
18 and next to that it says return employment date  
19 8-17-06.

20 A. Okay. Slow down a little bit. Say that  
21 again.

22 MR. WOODINGTON: Second line of  
23 numbers.

24 BY MR. HARLING:

25 Q. Yes.

1 A. Okay. 33,187.

2 Q. And then the return employment date was  
3 8-17-06?

4 A. I'm with you.

5 Q. And then next to that it says the rehire  
6 salary was 33,187?

7 A. That's correct.

8 Q. Why was there no reduction in salary  
9 there? Did you only reduce the salary once?

10 A. I can't answer that question without  
11 knowing who it was.

12 Q. Okay. Were different people handled  
13 differently as far as reductions in salary?

14 A. Well, as you pointed out earlier, that  
15 first group with the 9-28 separation date, the  
16 information there is reflective of their -- of them  
17 being -- taking part in that voluntary separation.

18 Q. Got it.

19 A. So if those are the first two entries,  
20 they would be a little bit different.

21 Q. Okay. I understand. I understand.

22 A. But they were included because at some  
23 point they did sign the agreement.

24 Q. Right. I gotcha. Why were some converted  
25 to hourly? If you look on the first page, for

1 example, No. -- it's No. 15.

2 A. No. 15?

3 Q. Uh-huh. Well, I'm going across.

4 A. Going all the way across?

5 Q. Yeah, I'm going all the way across. And  
6 it goes from -- went from a salary of 64,000 -- no.  
7 I'm sorry. 14. Excuse me. Look at name No. 14.

8 A. Okay. Tell me what line you get to when  
9 you go all the way across.

10 MR. WOODINGTON: He's just asking on  
11 the first page.

12 BY MR. HARLING:

13 Q. Yeah, it's on the first page, on Page 117.

14 A. He returned as a temporary employee.

15 Q. Okay. And temporary employees are paid  
16 hourly?

17 A. Yes.

18 Q. Okay.

19 A. Obviously this person left and agreed to  
20 come back and work in that capacity.

21 Q. Okay. The rehire salary for everyone --  
22 for everyone after Employee No. 11 looks like they  
23 all had the reduction taken in their rehire salary  
24 the first time they retired and came back; is that  
25 correct?

1 A. Yes.

2 Q. And that was that 13.5, 13.6 percent  
3 reduction?

4 A. That's correct.

5 Q. Was the comptroller general notified that  
6 they were retiring and coming back at a reduced  
7 salary?

8 A. We're not under an obligation to -- first  
9 of all, let me understand what you're asking. Was  
10 the comptroller general notified?

11 Q. Right.

12 A. When we rehire an employee we submit their  
13 paperwork as a new hire to the comptroller general's  
14 office to process their payroll.

15 Q. Okay.

16 A. So I guess the answer would be yes.

17 Q. Okay. And what paperwork was submitted to  
18 the comptroller? What forms would they be?

19 A. We enter in an electronic system that's  
20 connected and there's a transmission of that  
21 documentation. So our payroll person would  
22 actually -- actually it's a combination of the human  
23 resources office and the payroll office. We would  
24 put in a certain amount of information for a  
25 designated period of time and then the payroll

1 person would do her part of it. And then, of  
2 course, that transmission is made to the comptroller  
3 general's office electronically.

4 Q. Okay.

5 A. So there's no paperwork per se.

6 Q. Would that transmission to the comptroller  
7 for the new hires list their annual salary?

8 A. It would list -- yes.

9 Q. Okay.

10 A. And then, of course, it's broken down by  
11 biweekly amounts.

12 (Off-the-record discussion.)

13 (A recess transpired.)

14 BY MR. HARLING:

15 Q. We were talking about the information  
16 that's transmitted from SLED to the comptroller  
17 general in electronic format?

18 A. Yes.

19 Q. And one piece of that information that  
20 would have been transmitted would have been the  
21 annual salary?

22 A. Yes.

23 Q. And we were going to look at a specific  
24 example. If you'll look under the name column at  
25 No. 32.

1 A. Okay.

2 Q. When the information regarding Employee 32  
3 was transmitted to the comptroller general the  
4 annual salary would have been listed as what? Would  
5 it have been 39,828 or --

6 A. You mean as a new hire?

7 Q. Uh-huh.

8 A. As a new hire it would have been 39,828.

9 Q. That's the amount that would have been  
10 sent to the comptroller?

11 A. Yeah.

12 Q. Okay. That information is transmitted.  
13 How is that information stored or recorded at the  
14 comptroller or do you know?

15 A. I have no idea how the comptroller keeps  
16 that information.

17 Q. Is there a record of that information  
18 transmitted from SLED?

19 A. It should be, but I'm not sure. I can  
20 check.

21 Q. Okay.

22 MR. HARLING: Will you add that to  
23 the list of --

24 MR. WOODINGTON: Doesn't sound too  
25 promising, but I'll add it.

1 THE WITNESS: Well, if you would be  
2 clear in terms of what exactly you want and for what  
3 period you want? I mean, tell me --

4 BY MR. HARLING:

5 Q. Well, Employee 32 on July 19, 2004, was  
6 rehired by SLED. And at some point prior to that  
7 something was sent to the comptroller saying his  
8 annual salary is 39,828; is that correct?

9 A. Yes.

10 Q. All right. I need to get whatever record  
11 you have, if any, of that information being  
12 transmitted.

13 A. Okay. On Employee No. 32?

14 Q. Yes, ma'am.

15 MR. WOODINGTON: Is there any reason  
16 we couldn't do that for the two named plaintiffs?

17 MR. HARLING: That is one of the  
18 named plaintiffs.

19 MR. WOODINGTON: Oh, okay.

20 MR. HARLING: Yeah. And I wasn't  
21 trying to be cryptic. I was just trying -- yeah.  
22 If you could do it for both.

23 THE WITNESS: I recognize the salary.

24 MR. HARLING: If you could do it for  
25 both of the named plaintiffs, that would be --

1 MR. WOODINGTON: All right.

2 THE WITNESS: So you want a report to  
3 reflect that their salaries were transmitted to the  
4 comptroller general's office as a new hire?

5 MR. HARLING: Yes. Whatever  
6 information that was sent to the comptroller that  
7 you've got.

8 MR. WOODINGTON: It sounds like it  
9 would just be the form -- the new employee form that  
10 you fill out.

11 THE WITNESS: Well, it goes to the  
12 comptroller general's office, but we enter it into a  
13 system. So it's not actually a form.

14 MR. HARLING: And on the other end I  
15 can send a subpoena over to the comptroller and we  
16 can do -- I'm just thinking out loud.

17 MR. WOODINGTON: It will add  
18 complications.

19 THE WITNESS: So you want that on  
20 both of them?

21 MR. HARLING: Yes, ma'am.

22 THE WITNESS: So we'll just go --  
23 I'll go by the rehire date?

24 MR. HARLING: Right. Right.

25 MR. WOODINGTON: We're going to be

1 looking at those two persons' files anyway just to  
2 make sure we've got anything that may be relevant  
3 that's in them.

4 BY MR. HARLING:

5 Q. When that comptroller form is prepared,  
6 Exhibit 20 is prepared, does the comptroller just  
7 total up all the salaries that they have for SLED  
8 employees and make that calculation? That's based  
9 on information they already have; is that correct?

10 A. I would assume so. I'm not familiar with  
11 their process.

12 Q. Mr. Birnie would be the one?

13 A. Well, no, not from the comptroller  
14 general's office. You have to -- in terms of how  
15 they prepare the report, you would have to -- you  
16 would have to get with them. I'm not sure.

17 Q. Okay.

18 A. I doubt Steve would know their process.

19 Q. Okay. I want you to go back to Exhibits  
20 11 and 9. And what I want to specifically ask you  
21 about is the language in that salary portion that  
22 says you have a reduction of 13.6 percent of your  
23 salary to cover the amount it would cost SLED to pay  
24 the employer portion of retirement. And it says  
25 that in both of them. Does that portion of that

1 mean that the employee was covering the amount SLED  
2 was supposed to pay?

3 A. No.

4 MR. WOODINGTON: Object to the form  
5 of the question.

6 BY MR. HARLING:

7 Q. What does that mean then to you?

8 A. I'm trying think if I can think about  
9 what --

10 Q. Take your time.

11 A. That was an explanation of why there was a  
12 difference in the salary.

13 Q. That was -- I'm sorry. Say that again.

14 A. That was an explanation of why there was a  
15 difference in the salary from when they were  
16 employed previously based on the understanding and  
17 the agreement that they signed. This was just  
18 explaining that difference so that the employee  
19 would understand that that's what they had agreed  
20 to.

21 Q. So the employee was covering the amount it  
22 would cost SLED to pay the employer portion of  
23 retirement?

24 MR. WOODINGTON: Object to the form  
25 of the question.

1 THE WITNESS: When you say

2 covering --

3 BY MR. HARLING:

4 Q. I'm not saying covering. That's what the  
5 document says.

6 A. I understand. I guess I would have to say  
7 based on the way it's written, yes.

8 Q. I know I'm jumping around with exhibits a  
9 little bit. Let me get you to go back to Exhibit  
10 21, which is the spreadsheet with compensation on  
11 it. That's that big document.

12 A. Oh, the big one?

13 Q. Yeah.

14 A. Okay.

15 Q. The rehire salary was supposed to be the  
16 salary at retirement reduced by the percentage; is  
17 that right?

18 A. Yes.

19 Q. Do you know if that -- if the rehire  
20 salaries are 13.6 percent less than the salary at  
21 retirement?

22 A. Well, some of them may have been a little  
23 bit different because you notice that rate  
24 fluctuated.

25 Q. Right.

1           A.    But, yes, it should have been.

2                   MR. HARLING:  I don't have any  
3 further questions.

4                   MR. WOODINGTON:  I don't either.  I  
5 don't have any questions.

6                   MR. SMITH:  Not I.

7                   MR. HARLING:  Subject to the -- we're  
8 going to keep the deposition open subject to those  
9 documents we requested.  You want to put the list on  
10 the record?

11                   MR. WOODINGTON:  Yeah.  Let me do the  
12 best I can with that.  I think it was four or five.  
13 I missed a few.  No. 1 would be any documents not  
14 previously produced from files of the two named  
15 plaintiffs, that is that relate to retirement, not  
16 just any old thing.  Okay.

17                   MR. HARLING:  Whatever you've got  
18 will be --

19                   MR. WOODINGTON:  Well, I mean, you  
20 know, it can go back to 1970 something, but --

21                   MR. HARLING:  Yeah, let's just do  
22 retirement.

23                   MR. WOODINGTON:  The results of a  
24 search of Chief Stewart and Cindy's files, if  
25 there's anything to be found or any files to be

1 found.

2 MR. HARLING: Right.

3 MR. WOODINGTON: No. 3 is how many  
4 were, quote, unquote, let go in July '08 by Reggie  
5 Lloyd, which is probably the majority of them, I  
6 have a feeling.

7 No. 4 would be Ms. Hutto's E-mails to the  
8 extent that they are within the interrogatory  
9 question.

10 No. 5 would be as many of these CG reports  
11 per pay period as is possible to get.

12 MR. HARLING: Right.

13 MR. WOODINGTON: No. 6, I think, is  
14 the only other one. Whatever salary information was  
15 communicated from SLED to the comptroller general's  
16 office for both of the named plaintiffs starting  
17 with the first rehire.

18 MR. HARLING: I believe that is  
19 everything.

20 MR. WOODINGTON: That's it.

21 Further Deponent sayeth not.

22 (Whereupon, the taking of the  
23 deposition was concluded at 4:44 p.m.)

24

25

1 Certificate of Reporter

2

3 I, Brad H. Thomas, Certified Realtime  
4 Reporter and Notary Public in and for the State of  
5 South Carolina, do hereby certify that I reported  
6 the deposition of LYNN HUTTO on the 26th day of  
7 October, 2009; that the witness was first duly sworn  
8 by me, and that the foregoing 123 pages constitute a  
9 true and correct transcription of the said  
10 deposition.

7

8 I further certify that I am neither  
9 attorney nor counsel for, nor related to or employed  
10 by, any of the parties connected with this action,  
11 nor am I financially interested in said cause.

12 I further certify that the original of  
13 said transcript shall be hereafter sealed and  
14 delivered to W. JONATHAN HARLING, ESQUIRE, Lewis &  
15 Babcock, LLP, 1513 Hampton Street, Columbia, South  
16 Carolina 29211. This sealed original transcript  
17 shall be retained by the above party, who shall be  
18 responsible for filing same with Court prior to  
19 trial or any hearing which might result in a final  
20 order on any issue.

15

16 In witness whereof I set my hand and seal  
17 this 2nd day of November, 2009.

17

18

19

20 My Commission  
21 expires 12/12/17

\_\_\_\_\_  
Brad H. Thomas, CRR  
and Notary Public for the  
State of South Carolina

21

22

23

24

25

CPR403NA

OFFICE OF CONTROLLER GENERAL  
 DEPOSIT OF RETIREMENT CONTRIBUTIONS  
 SOUTH CAROLINA RETIREMENT SYSTEMS  
 BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/16/03

EMPLOYER CODE: 201.02 AGENCY: D10 PERIOD ENDING DATE: 06/16/2003			
EMPLOYER NAME: GOVERNORS OFF-SLED			
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS
1. Employee Contributions Withheld	.00	11,292.76	38,049.73
2. Employer Retirement Contributions			
a. 1) Total member's salaries	.00	188,211.06	585,379.74
2) Total retiree's salaries	+ .00	+ 18,908.21	+ 96,224.39
3) Total Salaries (a.1 + a.2)	.00	207,119.30	683,604.13
b. Contribution rate		x 10.7%	x 13.45%
c. Employer retirement contributions (Line 2a.3 x 2b)		22,161.77	91,944.76
3. Group life contributions (if covered)			
a. Total salaries (a.1 + a.2)		207,119.30	683,604.13
b. Contribution rate		x 0.15%	x 0.2%
c. Employer contributions (Line 3a x 3b)		310.68	1,367.21
4. Accidental death contributions (if covered) - PORS only			
a. Total salaries (a.1 + a.2)			683,604.13
b. Contribution rate			x 0.2%
c. Employer contributions (Line 4a x 4b)			1,367.21
5. Total Due for the Month (1 + 2 + 3 + 4)	.00	33,765.21	132,728.91
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)			
b. Adjustments			
c. Total (a + b)			
7. Net Remittance (line 5 +/- Line 6c)	.00	33,765.21	132,728.91
8. Total Remittance (combine SCRS, PORS & Judicial)			166,494.12

DEPOSITION  
 EXHIBIT  
 #20  
 Hutto

6022-B-001

CPK403RA

OFFICE OF COMPTROLLER GENERAL  
DEPOSIT OF RETIREMENT CONTRIBUTIONS  
SOUTH CAROLINA RETIREMENT SYSTEMS  
BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/16/04

EMPLOYER CODE: 201.02 AGENCY: D10 PERIOD ENDING DATE: 06/16/2004			
EMPLOYER NAME: GOVERNORS OFF-SLED			
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS
1. Employee Contributions Withheld	.00	10,266.38	35,961.32
2. Employer Retirement Contributions			
a. 1) Total member's salaries	.00	171,104.22	553,250.61
2) Total retiree's salaries	+ .00	+ 33,436.97	+ 123,942.57
3) Total Salaries (a.1 + a.2)	.00	204,541.19	677,193.18
b. Contribution rate		x 10.85%	x 13.6%
c. Employer retirement contributions (Line 2a.3 x 2b)		22,192.72	92,098.27
3. Group life contributions (if covered)			
a. Total salaries (a.1 + a.2)		204,541.19	677,193.18
b. Contribution rate		x 0.15%	x 0.2%
c. Employer contributions (Line 3a x 3b)		306.81	1,354.39
4. Accidental death contributions (if covered) - PORS only			
a. Total salaries (a.1 + a.2)			677,193.18
b. Contribution rate			x 0.2%
c. Employer contributions (Line 4a x 4b)			1,354.39
5. Total Due for the Month (1) + 2 + 3 + 4)	.00	32,765.91	130,768.37
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)			
b. Adjustments			
c. Total (a + b)			
7. Net Remittance (Line 5 +/- Line 6c)	.00	32,765.91	130,768.37
8. Total Remittance (combine SCRS, PORS & Judicial)			163,534.28

8022-B-002

CPR403NA

OFFICE OF COMPTROLLER GENERAL  
 DEPOSIT OF RETIREMENT CONTRIBUTIONS  
 SOUTH CAROLINA RETIREMENT SYSTEMS  
 BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/15/05

1. 5

EMPLOYER CODE: 201.02 AGENCY: D10 PERIOD ENDING DATE: 06/16/2005			
EMPLOYER NAME: GOVERNORS OFF-SLED			
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS
1. Employee Contributions Withheld	.00	11,118.13	35,776.76
2. Employer Retirement Contributions			
a. 1) total member's salaries	.00	185,999.90	550,409.40
2) Total retiree's salaries	+ .00	+ 38,411.12	+ 120,719.38
3) total Salaries (a.1 + a.2)	.00	223,711.02	671,158.78
b. Contribution rate		x 10.8%	x 13.55%
c. Employer retirement contributions (Line 2a.3 x 2b)		24,160.79	90,942.01
3. Group life contributions (if covered)			
a. Total salaries (a.1 + a.2)		223,711.02	671,158.78
b. Contribution rate		x 0.15%	x 0.2%
c. Employer contributions (Line 3a x 3b)		335.57	1,342.32
4. Accidental death contributions (if covered) - PORS only			
a. Total salaries (a.1 + a.2)			671,158.78
b. Contribution rate			x 0.2%
c. Employer contributions (Line 4a x 4b)			1,342.32
5. Total Due for the Month (1 + 2 + 3 + 4)	.00	35,614.49	129,403.41
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)			
b. Adjustments			
c. Total (a + b)			
7. Net Remittance (Line 5 +/- Line 6c)	.00	35,614.49	129,403.41
8. Total Remittance (combine SCRS, PORS & Judicial)			165,017.90

8022-B-003

EMPLOYER CODE:	201.02	AGENCY:	D10	PERIOD ENDING DATE:	06/16/2005
EMPLOYER NAME:	GOVERNORS OFF-SLED				
RETIREMENT CONTRIBUTIONS					ORP
1. Wages of ORP Participants:					
	Carrier	No. of Participants	Wages		
1.	AIG VALIC	0	.00		
2.	CITISTREET	3	3,509.59		
3.	ING	4	4,201.11		
4.	TIAA-CREF(SOUTHEAST)	0	.00		
5.	CARRIER NOT SELECTED	0	.00		
2. Employer ORP Contributions					
a.	Total ORP Wages	7,710.70			
b.	Contribution rate	x 5.800 %			
c.	Employer ORP Contributions (Line 2.a x Line 2.b)	447.22			
3. Group Life Contributions					
a.	Total ORP Wages	7,710.70			
b.	Contribution rate	x 0.150 %			
c.	Employer Contributions (Line 3.a x Line 3.b)	11.57			
4.	Total ORP Contributions due for the Month (Line 2.c + Line 3.c)	458.79			

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OFFICE OF COMPTROLLER GENERAL  
DEPOSIT OF RETIREMENT CONTRIBUTIONS  
SOUTH CAROLINA RETIREMENT SYSTEMS  
BOX 11960, COLUMBIA, SC 29211-1960

RUHDATE 06/16/06

EMPLOYER CODE: 201.02 AGENCY: 010 PERIOD ENDING DATE: 06/16/2006			
EMPLOYER NAME: GOVERNORS OFF-SLED			
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS
1. Employee Contributions Withheld			
a. 1) Total member's Contributions	.00	12,067.00	43,054.00
2) Total retiree's Contributions	+ .00	+ 294.22	+ 9,791.03
3) Total Contributions (a.1 + a.2)	.00	12,361.22	52,845.03
2. Employer Retirement Contributions			
a. 1) Total member's salaries	.00	193,073.31	662,371.35
2) Total retiree's salaries	+ .00	+ 31,418.00	+ 152,326.73
3) Total Salaries (a.1 + a.2)	.00	224,491.31	814,698.08
b. Contribution rate		x 10.8%	x 13.55%
c. Employer retirement contributions (Line 2a.3 x 2b)		24,245.06	110,391.59
3. Group life contributions (if covered)			
a. Total salaries (a.1 + a.2)		224,491.31	814,698.08
b. Contribution rate		x 0.15%	x 0.2%
c. Employer contributions (Line 3a x 3b)		336.74	1,629.40
4. Accidental death contributions (if covered) - PORS only			
a. Total salaries (a.1 + a.2)			814,698.08
b. Contribution rate			x 0.2%
c. Employer contributions (Line 4a x 4b)			1,629.40
5. Total Due for the Month (1 + 2 + 3 + 4)	.00	36,943.02	166,495.42
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)			
b. Adjustments			
c. Total (a + b)			
7. Net Remittance (Line 5 +/- Line 6c)	.00	36,943.02	166,495.42
8. Total Remittance (combine SCRS, PORS & Judicial)			203,438.44

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CPR403NB

OFFICE OF COMPTROLLER GENERAL  
 DEPOSIT OF RETIREMENT CONTRIBUTIONS  
 SOUTH CAROLINA RETIREMENT SYSTEMS  
 BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/16/06

EMPLOYER CODE: 201.02		AGENCY: D10	PERIOD ENDING DATE: 06/16/2006
EMPLOYER NAME: GOVERNORS OFF-SLED			
RETIREMENT CONTRIBUTIONS			ORP
1. Wages of ORP Participants:			
	Carrier	No. of Participants	Wages
1.	AIG VALIC	0	.00
2.	CITISTREET	0	.00
3.	THE HARTFORD	5	5,806.23
4.	TIAA-CREF(SOUTHEAST)	0	.00
5.	CARRIER NOT SELECTED	0	.00
2. Employer ORP Contributions			
a.	Total ORP Wages		5,806.23
b.	Contribution rate		x 5.800 %
c.	Employer ORP Contributions (Line 2.a x Line 2.b)		336.76
3. Group Life Contributions			
a.	Total ORP Wages		5,806.23
b.	Contribution rate		x 0.150 %
c.	Employer Contributions (Line 3.a x Line 3.b)		8.71
4.	Total ORP Contributions due for the Month (Line 2.c + Line 3.c)		345.47

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OFFICE OF COMPTROLLER GENERAL  
DEPOSIT OF RETIREMENT CONTRIBUTIONS  
SOUTH CAROLINA RETIREMENT SYSTEMS  
BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/14/07

7-1-07

EMPLOYER CODE: 201.02 AGENCY: D10 PERIOD ENDING DATE: 06/15/2007			
EMPLOYER NAME: GOVERNORS OFF-SLED			
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS
1. Employee Contributions Withheld			
a. 1) Total member's Contributions	.00	13,688.70	49,672.19
2) Total retiree's Contributions	+ .00	+ 941.92	+ 8,011.23
3) Total Contributions (a.1 + a.2)	.00	14,630.62	57,683.42
2. Employer Retirement Contributions			
a. 1) Total member's salaries	.00	210,593.66	764,188.26
2) Total retiree's salaries	+ .00	+ 37,479.45	+ 124,995.06
3) Total Salaries (a.1 + a.2)	.00	248,073.11	889,183.32
b. Contribution rate		x 11.4%	x 13.65%
c. Employer retirement contributions (Line 2a.3 x 2b)		28,280.33	121,373.52
3. Group life contributions (if covered)			
a. Total salaries (a.1 + a.2)		248,073.11	889,183.32
b. Contribution rate		x 0.15%	x 0.2%
c. Employer contributions (Line 3a x 3b)		372.11	1,778.36
4. Accidental death contributions (if covered) - PORS only			
a. Total salaries (a.1 + a.2)			889,183.32
b. Contribution rate			x 0.2%
c. Employer contributions (Line 4a x 4b)			1,778.36
5. Total Due for the Month (1 + 2 + 3 + 4)	.00	43,283.06	182,613.66
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)			
b. Adjustments			
c. Total (a + b)			
7. Net Remittance (Line 5 +/- Line 6c)	.00	43,283.06	182,613.66
8. Total Remittance (combine SCRS, PORS & Judicial)			225,896.72

8022-B-007

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CPR403NB

OFFICE OF COMPTROLLER GENERAL  
 DEPOSIT OF RETIREMENT CONTRIBUTIONS  
 SOUTH CAROLINA RETIREMENT SYSTEMS  
 BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/14/07

EMPLOYER CODE:	201.02	AGENCY:	D10	PERIOD ENDING DATE:	06/15/2007
EMPLOYER NAME:	GOVERNORS OFF-SLED				
RETIREMENT CONTRIBUTIONS					DRP
1. Wages of DRP Participants:					
	Carrier	No. of Participants	Wages		
1.	<u>AIG VALIC</u>	<u>0</u>	<u>.00</u>		
2.	<u>CITISTREET</u>	<u>0</u>	<u>.00</u>		
3.	<u>THE HARTFORD</u>	<u>3</u>	<u>4,606.95</u>		
4.	<u>TIAA-CREF (SOUTHEAST)</u>	<u>1</u>	<u>1,212.58</u>		
5.	<u>CARRIER NOT SELECTED</u>	<u>0</u>	<u>.00</u>		
2. Employer DRP Contributions					
a.	Total DRP Wages				<u>5,819.53</u>
b.	Contribution rate				x 6.400 %
c.	Employer DRP Contributions (Line 2.a x Line 2.b)				<u>372.45</u>
3. Group Life Contributions					
a.	Total DRP Wages				<u>5,819.53</u>
b.	Contribution rate				x 0.150 %
c.	Employer Contributions (Line 3.a x Line 3.b)				<u>8.73</u>
4.	Total DRP Contributions due for the Month (Line 2.c + Line 3.c)				<u>381.18</u>

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CPR403NA

OFFICE OF COMPTROLLER GENERAL  
 DEPOSIT OF RETIREMENT CONTRIBUTIONS  
 SOUTH CAROLINA RETIREMENT SYSTEMS  
 BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/12/08

EMPLOYER CODE: 201.02 AGENCY: D10 PERIOD ENDING DATE: 06/16/2008			
EMPLOYER NAME: GOVERNORS OFF-SLED			
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS
1. Employee Contributions Withheld			
a. 1) Total member's Contributions	.00	15,307.96	56,658.69
2) Total retiree's Contributions	+ .00	+ 1,005.52	+ 8,569.02
3) Total Contributions (a.1 + a.2)	.00	16,313.48	65,227.71
2. Employer Retirement Contributions			
a. 1) Total member's salaries	.00	235,506.43	871,673.23
2) Total retiree's salaries	+ .00	+ 35,296.12	+ 131,031.33
3) Total Salaries (a.1 + a.2)	.00	270,802.55	1003,504.56
b. Contribution rate		x 12.48%	x 13.72%
c. Employer retirement contributions (Line 2a.3 x 2b)		33,796.16	137,680.83
3. Group life contributions (if covered)			
a. Total salaries (a.1 + a.2)		270,802.55	1003,504.56
b. Contribution rate		x 0.15%	x 0.2%
c. Employer contributions (Line 3a x 3b)		406.20	2,007.01
4. Accidental death contributions (if covered) - PORS only			
a. Total salaries (a.1 + a.2)			1003,504.56
b. Contribution rate			x 0.2%
c. Employer contributions (Line 4a x 4b)			2,007.01
5. Total Due for the Month (1 + 2 + 3 + 4)	.00	50,515.84	206,922.56
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)			
b. Adjustments			
c. Total (a + b)			
7. Net Remittance (Line 5 +/- Line 6c)	.00	50,515.84	206,922.56
8. Total Remittance (combine SCRS, PORS & Judicial)			257,438.40

8022-B-009

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EMPLOYER CODE:	201.02	AGENCY:	010	PERIOD ENDING DATE:	06/16/2008
EMPLOYER NAME:	GOVERNORS OFF-SLED				
RETIREMENT CONTRIBUTIONS					DRP
1. Wages of ORP Participants:					
	Carrier	No. of Participants	Wages		
1.	<u>AIG VALIC</u>	<u>1</u>	<u>1,583.33</u>		
2.	<u>CITISTREET</u>	<u>0</u>	<u>.00</u>		
3.	<u>THE HARTFORD</u>	<u>3</u>	<u>4,679.19</u>		
4.	<u>TIAA-CREF (SOUTHEAST)</u>	<u>1</u>	<u>1,436.29</u>		
5.	<u>CARRIER NOT SELECTED</u>	<u>0</u>	<u>.00</u>		
2. Employer ORP Contributions					
a.	Total ORP Wages		<u>7,698.81</u>		
b.	Contribution rate		x 7.480 %		
c.	Employer ORP Contributions (Line 2.a x Line 2.b)		<u>590.83</u>		
3. Group Life Contributions					
a.	Total ORP Wages		<u>7,698.81</u>		
b.	Contribution rate		x 0.150 %		
c.	Employer Contributions (Line 3.a x Line 3.b)		<u>11.85</u>		
4.	Total DRP Contributions due for the Month (Line 2.c + Line 3.c)		<u>602.68</u>		

CPR403NA

OFFICE OF COMPTROLLER GENERAL  
 DEPOSIT OF RETIREMENT CONTRIBUTIONS  
 SOUTH CAROLINA RETIREMENT SYSTEMS  
 BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/16/09

EMPLOYER CODE: 201.02      AGENCY: 010      PERIOD ENDING DATE: 06/16/2009			
EMPLOYER NAME: GOVERNORS OFF-SLED			
RETIREMENT CONTRIBUTIONS	JUDICIAL	SCRS	PORS
1. Employee Contributions Withheld			
a. 1) Total member's Contributions	.00	15,031.58	45,952.25
2) Total retiree's Contributions	+ .00	+ 879.64	+ 3,441.34
3) Total Contributions (a.1 + a.2)	.00	15,911.22	49,393.59
2. Employer Retirement Contributions			
a. 1) Total member's salaries	.00	231,256.72	706,956.58
2) Total retiree's salaries	+ .00	+ 18,756.89	+ 52,943.85
3) Total Salaries (a.1 + a.2)	.00	250,013.61	759,900.43
b. Contribution rate		x 12.74%	x 14.15%
c. Employer retirement contributions (Line 2a.3 x 2b)		31,851.74	107,525.91
3. Group life contributions (if covered)			
a. Total salaries (a.1 + a.2)		250,013.61	759,900.43
b. Contribution rate		x 0.15%	x 0.2%
c. Employer contributions (Line 3a x 3b)		375.02	1,519.80
4. Accidental death contributions (if covered) - PORS only			
a. Total salaries (a.1 + a.2)			759,900.43
b. Contribution rate			x 0.2%
c. Employer contributions (Line 4a x 4b)			1,519.80
5. Total Due for the Month (1 + 2 + 3 + 4)	.00	48,137.98	159,959.10
6. a. Less Authorized (Credits) Debits (Attach copy of billing or authorization)			
b. Adjustments			
c. Total (a + b)			
7. Net Remittance (Line 5 +/- Line 6c)	.00	48,137.98	159,959.10
8. Total Remittance (combine SCRS, PORS & Judicial)			208,097.08

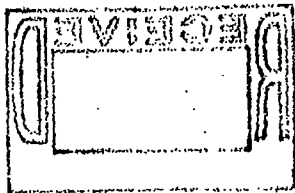
8022-B-0011

CPR403NB

OFFICE OF COMPTROLLER GENERAL  
 DEPOSIT OF RETIREMENT CONTRIBUTIONS  
 SOUTH CAROLINA RETIREMENT SYSTEMS  
 BOX 11960, COLUMBIA, SC 29211-1960

RUNDATE 06/16/09

EMPLOYER CODE: 201.02		AGENCY: D10	PERIOD ENDING DATE: 06/16/2009
EMPLOYER NAME: GOVERNORS OFF-SLED			
RETIREMENT CONTRIBUTIONS			ORP
1. Wages of ORP Participants:			
	Carrier	No. of Participants	Wages
1.	AIG VALIC	4	6,118.15
2.	CITISTREET	0	.00
3.	THE HARTFORD	2	4,060.70
4.	TIAA-CREF(SOUTHEAST)	1	1,450.62
5.	CARRIER NOT SELECTED	0	.00
2. Employer ORP Contributions			
a.	Total ORP Wages		11,629.47
b.	Contribution rate		x 7.740 %
c.	Employer ORP Contributions (Line 2.a x Line 2.b)		900.12
3. Group Life Contributions			
a.	Total ORP Wages		11,629.47
b.	Contribution rate		x 0.150 %
c.	Employer Contributions (Line 3.a x Line 3.b)		17.44
4.	Total ORP Contributions due for the Month (Line 2.c + Line 3.c)		917.56



8022-B-0012

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

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Case No. 08-CP-40-8854

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Phillip D. Grimsley, Sr., and  
Roger M. Jowers, on behalf of  
themselves and others similarly situated,

Appellants,

vs.

South Carolina Law Enforcement Division  
and the State of South Carolina,

Respondents.

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CERTIFICATE OF COUNSEL

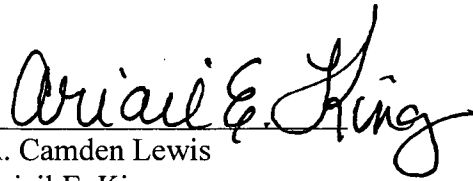
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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material, and this Record complies with the August 13, 2007 Order of the South Carolina Supreme Court which requires redaction of certain personal identifying information.

**RECEIVED**

JUN 12 2013

**SC Court of Appeals**



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June 6, 2013

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