

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Circuit Court Judge J. C. Nicholson, Jr.

RECEIVED

Case No. 2019-000332

SEP 27 2019

SC Court of Appeals

Alvar R. Rissanen, Michael H. Baxley,
Clifford W. Forner, and Willie L. Hood,

Respondents,

v.

City of North Charleston,

Appellant.

RECORD ON APPEAL

VOLUME II OF III
(Pp. 497 – 922)

Caroline Cleveland
Bob J. Conley
Emmanuel J. Ferguson
CLEVELAND & CONLEY, LLC
171 Church Street, Suite 310
Charleston, SC 29401
Telephone: (843)577-9626
Attorneys for Appellant

Nancy Bloodgood
Lucy Sanders
BLOODGOOD & SANDERS, LLC
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464
Telephone : (843) 972-0313
Attorneys for Respondents

INDEX

Volume I (pp. 1-496)

Official Record Pg.
Nos. – Bottom Center

I. ORDERS

1. Order filed February 9, 2018	1
2. Order filed November 13, 2018	17
3. Order filed February 5, 2019	36
4. Consent Order filed February 22, 2019	37

II. PLEADINGS

1. Complaint.....	41
2. Amended Complaint.....	53
3. Answer to Amended Complaint.....	65
4. Notice of Appeal	81

III. TRIAL AND HEARING TRANSCRIPTS

1. Trial – October 18 and 19, 2017	108
A. Opening Statements	113
By Plaintiff’s Counsel.....	114
By Defendant’s Counsel	122
B. Testimony & Motions.....	154
Testimony of Alvar R. Rissanen.....	155
Direct Examination.....	155
Cross-Examination.....	199

Redirect Examination.....	229
Testimony of Michael H. Baxley	236
Direct Examination	236
Cross-Examination.....	251
Redirect Examination.....	271
Testimony of Clifford W. Forner.....	274
Direct Examination	274
Cross-Examination.....	280
Testimony of Willie L. Hood.....	290
Direct Examination.....	290
Cross-Examination	298
Redirect Examination	306
Testimony of Warren Newton.....	307
Direct Examination.....	307
Cross-Examination	320
Redirect Examination	328
Testimony of R. Keith Summey	330
Direct Examination	330
Cross-Examination	358
Redirect Examination	372
Directed Verdict Motion	387
Trial Court's Ruling	388
C. Closing Arguments	388

By Nancy Bloodgood, Counsel for Plaintiffs	388
By Bob J. Conley, Counsel for Defendant.....	389
Reply by Nancy Bloodgood, Counsel for Plaintiffs	396
D. Verdict & Post-Verdict Motions.....	399
Appellant's Post-Trial Brief filed November 1, 2017	399
Respondents' Supplement Post-Trial Brief filed	
November 1, 2017	414
Respondents' Affidavit in Support of Attorney Fees filed	
February 20, 2018.....	419
Appellant's Objections to Respondents' Affidavit in Support	
of Attorneys' Fees filed March 2, 2018.....	430
Appellant's Motion to Alter or Amend dated February 23,	
2018	436
Respondents' Response to Appellant's Motion to Alter	
or Amend filed March 16, 2018.....	445
Respondents' Supplemental Memorandum filed March 28,	
2018.....	452
E. Exhibits	457
Plaintiff's Exhibit 1 (5/13/98 Letter from Mayor	
Summey)	457
Introduced into Evidence	47
Related Testimony	163

Plaintiff's Exhibit 2 (5/4/09 Letter from Mayor	
Summey)	458
Introduced into Evidence.....	47
Related Testimony.....	173
Plaintiff's Exhibit 3 (6/23/11 Email from Astle to	
Rissanen).....	459
Introduced into Evidence.....	47
Related Testimony.....	186
Plaintiff's Exhibit 4 (5/11/12 Letter from Ruth to	
Rissanen).....	464
Introduced into Evidence.....	47
Related Testimony.....	190
Plaintiff's Exhibit 5 (Rissanen Retirement Forms).....	465
Introduced into Evidence	47
Related Testimony	192
Plaintiff's Exhibit 6 (Baxley Annual Retirement Forms	475
Introduced into Evidence	47
Related Testimony	248
Plaintiff's Exhibit 7 (Forner Annual Retirement Forms)	475
Introduced into Evidence	47
Related Testimony	279
Plaintiff's Exhibit 8 (12/3/10 Letter from Ruth to	
Hood)	479

Introduced into Evidence	47
Related Testimony	295
Plaintiff's Exhibit 9 (City of N. Chas. Retiree Benefit Plan)	480
Introduced into Evidence	47
Related Testimony	313
Plaintiff's Exhibit 10 (5/8/98 Memo from Summey to Council)	481
Introduced into Evidence	47
Related Testimony	373
Defendant's Exhibit 1 (Hood Annual Retirement Form)	483
Introduced into Evidence	47
Related Testimony	306
Defendant's Exhibit 2 (1998 Workshop Minutes)	485
Introduced into Evidence	47
Related Testimony	326
Defendant's Exhibit 3 (1984 Ordinance)	495
Introduced into Evidence	47
Related Testimony	200
Volume II (pp. 497-922)	
Defendant's Exhibit 4 (1986 Ordinance)	497
Introduced into Evidence	47
Related Testimony	NA
Defendant's Exhibit 5 (2004 Personnel Policies)	520

Introduced into Evidence	47
Related Testimony	220
Defendant's Exhibit 6 (Current Code)	549
Introduced into Evidence	47
Related Testimony	NA
Defendant's Exhibit 7 (May 2009 Minutes/Workshop) .	557
Introduced into Evidence	47
Related Testimony	325
Defendant's Exhibit 8 (June 2009 Minutes)	566
Introduced into Evidence	47
Related Testimony	325
Defendant's Exhibit 9 (Funding)	571
Introduced into Evidence	47
Related Testimony	320
Defendant's Exhibit 10 (2009 Letter to Employees)	585
Introduced into Evidence	47
Related Testimony	325
Defendant's Exhibit 11 (Baxley Retirement)	586
Introduced into Evidence	47
Related Testimony	270
Defendant's Exhibit 12 (Rissanen Retirement)	587
Introduced into Evidence	47
Related Testimony	NA

Defendant's Exhibit 13 (Hood June 2010 Letter).....	588
Introduced into Evidence	47
Related Testimony	305
Defendant's Exhibit 14 (Forner Letter)	589
Introduced into Evidence	47
Related Testimony	289
Defendant's Exhibit 15 (Forner Retirement)	590
Introduced into Evidence	47
Related Testimony	NA
Court Exhibit 1 (Baxley Deposition 1/4/16).....	591
Related Testimony	258
Court Exhibit 2 (Rissanen Deposition 1/5/16).....	691
Related Testimony.....	216
F. Post-Verdict Hearing	759
Hearing Transcript of March 28, 2018	759
2. Re-Opened Trial - November 8, 2018	797
A. Testimony & Motions	800
Testimony of Tyler Gibbons.....	804
Direct Examination	804
Cross-Examination.....	807
Testimony of Roy Strickland.....	820
Direct Examination	821
Cross-Examination.....	839

B. Verdict & Post-Verdict Motions	843
Respondents' Amended Affidavit in Support of Attorney Fees filed November 8, 2018	843
Appellant's Motion to Alter or Amend filed November 26, 2018	889
Respondents' Response to Appellant's Motion to Reconsider filed January 4, 2018	903
C. Exhibits	915
Plaintiff's Exhibit 11 (Gibbons Report/Calculations)	915
Introduced into Evidence	818
Related Testimony	805
Plaintiff's Exhibit 12 (Gibbons Resume/CV)	920
Introduced into Evidence	818
Related Testimony	805
 Volume III (pp. 923-1041)	
Defendants' Exhibit 16 (Strickland Report/Calculations)	923
Introduced into Evidence	821
Related Testimony	821
Defendant's Exhibit 17 (Strickland Resume/CV)	1032
Introduced into Evidence	819
Related Testimony	838
 IV. CERTIFICATE OF COUNSEL	 1041

AN ORDINANCE
NO. 1986-29

Adopting and Enacting a New Code of Ordinances of the City of North Charleston, South Carolina; Establishing the Same; Providing for the Repeal of Certain Ordinances Not Included Therein; Providing a Penalty for the Violation Thereof; Providing for the Manner of Amending Such Code; and Providing When Such Code and This Ordinance Shall Become Effective.

Be It Ordained By the Mayor and City Council of the City of North Charleston, in Council Assembled:

Section 1. The Code of Ordinances, consisting of Chapters 1 to 19 each inclusive and including such Code as originally presented to City Council, a Revision thereof dated April 1985, Supplement No. 1, including Ordinances through Ordinance No. 1985-23 enacted April 11, 1985, Supplement No. 2, including Ordinances through Ordinance No. 1985-76, enacted November 21, 1985, together with all ordinances enacted subsequent thereto and to be incorporated into the Code through subsequent supplements pursuant to Section 1-8 of said Code, is hereby adopted and enacted as the "Code of Ordinances, City of North Charleston, South Carolina," and shall be treated and considered as a new and original comprehensive ordinance which shall supersede all general and permanent ordinances of the city passed on or before the date of adoption hereof, to the extent provided in section 2 hereof.

Section 2. All provisions of the Code shall be in full force and effect from and after the date of adoption hereof, and all ordinances of a general and permanent nature enacted on final passage on or before the date of adoption hereof and not included in the Code or recognized and continued in force by reference therein are hereby repealed from and after the effective date of the Code, except as provided in section 1-13 of such Code. No resolution of the city, not specifically mentioned is hereby repealed.

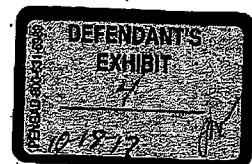
Section 3. Whenever in such Code an act is prohibited, or is made or declared to be unlawful or an offense or a misdemeanor by the Council, or whenever in such Code the doing of any act is required or the failure to do any act is declared to be unlawful by the City Council, and no specific penalty is provided therefor, the violation of any such provision of such Code shall be punished by a fine of not more than two hundred dollars (\$200.00), or imprisonment for a term not exceeding thirty (30) days, as provided in section 1-10 of such Code.

Section 4. Any and all additions and amendments to the Code, when passed in the form as to indicate the intention of the governing body to make the same a part of the Code, shall be deemed to be incorporated in the Code, so that reference to the Code shall be understood and intended to include the additions and amendments.

Section 5. In case of the amendment of any section of the code for which a penalty is not provided, the general penalty as provided in section 1-10 of such Code shall apply to the section as amended, or in case the amendment contains provisions for which a penalty, other than the aforementioned general penalty, is provided in another section in the same chapter, the penalty so provided in the other section shall be held to relate to the section so amended, unless the penalty is specifically repealed therein.

Supp. No. 3

vii



Section 6. A copy of such Code shall be kept on file in the office of the Municipal Clerk, preserved in looseleaf form, or in such other form as the Municipal Clerk may consider expedient. It shall be the express duty of the Municipal Clerk, or someone authorized by him, to insert in their designated places all amendments, ordinances or resolutions which indicate the intention of the City Council to make the same a part of such Code when the same have been printed or reprinted in page form, and to extract from such Code all provisions which may be repealed from time to time by the city council. This copy of such Code shall be available for all persons desiring to examine same.

Section 7. It shall be unlawful for any person to change or alter by additions or deletions, any part or portion of such Code, or to insert or delete pages or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the City of North Charleston to be misrepresented thereby. Any person violating this section shall be punished as provided in section 1-10 of the Code of the City of North Charleston, South Carolina, and in section 3 of this ordinance.

Section 8. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Ratified in City Council this 10th day
of July, in the Year of Our Lord, 1986,
and in the 210th year of the Independence
of the United States of America.

/s/ John E. Bourne, Jr.
Mayor

Attest:

/s/ Cynthia E. Stewart
Municipal Clerk

Approved as to content and form:

/s/ James E. Gonzales
Legal Counsel

TABLE OF CONTENTS

	Page
Officials of City	iii
Preface	v
Adopting Ordinance	vii
Checklist of Up-to-Date Pages	[1]

CODE OF ORDINANCES

Chapter	
1. General Provisions	1
2. Administration	57
Art. I. In General	57
Art. II. City Council	58
Div. 1. Generally	58
Div. 2. Meetings and Procedures	60
Div. 3. Committees	64.2
Art. III. Officers and Employees	67
Div. 1. Generally	67
Div. 2. Mayor	67
Div. 3. Clerk	68
Div. 4. Finance Director	69
Div. 5. Legal Counsel	71
Div. 6. Public Works Director	72
Div. 7. Personnel	73
Div. 8. Safety and Health Program	75
Div. 9. Director of Code Enforcement	79
Art. IV. Citizens Advisory Council	80
Art. V. Accommodations Tax Advisory Committee	84
Art. VI. Vehicle and Heavy Equipment Utilization and Assignment Policy	85
3. Alcoholic Beverages	135
4. Animals and Fowl	185
Art. I. In General	185
Art. II. Bird Sanctuary	192
5. Buildings and Building Regulations	235
Art. I. In General	239
Art. II. Administration and Enforcement	239
Div. 1. Generally	239
Art. III. Standard Codes and State/Local Adaptations	241
Art. IV. Board of Adjustments and Appeals	247
Art. V. Flood	248
Div. 1. In General	248
Div. 2. Development Permits	262

NORTH CHARLESTON CODE

Chapter	Page
Div. 3. Provisions for Flood Hazard Reduction	264
Div. 4. Nuisances	271
Div. 5. Legal Status Provisions	272
App. A. Permit Fees	274
6. Civil Defense	321
Art. I. In General	321
Art. II. Civil Emergencies	321
7. Elections	373
8. Fire Prevention and Protection	425
Art. I. In General	425
Art. II. Fire Prevention Code	428
9. Health and Sanitation	469
Art. I. In General	469
Art. II. Health Officer	469
Art. III. Garbage, Trash and Refuse	470
Art. IV. Nuisances	480
Div. 1. Generally	480
Div. 1.1. Specific Uses	482
Div. 2. Enforcement	482.1
Art. V. Rat Control in Business Buildings	483
Art. VI. Escorts, Escort Bureaus, and Introductory Services	487
10. Housing	539
Art. I. In General	539
Art. II. Procedure, Powers and Duties of Public Safety and Housing Officer	542
Art. III. Standards for Dwellings or Dwelling Units Fit for Human Habitation	546
Div. 1. Generally	546
Div. 2. Multiple Dwellings	546.1
Art. IV. Redevelopment Commission	547
10.5. Licenses, Permits and Miscellaneous Business Regulations	559
Art. I. In General	565
Art. II. Business Licenses	565
Art. III. Telecommunications and Cable Code	621
Art. IV. Municipal Accommodations Fee	652.54
Art. V. Public Rights-of-Way Consent Fee	652.56
Div. 1. Generally	652.56
Art. VI. Taxicabs	652.57
Div. 1. Generally	652.57
Div. 2. Inspector	652.58
Div. 3. Taxicab Driver's Permit	652.59
Div. 4. Operating Conditions	652.62
Div. 5. Condition and Equipment	652.67
Art. VII. Restoration of Vehicles	652.70

TABLE OF CONTENTS—Cont'd.

Chapter	Page
Art. VIII. Gambling Cruises	652.72
11. Motor Vehicles and Traffic	653
Art. I. In General	654
Art. II. Stopping, Standing and Parking	654.1
Div. 1. Generally	654.1
Div. 2. Enforcement	659
Art. III. Processing Fee for Police Generated Tows	660
12. Municipal Court	709
13. Offenses and Miscellaneous Provisions	759
Art. I. In General	759
Art. II. Offenses Against Morals	760
Art. III. Offenses Against the Peace	763
Art. IV. Offenses Against the Person	766.2
Art. V. Offenses Against Property	766.3
Art. VI. Alarm Systems	768
Art. VII. Drug Paraphernalia	770
Art. VIII. Gambling	772
Art. IX. Noises	772
Art. X. Weapons	774
14. Parks and Recreation	825
Art. I. In General	825
Art. II. Recreation Board	825
15. Planning	877
Art. I. In General	877
Art. II. Planning Commission	877
16. Police	929
Art. I. In General	929
Art. II. Department	930
17. Streets, Sidewalks and Public Places	979
Art. I. In General	982
Art. II. Numbering of Buildings	982
Art. III. Parades, Demonstrations, Picketing and Solicitations	984
Art. IV. Road Code	988
Div. 1. Generally	988
Div. 2. Requirements for Street Plans and Profiles	988
Div. 3. Street Design and Construction Requirements	990
Div. 4. Design and Construction Requirements for Concrete Curb, Curb and Gutter, Sidewalks and Drainage Improvements	994
Div. 5. Design and Construction Requirements for Utility Lines, Street Name Signs and Sidewalks	998
Div. 6. Excavation and Construction	1000

applicant for such an ordinance shall publish a notice in three (3) issues of a newspaper having general circulation in the city stating the nature of the franchise, license or right sought or a description of the street sought to be closed, and the date on which the application is to be presented to the city council which shall be at least one week after the last notice. This requirement shall not apply to the closing of a public street initiated by the city council. (Ord. No. 1993-10, 4-8-93)

Sec. 2-48. Same--Introduction.

An ordinance may be proposed by any member of the council. A proposed ordinance shall be referred to the legal counsel for approval as to form. The legal counsel shall render assistance in the preparation of notices and ordinances. After an ordinance is in proper form and required notices have been given, the legal counsel shall send the ordinance to the municipal clerk to be held for public inspection. An ordinance shall be deemed to be introduced when it appears on an agenda for a public meeting of council and its title is read.

Sec. 2-49. Same--Form.

(a) Every proposed ordinance shall be introduced in writing and in the form required for final adoption which shall include:

- (1) A title describing the content;
- (2) Findings, reasons or basis for the ordinance, if desired and appropriate;
- (3) An enacting clause;
- (4) Citation of any ordinance repealed;
- (5) The provisions of the ordinance including section numbers if the ordinance is to be codified or amends an existing codified ordinance;
- (6) The effective date of the ordinance;
- (7) The approval of the legal counsel as to form and the assignment of an ordinance number; and
- (8) Space for the signatures of the mayor or presiding member of council and the municipal clerk attesting notice, if required, and adoption.

(b) Written resolutions shall be in such similar form as deemed appropriate by the legal counsel.

State law reference--Form and procedure for adoption, S.C. Code 1976, § 5-7-276.

Sec. 2-50. Same--Enactment.

(a) An ordinance to levy a tax, adopt a budget, appropriate funds, grant a franchise, license or right to use or occupy public street or public property for commercial purposes shall be complete in the form in which it is finally passed, and in such form remain on file with the municipal clerk for public inspection at least one week before final adoption.

(b) No ordinance shall be adopted until it shall have been read two (2) times and on two (2) separate days with at least six (6) days between each reading.

(c) Emergency ordinances may be adopted on one reading without notice or hearing by affirmative vote of two-thirds of the members of council present. An emergency ordinance may not levy taxes, relate to a franchise or a service rate and shall expire automatically on the sixty-first day following enactment.

(d) The introduction and reading of any ordinance shall be by the reading of the title only unless full reading is requested by a member of the council.

(e) Upon final adoption by vote of the council, an ordinance shall be signed by the mayor or presiding member and attested by the municipal clerk, who shall file the original in the book of ordinances.

Sec. 2-51. Introduction or resolutions.

A voice motion of a member of council shall be considered to be the introduction of an oral resolution which shall require no written record other than a notation of the municipal clerk in the council minutes. A resolution proposed in writing shall be introduced in the same manner as an ordinance.

Sec. 2-52. Adoption of resolutions.

Written or oral resolutions may be adopted on one reading unless a public hearing is set by a majority of the members of council present.

Sec. 2-53. Procedure for zoning with annexation.

(a) A person or persons who wish to petition for annexation of property to the City of North Charleston may request that city council consider a particular zoning for the subject property at the same time as considering the annexation of the property. Such a request shall be made in writing in the petition requesting annexation.

(b) A request for annexation with a particular zoning under the provisions of section 2-53(a) may only be brought before council by a single ordinance which provides for both the annexation and the zoning of the subject property in accordance with the request of the petitioner.

(c) In the event that council amends such ordinance to provide a zoning of the subject property which varies from the zoning requested by the petitioner, the following provisions shall apply:

(1) The petitioner may consent to said amendment in writing or verbally before the council or one of its committees, or before the planning commission. Such consent may also be given in writing placed in the hands of the office of the clerk of city council.

In such cases, the fact of petitioner's consent shall be noted in the minutes of the appropriate meeting of council, its committee, or the planning commission and the notification provided for in section 2-53(c)(2) shall not be required.

- (2) If the petitioner has not consented in accordance with the provisions of section 2-53(c)(1), the clerk of city council shall notify the petitioner of such amendment by certified mail at the address indicated on the annexation petition. The petitioner may withdraw the petition for annexation by placing in the hands of the office of the clerk of city council a signed written request to withdraw said petition within ten (10) calendar days from the date of mailing of the notice.
- (3) Council shall not give final reading to said ordinance until the petitioner has indicated his consent in accordance with the provisions of section 2-53(c)(1) or has failed to withdraw his petition for annexation within the ten-day period allowed in accordance with the provisions of section 2-53(c)(2).

(d) In cases where more than one person appears as petitioner for a particular annexation, the consent of the petitioner provided for in section 2-53(c)(1) shall mean the consent of a sufficient number of persons whose signatures would render the annexation petition in question valid without the signatures of any other persons.

(e) In cases where more than one person appears as petitioner for a particular annexation, the request for withdrawal of the petition for annexation provided for in section 2-53(c)(1) shall mean such a request by a sufficient number of persons without whose signatures the annexation petition in question would be rendered invalid.

(Ord. No. 1990-19, 4-12-90)

Cross reference—Zoning regulations, App. A.

Sec. 2-54. Appointments by mayor and council.

(a) In all cases of an appointment to a board or commission which is required or authorized to be made by city council, or by the mayor upon the recommendation or approval of city council, the mayor shall recommend such persons as he shall deem appropriate for the position to city council with the recommendation to be forwarded to the members of council at least one week prior to the meeting at which the question of the appointment is to be taken up. The provisions of this subsection may be waived by majority vote of a quorum of council present at any meeting.

(b) In all cases in which an appointment to a board or commission is made by the mayor without approval of city council, he should advise the members of council of his recommendation and intentions regarding the appointment at least one week prior to the anticipated date of appointment and seek their advice and concurrence in the appointment.

(Ord. No. 1994-19, 7-14-94)

Secs. 2-55—2-60. Reserved.

DIVISION 3. COMMITTEES

Sec. 2-61. Establishment, appointment and term of standing committees.

Except as may otherwise be provided in this division, the mayor shall at the first regularly scheduled council meeting in July of each and every year establish and/or continue standing committees, assign their responsibilities, determine size and appoint their membership for the ensuing twelve (12) months as the mayor may determine to be necessary to equitably distribute the workload, make use of the individual talents of members of council, broaden their legislative experience by rotating members among committees to more effectively carry out

the business of council and the public; provided, however, that such committees and membership, once established and appointed for such year, shall stand without alteration for the ensuing twelve (12) months.

(Ord. No. 1991-29, 7-18-91; Ord. No. 1992-29, 7-23-92)

Sec. 2-62. Appointment of special committees.

All special committees and their chairmen shall be appointed by the mayor unless a ballot is called for. The mayor shall be a voting member of all special committees unless otherwise specifically provided.

(Ord. No. 1991-29, 7-18-92)

Sec. 2-63. Duty of councilmen as committee members.

(a) It shall be the duty of the councilmen to serve on the various committees to which they are appointed.

(b) It shall be the duty of each member of a committee to attend all meetings of the committee of which he is a member.

Sec. 2-64. Reference to standing committees.

Matters to be referred to the several standing committees are such as appertain or relate to the subjects designated in the names of the committees. Whenever matters are brought before the city council, by petition or otherwise, connected with or relating to such subjects exclusively, the matters shall be referred as a matter of course to the standing committees having charge of such subjects upon the request of any two (2) members of city council.

(Ord. No. 1991-29, 7-18-91)

Sec. 2-65. Reference when matter concerns more than one standing committee.

Whenever any matter shall come before the city council, by petition or otherwise, which shall be connected with or related to two (2) or more of the subjects with which the standing committees are especially charged, the council shall determine whether such matter shall be referred to a special committee or to a joint committee to be composed of two (2) or more of the standing committees concerned therewith or to one of the standing committees and, in the latter case, to which one the reference is to be made.

Sec. 2-66. Investigations and reports by committees.

It shall be the duty of each committee to examine carefully and to report upon all petitions and other matters referred to it by the city council. It shall be the duty of each member of a committee to lend his aid and assistance to the proper investigation into, and report upon, all matters referred to the committee.

Sec. 2-67. Examination of ordinances by standing committees; suggestions for revision.

It shall be the duty of each of the standing committees and the members thereof to examine carefully the ordinances of the city appertaining to the subject with which such committee is especially charged and to endeavor to ascertain, from time to time, whether the ordinances appertaining are sufficient and satisfactory, and to suggest to the council from time to time such changes in the ordinances as they may deem proper.

Sec. 2-68. Reports of ordinance violations and other matters of interest to the council.

Each standing committee shall report from time to time to the city council such violations of ordinances as they may ascertain, or any other matter connected with their particular subjects which may seem to them to be to the best interest of the city.

Sec. 2-69. Special committees.

The council may appoint a special committee to assist in or hold a public hearing for the council at any time upon any matter pending before it. Minutes or reports of hearings held by special committees shall be filed with the municipal clerk as public records.

Sec. 2-70. Certification of committee assignment and responsibilities.

The mayor shall, in establishing and appointing such committees at the first regularly scheduled council meeting in July of each year, memorialize such appointments and the scope of the committee assignments by filing the mayor's certificate with the clerk of council.
(Ord. No. 1991-29, 7-18-91; Ord. No. 1992-29, 7-23-92)

Sec. 2-71. Committee meeting times.

Council committee meetings shall begin only after 5:00 p.m. of the day of which such meeting is scheduled unless a majority of the whole committee consents.
(Ord. No. 1991-29, 7-18-91; Ord. No. 1991-31, 7-25-91; Ord. No. 1992-29, 7-23-92)

Secs. 2-72-2-76. Reserved.

Editor's note—Ord. No. 1992-29, adopted July 23, 1992, amended the Code by deleting provisions contained in §§ 2-72-2-76. Said provisions pertained to the committee on parks, recreation and community relations; the committee on public safety; the committee on capital improvements, economic development and redevelopment; the committee on public health, codes and water resources and derived from Ord. No. 1991-29, adopted July 18, 1991; Ord. No. 1991-31, adopted July 25, 1991.

Secs. 2-77-2-85. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES

DIVISION 1. GENERALLY

Sec. 2-86. Who may draw on city funds.

Any city funds deposited shall be subject to the joint order of the mayor and the finance director; provided that, in the absence or disability of the mayor or finance director, the mayor pro tem or chairman of the finance committee shall have the authority to act for either.

Secs. 2-87—2-95. Reserved.

DIVISION 2. MAYOR

Sec. 2-96. Chief executive officer of city; powers and duties generally.

The mayor shall be the chief executive officer of the city. As such, he shall have the powers and perform the duties prescribed for him by statute, this Code and other ordinances, and he shall be vigilant and active at all times in causing the ordinances and laws for the government of the city to be duly executed and put in force.

Sec. 2-97. Office hours.

The office of mayor shall be a full-time position. It shall be the duty of the mayor to be in his office and/or available to the public during regular business hours everyday, Saturdays, Sundays and holidays expected, so that any person having business with him officially may be assured of seeing him; in the event the mayor's official duties cause his absence over extended periods of time then the mayor pro tem shall avail himself to the public during such periods.

Sec. 2-98. Specific powers and duties.

It shall be the duty of the mayor, among his other duties, to:

- (a) Appoint, suspend and remove city employees and appointive administrative officers.
- (b) Direct and supervise all municipal agencies.
 - (1) Give such directions to subordinate officers of the city as may be necessary to carry the ordinances and the police laws and regulations into effect.
 - (2) Direct an annual audit to be made of the books of the municipal clerk, finance director and other officers of the city having custody or control of any funds or securities of the city.
 - (3) Call upon officers, boards, commissions and agencies of the city, from time to time, as he may deem necessary, to furnish him in writing with any information connected with any of their respective offices.

- (c) Prepare and submit the annual operating budget and capital program to the council for its consideration and approval.
- (d) Submit or cause the submission of all necessary reports on the operation of municipal agencies and the finances thereof.
- (e) Communicate to the city council from time to time such information and recommend to the council such measures as may tend to the improvement of the finances, the police, the health, security, cleanliness, ornament and general welfare of the city.
- (f) Compile, organize and prepare all data necessary and to submit reports, information, certifications and receipts to the Department of the Treasury of the United States of America to effect compliance with all federal statutes, guidelines and regulations governing the receipt, retention and expenditure of federal revenue sharing funds accruing to, or received by, the city pursuant to the state and local Fiscal Assistance Act of 1972, the mayor, being expressly allowed and required to submit in behalf of the city council, upon his sole signature, such reports, information, certifications and receipts. The city council further adopts, confirms and ratifies the prior submissions of the mayor to the Department of the Treasury made pursuant to the state and local Fiscal Assistance Act of 1972, and his acts and doings in effecting compliance.
- (g) Negotiate and make settlement of all legal claims upon the recommendation of the legal counsel for the city; provided, however, that, as to claims made against the city, such authority shall extend only to claims of two thousand five hundred dollars (\$2,500.00) or less.

(Ord. No. 1995-53, 10-24-95)

Sec. 2-99. Salary.

The annual salary of Mayor of the City of North Charleston shall be one hundred forty-eight thousand nine hundred five dollars (\$148,905.00) at the commencement of the new term of office beginning in the January following the general election in 2011.

(Ord. No. 1997-29, 5-8-97; Ord. No. 2002-083(a), 11-14-02; Ord. No. 2005-8, 2-10-05; Ord. No. 2010-078, 11-9-2010)

Secs. 2-100—2-110. Reserved.

DIVISION 3. CLERK*

Sec. 2-111. Election and term of office.

At the first July meeting of the city council there shall be elected by the council an officer to be known as the municipal clerk, who shall hold office for a term of one year or until his successor is duly elected and qualified, unless removed from office by the council for sufficient cause.

*State law reference—Appointment, duties, S.C. Code 1976, § 5-7-220.

Sec. 2-112. Bond.

Before entering upon the duties of his office, the municipal clerk shall enter into a bond in such sum as may be required and in such surety company as shall be approved by the mayor and the council committee on finance for the faithful performance of his duties.

Sec. 2-113. Management of records.

(a) The municipal clerk shall be the clerk and secretary of the city council and shall perform all duties relating to those positions. The municipal clerk shall be the custodian of all documents, books, records and papers of the city government for which there is no other custodian and, under the supervision of the mayor, his office shall perform the functions of a central secretariat for the city government.

(b) The municipal clerk shall be responsible for the establishment and maintenance of a citywide records and forms management program to maintain, protect, retain or dispose of city records in accordance with government regulations, legal requirements and city historical and reference needs. Duties and responsibilities include but are not limited to the creation of city records, filing and housing of active records, preparation and issuance of approved records retention schedules, establishment and operation of centralized records storage facility, establishment of forms, report and correspondence management program, management of centralized microfilming and the establishment of appropriate procedures and practices to carry out these functions.

(c) No new forms may be generated and no records may be destroyed without the prior approval of the municipal clerk.
(Ord. No. 1988-26, 3-10-88)

Sec. 2-114. Custodian of city seal.

The municipal clerk shall have custody of the city seal, which shall be carefully preserved and kept by him at all times in his office.

Sec. 2-115. Issuance of licenses, permits and badges.

Except as may be provided otherwise by statute, this Code or other ordinance, the municipal clerk shall issue all city licenses, badges and permits for which provision may be made.

Sec. 2-116. Miscellaneous duties.

The municipal clerk shall perform such other duties as may be annexed to his office or that he may be required by the city council to perform.

Sec. 2-117. Tort claims.

The municipal clerk is designated to receive the filing of claims submitted pursuant to the South Carolina Tort Claims Act.
(Ord. No. 1987-6, 2-26-87)

Secs. 2-118-2-130. Reserved.

DIVISION 4. FINANCE DIRECTOR*

Sec. 2-131. Appointment and term of office.

The mayor shall appoint an officer to be known as the finance director who shall hold office for a term to be designated by the mayor, unless removed from office by the mayor.

*Cross reference—Administration and enforcement of taxation chapter, § 19-21.

Sec. 2-132. Collections and receipt of city money.

Except as may be provided otherwise by statute, this Code or other ordinance, the finance director shall collect all fees for city license and permits, and all claims and accounts that may be due and payable to the city and he shall receive all money belonging to the city.

Sec. 2-133. Opening city accounts and deposit of city money.

The finance director shall be authorized to open accounts on behalf of the city with financial institutions as required. This authority shall be exercised jointly with the mayor and shall require the signature of both the mayor and finance director to open an account.

The finance director shall deposit all funds of the city received by him when such funds amount to the sum of five hundred dollars (\$500.00) or more, in cash.
(Ord. No. 1988-69, 11-3-88)

Sec. 2-134. Investment of city funds.

(a) The investment authority provided for by section 6-5-10 of the Code of Laws of the State of South Carolina for 1976, as amended, is hereby delegated to the finance director and mayor to be exercised jointly with such officers being allowed to invest monies belong to the city in:

- (1) Obligations of the United States and agencies thereof;
- (2) General obligations of the state or any of its political units;
- (3) Savings and loan associations to the extent that the same are secured by the federal savings and loan insurance corporation;
- (4) Certificates of deposit where the certificates are collaterally secured by securities of the type described in (1) and (2) above, held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of the deposits so secured, including interest;

It being hereby further authorized that funds may be held in deposit accounts with banking institutions as otherwise authorized by law.

(b) Such investments as are made pursuant to the above authorization shall have maturities consistent with the time or times when the invested monies will be needed in cash.

(c) Such funds shall be invested in such a manner, consistent with the above authorization, as will result in the highest interest yield to the city, either by negotiation or bid, at the discretion of the mayor and finance director.

Sec. 2-135. Payment of bills.

The finance director shall pay such bills as have been funded by ordinance of the council, provided that he shall be satisfied that such bills conform to the appropriation.

Sec. 2-136. Keeping of accounts; monthly reports to city council.

The finance director shall transmit to the mayor and council, at least monthly, statements of cash on hand and of classified unencumbered appropriation balances for the city as a whole, and such other finance statements as the mayor and city council may from time to time require. The finance director shall keep all the departments, boards, commissions, or institutions currently informed of their classified unencumbered appropriation balances.

Sec. 2-137. Publication of quarterly statements.

The finance director shall make and publish in accordance with the requirements of state law the quarterly statements of the financial condition of the city.

State law reference—Required financial statements, S.C. Code 1976, § 5-21-50.

Sec. 2-138. Miscellaneous duties.

The finance director shall perform such other duties as may be annexed to his office or that he may be required by the city council to perform.

Secs. 2-139—2-150. Reserved.

DIVISION 5. LEGAL COUNSEL*

Sec. 2-151. Appointment, duties, compensation, terms and designation of chief legal counsel.

(a) City council shall appoint or contract with an attorney or attorneys at law, or a law firm, to represent the city as legal counsel. It shall be the responsibility of legal counsel to advise city officials and employees, to represent the city in law suits filed against the city and to do such other work for the city as may be required from time to time. The compensation and other terms of representation shall be determined by the city council. From the legal counsel hired, appointed or contracted as provided in this section, council shall designate an attorney or law firm who shall be chief legal counsel.

(b) Chief legal counsel shall have authority to retain, appoint or hire as an independent contractor such additional attorneys or co-counsel, as well as legal support personnel, as may be required to provide adequate and effective legal representation, subject to the limits of budgeted funds and any contrary direction of city council. Any such additional attorneys, co-counsel or legal support personnel shall perform their functions under the direction and management of the chief legal counsel.

***Editor's note**—Ordinance No. 1995-30, adopted August 10, 1995, repealed Ch. 2, Art. III, Div. 5, §§ 2-151—2-155 and added a new § 2-151 to read as herein set out. Former Div. 5 pertained to similar subject matter and derived from Ord. No. 1994-7, adopted April 14, 1994 and Ord. No. 1994-28, adopted September 22, 1994.

Cross references—Parks and recreation, Ch. 14; streets, sidewalks and public places, Ch. 17; subdivision regulations, Ch. 18; zoning regulations, App. A.

State law reference—Municipal attorney, S.C. Code 1976, § 5-7-230.

(c) The city may also be represented from time to time by attorneys provided by the city's insurance carriers. In such cases, legal counsel for the city may nevertheless monitor, participate in and follow the progress of such cases to insure overall coordination of the city's legal positions.

(Ord. No. 1995-80, 8-10-95)

Secs. 2-152—2-160. Reserved.

DIVISION 6. PUBLIC WORKS DIRECTOR*

Sec. 2-161. Appointment and term of office.

The mayor shall appoint an officer to be known as the public works director who shall hold office for a term to be designated by the mayor, unless removed from office by the mayor.

(Ord. No. 1987-83, 10-8-87)

Sec. 2-162. Powers and duties generally.

The public works director shall maintain on file in his office a copy of all plans and specifications for street and sidewalk construction and for the construction of all other public improvements, works and buildings, together with copies of all plans, plats, drawings, and diagrams which by law, this Code or other ordinances his inspection or approval is required. He shall maintain a record of street grades and bench marks within the city and such other records of an engineering or topographical nature as may be used by the city or any of its officers or employees in the discharge of their official duties. Except as may be provided otherwise by law, this Code or other ordinances, the public works director shall supervise all engineering, construction and surveying work done by or for the city and shall perform such other duties of a professional nature as may be required of him by the mayor or city council.

(Ord. No. 1987-83, 10-8-87)

Secs. 2-163—2-175. Reserved.

***Editor's note**—The user of this volume should note that Ord. No. 1989-19, adopted March 9, 1989, amended the Code by deleting the term "city engineer" and by inserting in lieu thereof, the term "public works director." As pages are pulled in the Supplement Service, beginning with Supplement No. 7, the above change in terminology will be effected.

DIVISION 7. PERSONNEL*

Sec. 2-176. Mayor to be responsible for establishing policies.

Mayor shall be responsible for establishing personnel policies through executive order and shall notify the city council of all changes to the personnel policies at least ten (10) days prior to such changes.

(Ord. No. 2004-011, 2-12-04)

Sec. 2-177. Personnel director.

(a) Under the direction of the mayor, the personnel director shall have the responsibility for the administration of the city personnel policies.

(b) Throughout this division, the term "personnel director" shall be used to refer to the city official delegated authority for personnel administration by the mayor.

(Ord. No. 2004-011, 2-12-04)

Sec. 2-178. Reserved.

Note—See the editor's note to div. 7 of this article.

Sec. 2-179. Delegation of responsibility by the mayor.

The mayor may delegate all or any part of any responsibility conferred upon him or her relating to hiring, complaints, discipline, discharge of employees or any other personnel issue to the personnel director or other designated city personnel.

(Ord. No. 2004-011, 2-12-04)

Secs. 2-180—2-189. Reserved.

Note—See the editor's note to div. 7 of this article.

Sec. 2-190. Nepotism.

(a) *Definition.* The term "immediate family," as used in this section, (close relatives) shall include wife, husband, mother, father, sister, brother, son, daughter, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather, grandson, granddaughter, step-mother, stepfather, stepson and stepdaughter.

(b) *Restrictions.* Two (2) or more members of an immediate family shall not be employed by the city if such employment will result in one supervising a member of his immediate family, or where one member occupies a position which has influence over another's employment, promotion, salary administration and other related management or personnel considerations. Employment of close relatives may be permitted in strictly emergency situations for temporary

*Editor's note—Ord. No. 2004-011, adopted Feb. 12, 2004 amended div. 7 Personnel to read as herein set out. Formerly, said division pertained to similar subject matter. See the Code Comparative Table for a detailed description of amendment.

periods of time, normally not to exceed thirty (30) calendar days, or for some longer period with the approval of the personnel director in cases where other qualified applicants are not available for an essential task.

(c) *Exceptions.* Exceptions to this section may be made only by the personnel director upon the advice of the mayor.

(d) *Effective date.* The policy set out in this section shall be applied on the effective date of its adoption and is not retroactive. Where close relatives were already employed on such date within the same department, efforts are to be made to comply with the policy through reassignments or other measures.

(Ord. No. 2004-011, 2-12-04)

Secs. 2-191—2-204. Reserved.

Note—See the editor's note to div. 7 of this article.

Sec. 2-205. Same—Special operation expense allowance.

Special expense allowance will be determined on an individual basis and shall be approved in advance by the mayor. Allowances will be considered in connections with the preparation of the annual budget.

(Ord. No. 2004-011, 2-12-04)

Sec. 2-206. Same—Use of city vehicles.

The use of city-owned vehicles or equipment for private business is strictly prohibited. Vehicles shall be used for official business only and shall be operated within the limits of the law at all times. Operators shall be held responsible for fines or damages resulting from their own negligence.

(Ord. No. 2004-011, 2-12-04)

Sec. 2-207. Other fringe benefits.

From time to time the personnel director may publish an employee's handbook explaining in detail additional fringe benefits, such as group insurance, hospitalization, credit union, etc. Information or clarification on employee benefits may be obtained from the personnel office any time during normal working hours.

(Ord. No. 2004-011, 2-12-04)

Sec. 2-208. Effect of conflict with other rules.

The rules and regulations set out in this division shall supplement and supersede all previous rules and regulations relating to the same subject. All conflicting rules and regulations are hereby repealed.

(Ord. No. 2004-011, 2-12-04)

Secs. 2-209—2-213. Reserved.

Note—See the editor's note to div. 7 of this article.

DIVISION 8. SAFETY AND HEALTH PROGRAM

Sec. 2-214. Policy of city council.

The employees of the city are our most important asset, and every effort will be made to protect them by providing a safe and healthy working place. This is a prime responsibility of each supervisor. In addition, each employee must carefully follow established standards promulgated under the Occupational Safety and Health Act of 1970. Doing so is not only a moral obligation but is inseparable from good management of our limited and most precious resource—The employees.

(Ord. No. 1995-4, § 2-23-95)

Sec. 2-214.1. Coordinator/director of safety and health matters.

The safety officer is designated as the focal point for all matters pertaining to employee safety and health. She will function in the role of coordinator and assist department heads in fulfilling their responsibilities for preventing accidents. She will continuously monitor the progress of this plan to control accidental losses and keep city council informed on both the progress being made and problems that develop.

(Ord. No. 1995-4, § 2-23-95)

Sec. 2-214.2. No loss of pay.

The time during which employees are participating in training and education activities shall be considered as hours worked for purposes of wages, benefits, and other terms and conditions of employment. The training and education shall be provided at no cost to the employees. Members at the safety committee shall be allowed reasonable time to exercise the rights of the committee without any loss of pay or benefits for time spent on duties of the committee.

(Ord. No. 1995-4, § 2-23-95)

Sec. 2-214.3. Self inspection/evaluation.

The safety officer, in cooperation with the safety committee, will ensure a thorough inspection is conducted within the workplace as often as necessary but at least once every three (3) months. Particular attention will be given to employee work habits in addition to identifying hazardous conditions. During this inspection, employees will be consulted and their concerns addressed. A written record of the inspection results and corrective actions taken will be maintained by the safety officer for review.

(Ord. No. 1995-4, § 2-23-95)

Sec. 2-214.4. Emergency situation and medical treatment.

Emergency telephone numbers (fire, rescue, etc.) will be conspicuously posted near every telephone unit. The responses to emergency situations which may affect all employees will be planned and coordinated by the safety officer and safety committee. Department heads will identify and plan courses of action for special emergencies which would be confined to their sphere of responsibility. Emergency procedures will be exercised as often as necessary to insure proficiency in coping with the emergency, but no less often than once a year. (Ord. No. 1995-4, § 2-23-95)

Sec. 2-214.5. Accident and illness investigation.

Personal injuries (other than first aid), property damage, accidents, "near misses" that could have resulted in personal injury, and all occupational illnesses will be promptly and thoroughly investigated to determine what happened, why it happened, and what should be done to prevent recurrence of similar mishaps or conditions. The responsible supervisor as well as the safety officer will insure that such an investigation is conducted and will obtain technical assistance from other sources, as needed. The safety officer and safety committee will review all such reports and recommend any further action necessary. (Ord. No. 1995-4, § 2-23-95)

Sec. 2-214.6. Other employers/employees on site.

The safety officer shall be responsible for ensuring that all outside employers who have employees on city property comply with our safety and health rules. Outside employers shall be required to review with the safety officer all planned work procedures and potential hazards before any work begins. The safety officer will in turn review this information with department heads and supervisors as necessary. Department heads and supervisors will inform and train affected employees. No outside employer will be allowed to perform work for the city if it cannot be done safely. The safety officer shall maintain supporting documentation of this activity. Realistic dates shall be established for correcting each hazard noted during an inspection. Correction of hazards will be tracked by the safety officer. Department heads and supervisors shall be responsible for ensuring correction of hazards in their work area. Serious hazards which present great danger to employees will be corrected on the spot, when possible, and a written report submitted to or by the safety officer. File copies of all inspections will be retained in the work place by the safety officer for two (2) years. (Ord. No. 1995-4, § 2-23-95)

Sec. 2-214.7. Safety and health training for employees and committee members.

Supervisors should be our most knowledgeable, skillful, and safety conscious employees. Supervisors are to always set a good example for subordinates and to constantly function as their trainer. During the initial orientation of current and new employees, the department head will ensure that the person is fully capable of coping with all potential emergencies and is aware of job related hazards. An employee is not to work without direct, immediate supervision until this is done. All employees will be provided a copy of the city's safety and

Executive Order #: 2004-1

**AN EXECUTIVE ORDER
ESTABLISHING PERSONNEL POLICIES FOR CITY EMPLOYEES**

WHEREAS, personnel policies are required for the effective management and compensation of employees in any successful organization; and

WHEREAS, the City's personnel policies were previously addressed by a series of ordinances; and

WHEREAS, Ordinance Number 2004-011, titled, An Ordinance Amending Sections 2-176, 2-177 and 2-179 of the Code of Ordinances for the City of North Charleston and Repealing Sections 2-178, 2-180, 2-181, 2-182, 2-183, 2-184, 2-185, 2-185.1, 2-185.2, 2-185.3, 2-186, 2-187, 2-188, 2-189, 2-192, 2-193, 2-194, 2-195, 2-196, 2-197, 2-198, 2-199, 2-200, 2-201, 2-202, 2-203, 2-204, 2-209, 2-211, 2-212, and 2-213 of the Code of Ordinances for the City of North Charleston; and

WHEREAS, South Carolina Code § 5-9-30 confers upon the Mayor of a City, in the mayor-council form of government under which the City of North Charleston is incorporated, of that law require a mayor the responsibilities and duties regarding personnel matters including but not limited to employee hiring, supervising, terminating and discipline.

THEREFORE, EFFECTIVE IMMEDIATELY, THE ATTACHED EXHIBIT TITLED "CITY OF NORTH CHARLESTON PERSONNEL POLICIES" IS HEREBY ADOPTED AS THE PERSONNEL POLICIES FOR ALL CITY EMPLOYEES AND MATTERS RELATED THERETO.

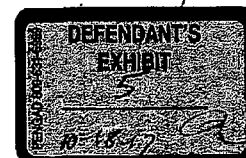
On this 12th day of February, in the Year of Our Lord, 2004, and in the 228th year of the Independence of the United States of America.

ATTEST:
APPROVED AS TO FORM:

R. KEITH SUMMEY
MAYOR

LEGAL COUNSEL

402238



**EXECUTIVE ORDER OF THE MAYOR:
CITY OF NORTH CHARLESTON PERSONNEL POLICIES**

The policies set out in this Executive Order shall supplement and supersede all policies relating to the same subject. All conflicting rules and regulations are hereby repealed.

IMPORTANT NOTICE

MANY OF THE POLICIES CONTAINED IN THIS EXECUTIVE ORDER ARE BASED ON LEGAL PROVISIONS, INTERPRETATIONS OF LAW, AND EMPLOYEE RELATIONS PRINCIPLES, ALL OF WHICH ARE SUBJECT TO CHANGE. FOR THIS REASON, THIS EXECUTIVE ORDER IS CONSIDERED TO BE A GUIDELINE AND IS SUBJECT TO CHANGE WITH LITTLE NOTICE. THE EXECUTIVE ORDER DOES NOT CONSTITUTE A CONTRACT OF EMPLOYMENT FOR ANY TERM.

NOTHING IN THIS EXECUTIVE ORDER SHALL BE CONSTRUED TO CONSTITUTE A CONTRACT. THE MAYOR HAS THE RIGHT, AT HIS DISCRETION, TO MODIFY THIS EXECUTIVE ORDER AT ANY TIME. NOTHING HEREIN LIMITS THE CITY'S RIGHTS TO TERMINATE EMPLOYMENT. ALL EMPLOYEES OF THE CITY ARE AT-WILL EMPLOYEES. NO ONE EXCEPT THE MAYOR HAS THE AUTHORITY TO WAIVE ANY OF THE PROVISIONS OF THIS EXECUTIVE ORDER, OR MAKE REPRESENTATIONS CONTRARY TO THE PROVISIONS OF THIS EXECUTIVE ORDER.

CITY OF NORTH CHARLESTON PERSONNEL POLICIES

A. Personnel Department.....	3
Section 1. Personnel director.....	3
Section 2. Interpretation.....	3
Section 3. Delegation of responsibility by the mayor.....	3
Section 4. Filling of vacancies.....	3
Section 5. Records and reports.....	5
B. Attendance, Leave, Work Schedule, Holidays and Fringe Benefits.....	5
Section 1. Attendance and work schedule.....	5
Section 2. Holidays.....	5
Section 3. Vacation policy.....	6
Section 4. Attendance records.....	7
Section 5. Sick leave policy.....	7
Section 5.1. Family and medical leave.....	9
Section 5.2. Leaves of absence for employees who do not qualify for the Family and Medical Leave Act.....	11
Section 5.3. Sick leave donation program.....	12
Section 6. Bereavement leave.....	13
Section 7. Educational leave.....	13
Section 8. Military leave.....	14
Section 9. Civil leave.....	14
Section 10. Fringe benefits.....	15
C. Resignation, Retirement and Termination.....	15
Section 1. Compulsory resignation.....	15
Section 2. Layoffs.....	15
Section 3. Demotion.....	16
Section 4. Death of Employee.....	16
Section 5. Surrender of city property and exit interview.....	16
Section 6. Retirement.....	16
D. Transportation and Travel.....	17
Section 1. Use of city vehicles.....	17
Section 2. Travel and subsistence.....	17
E. Drug and Alcohol Testing.....	18
Section 1. City drug and alcohol testing policy.....	18
F. Appeals.....	25
Section 1. Right of appeal.....	25
Section 2. Establishment, membership, and powers of board of appeals.....	26
Section 3. Findings and decisions of the board of appeals; review.....	26
G. Notice of at-will employment and disclaimer.....	27

A. Personnel Department

Section 1. Personnel director.

- (a) Under the direction of the mayor, the personnel director shall have the responsibility for the administration of the city personnel program.
- (b) The term "personnel director" shall be used to refer to the city official delegated authority for personnel administration by the mayor.

Section 2. Interpretation.

The personnel director shall be responsible for interpreting the various provisions of the city personnel program. Such interpretation shall be based upon the principles expressed in the statement of personnel policy set forth by the city council.

Section 3. Delegation of responsibility by the mayor.

The mayor, at his discretion, may delegate all or any part of any responsibility conferred upon him pursuant to the personnel policy set out in this division and ordinances of the city and the state law relating to hiring, complaints, discipline and discharge of employees to the personnel director or other designated city personnel.

Section 4. Filling of vacancies.

- (a) Equal employment opportunity. It shall be the policy of the city to fill each position in the city's classified service with the best qualified available applicant. Selections will be made on the basis of educational background, related work experience and other work related factors but without regard to race, color, religion, age, sex or national origin.
- (b) Recruitment. In order to insure efficiency and economy by eliminating duplication of effort in recruiting qualified applicants and to insure that all citizens of the city have an opportunity to learn of vacancies in city government service, it shall be the policy of the city that only the personnel director and the mayor shall be authorized to expend city funds for the advertisement of vacancies or for any other purpose related to the recruitment of applicants. All department heads shall notify the personnel director immediately upon learning that a vacancy will occur. The personnel director will then take those steps as may be necessary to attract qualified applicants. He/she will eliminate those applicants who do not meet the minimum training and experience requirements before forwarding the remaining applications to the appropriate department head for further consideration.
- (c) Examinations. As determined by the personnel director, the selection process may include one or more of all of the following: oral interviews, evaluations or experience and training, reference checks, written examinations, performance tests or unassembled examinations. Physical examinations shall be required for such classes of positions as may be determined necessary by the mayor, personnel director and the department or office head.
- (d) Promotions, transfers and vacancies. It is the policy of the city to employ and promote those qualified persons who reside in the City of North Charleston. In furtherance of said policy and to also provide upward mobility for employees already in city service, it is the policy of the

city to consider persons currently employed by the city or are city residents for all vacancies before applications from the general nonresident public are considered. The personnel director will post a notice on the bulletin board for each vacancy which occurs stating the position, the minimum training and experience requirements, the salary range, and how and when to apply. First consideration will be given to those persons in the unit or department where the vacancy occurs for whom the vacant position would represent a promotion. If none of these persons are selected to fill the vacancy, all other city employees requesting consideration shall be considered. If no city employee is selected to fill a vacancy, next consideration shall be given to applicants who are residents of the city. Finally, any other applicants may be considered, but the mayor may upon his determination that it is in the best interest of and to the good of the city deny employment to nonresident applicants. An employee who at the time of his initial hiring resides within the city shall not during his continuing employment move his residence without the city unless he shall first obtain the written approval of the mayor. Notwithstanding the above, those persons who on September 22, 1987, were employed by the city and resided without the city and at the time of their initial employment did not sign an agreement to move within the city, their employment with the city shall continue without condition they move into the city, but if an employee in such status has relocated or in the future shall relocate to the city the above personnel policy shall otherwise fully apply in all respects.

(e) Final selection of new employees. The final selection of the person to fill each vacancy shall be made (subject to provisions of Part A-Section 3), by the appropriate department head with the advice and consent of the personnel director. Utilizing reporting forms designated by the personnel director, the department head shall indicate his appraisal of each applicant referred to him/her and state the reasons for appointment or rejection.

(f) Probationary period. All new employees shall serve a probationary period as follows: sworn police officers and fire suppression personnel twelve (12) months, all other employees six (6) months. During this period, the new employee's performance will be evaluated; if it is determined that the new employee's performance is not coming up to expected levels, he/she may be terminated at any time during the probationary period. If requested by the department head and approved by the personnel director, the probationary period may be extended for up to ninety (90) days. If, at the end of the probationary period, the employee has earned a satisfactory rating, he/she shall be given regular status. Upon promotion sworn police officers and fire suppression personnel shall serve a twelve month promotional probationary period. All other employees shall serve a six (6) month promotional probationary period. If it is determined that the new employee's performance is not coming up to expected levels, the employee may be demoted to the former position. Satisfactory completion of the promotional probationary period shall not prevent demotion at a future date.

(g) Regular status. Sworn police officers and fire suppression personnel who have satisfactorily completed twelve (12) months continuous service and all other employees who have satisfactorily completed six (6) months continuous service shall be granted regular status. Regular employees are entitled to all benefits and privileges provided in the following sections of this division.

(h) Job tenure not established. Consistent with the "Important Notice" set forth at the beginning and end of the personnel policies nothing contained in herein shall be deemed to

City of North Charleston Personnel Policies; Page 4 of 27

402242

confer job tenure or a right to continuing employment upon any city employee, or require discharges to be for cause, as all hiring, discipline and discharge of such employee is to be at the will and pleasure of the city.

Section 5. Records and reports.

- (a) Personnel transactions. All appointments, separations and other personnel transactions shall be made on forms and in the manner designated by the personnel director.
- (b) Public inspection. The following information relative to employees and former employees is available for public inspection at reasonable times and in accordance with such procedures as the personnel director may prescribe: name, (job) class title, and dates of employment. Examination records, performance rating reports and salary are accessible only to the department head concerned, the mayor, and the employee involved. Other personnel information may be made available for official purposes at the discretion of the personnel director.

B. Attendance, Leave, Work Schedule, Holidays and Fringe Benefits

Section 1. Attendance and work schedule.

Each department and office head shall be responsible for the attendance, work schedule and on-the-job performance of employees in his/her department and shall submit such personnel records to the personnel director as may be required by him/her. The attendance and work schedules of city departments and offices shall be maintained on as uniform a basis as is practical for the purpose of providing maximum service for the public.

Section 2. Holidays.

Official City Holidays that may be observed with pay by regular full-time City employees (pursuant to accrual policy set forth below) were declared by City Council in Resolution 2004-011. Holiday leave shall accrue as vacation leave for sworn police officers and fire suppression personnel.

- (1) January first, New Year's Day;
- (2) The third Monday in January, Martin Luther King, Jr.'s Birthday;
- (3) The third Monday in February, President's Day;
- (4) Last Monday in May, Memorial Day;
- (5) July Fourth, Independence Day;
- (6) First Monday in September, Labor Day;
- (7) Veteran's Day;
- (8) Thanksgiving Day;
- (9) Friday after Thanksgiving Day;
- (10) December twenty-fourth, Christmas Eve; and
- (11) December twenty-fifth, Christmas Day.

PURSUANT TO THE FOLLOWING POLICY:

City of North Charleston Personnel Policies: Page 5 of 27

- (A) For each paid holiday, all employees shall accrue holiday or annual leave a rate of 4.213% of annual scheduled work hours, which means the annual number of work hours for which an employee's position is scheduled to work. Holiday or annual leave shall not be counted as hours worked for the purpose of computing overtime.
- (B) If one of the above holidays falls on a Saturday, employees shall accrue the holiday leave on the Friday preceding the holiday; and if one of the above holidays falls on a Sunday, employees shall accrue the holiday leave on the Monday following the holiday.

Section 3. Vacation policy.

- (a) It is the policy of the city to provide paid vacation affording opportunity for healthful rest and relaxation to all regular employees.
- (b) All regular employees assigned to permanent positions who have completed at least six (6) months of satisfactory service shall earn vacation time according to the following schedule (annual scheduled work hours throughout the Personnel Policies means the annual number of work hours for which an employee's position is scheduled to work):
 - (1) Full-time regular employees with less than ten (10) years and at least six (6) months of continuous service accrue annual leave at a rate of 3.846% of annual scheduled work hours.
 - (2) Full-time regular employees with at least ten (10) years but less than twenty (20) years of continuous service shall accrue annual leave at a rate of 5.769% of annual scheduled work hours.
 - (3) Full-time regular employees with twenty (20) or more years continuous service shall accrue annual leave at a rate of 7.692% of annual scheduled work hours.
 - (4) Regular part-time employees who are scheduled to work at least one-half the regular workweek shall earn credits for paid vacation at a rate based on the above schedule, and in proportion to the percentage of the regular workweek that they are scheduled to work. (Example: A regular part-time employee who works twenty-five (25) hours per week with less than ten (10) years of continuous service shall receive annually vacation credit equal to two 3.846% of annual scheduled work hours.
 - (5) Employees hired to fill temporary or seasonal positions shall not earn or be paid for any vacation time.
 - (6) Employees on full-time leave without pay for more than ten (10) consecutive shall not earn credits for paid vacation while on leave status.
 - (7) Regular part-time employees with one year's continuous service who are scheduled to work less than one-half the normal workweek shall receive annually vacation credit for 1.923% of annual scheduled work hours.
 - (8) Regular part-time employees with two (2) or more years continuous service who are scheduled to work less than one-half (1/2) the normal workweek shall receive annually vacation credit for two 3.846% of annual scheduled work hours.
 - (9) Vacation leave shall accrue biweekly on a prorata basis.

- (c) Vacation time may be charged in units of whole hours or whole days.
- (d) All full-time employees are required to take the equivalent of at least one workweek of paid vacation each calendar year.
- (e) Except in the case of an emergency, all vacation time must be approved in advance by the employee's department head. Whenever possible, an employee wishing to take more than four (4) hours of vacation time should request approval at least one week in advance.
- (f) Whenever possible, employees will be allowed to take paid vacation at times most convenient to them. However, in order to insure smooth operation and maintain a high level of quality in the delivery of services to the citizens of the city, the city reserves the right to limit the number of employees that may be absent from a given department or unit at any one time. When there is a conflict in the vacation choices of two (2) or more employees who cannot be spared at the same time, preference will be given to the employee with the longest continuous service to the city.
- (g) When a paid holiday is observed by the city during the period an employee is on paid vacation, the employee shall receive only his/her regular holiday pay and that day shall not be charged against the employee's vacation earnings.
- (h) Vacations shall be taken in increments of no more than two (2) consecutive calendar weeks except with special permission from the mayor upon recommendation of the department head.
- (i) Should an employee be requested to work during all or part of his scheduled vacation, if he agrees, he may reschedule his vacation for a later time during the same year.
- (j) Up to the equivalent of seven (7) workweeks of unused vacation earnings may be carried forward from an employee's anniversary.
- (k) When an employee's employment with the city is terminated, for whatever reasons, he/she shall be paid at his/her regular straight time rate for all hours of unused vacation earnings, less any amounts offset pursuant to Part C Section 5 of the Personnel Policies. In the event of the death of an active employee, this payment shall be made to his his/her estate.

Section 4. Attendance records.

An attendance record shall be maintained for each employee by the personnel office. This record shall reflect all absences including sick leave, vacations, civil leave, etc., and shall be made available to him/her for inspection upon request. The head of each department shall be responsible for the completion of a weekly attendance report for his/her department. This report shall be filed with the personnel office no later than noon the following Monday.

Section 5. Sick leave policy.

It is the policy of the city to provide regular employees unable to work because of personal illness an income equal to their rate of pay for the number of sick days they have accumulated during their employment consistent with the following procedures:

City of North Charleston Personnel Policies: Page 7 of 27

(a) All full-time employees shall earn credit for paid sick leave at a accrue annual leave at a rate of 4.615% of annual scheduled work hours. Sick leave shall accrue biweekly on a pro rata basis. Up to the equivalent of twenty-six (26) workweeks of unused sick leave may be carried forward from an employee's anniversary. Employees who have accrued more than the equivalent of twenty-six work weeks by March 15, 2004 shall be permitted to carry the actual accrued sick leave amount until the balance is the equivalent of twenty-six work weeks or less. Regular part-time employees who are scheduled to work at least one-half the regular workweek shall earn credits at a rate in proportion to the percentage of the regular workweek that they are scheduled to work. Regular part-time employees who are scheduled to work less than one-half of the regular workweek shall earn two (2) hours sick leave per month. Employees who are on full-time leave without pay for more than ten (10) consecutive days shall not earn sick leave credits. During the first six (6) months of employment, sick leave benefits are accrued but not authorized.

(b) Sick leave may be paid when an employee is unable to work due to personal illness or injury, when the employee's presence may endanger the health of fellow workers, or upon enforced quarantine of the employee. Sick leave may not be used to cover absences made necessary by illness in an employee's family.

(c) When a paid holiday occurs during the period an employee is on sick leave with pay, the employee shall receive only his regular holiday pay and the day shall not be charged against his sick leave earnings.

(d) In order to be eligible for sick leave with pay, an employee must:

1. Report to his supervisor within thirty (30) minutes of a scheduled starting time the reason for the absence, except as otherwise outlined in departmental policies. An employee who fails to so notify his supervisor shall not be paid for the days taken prior to notification.
2. If the absence extends beyond three (3) days, keep his supervisor advised as to his condition and anticipated date of return.
3. For periods of absence of three (3) or more days, when requested, the employee must submit a statement from his physician.
4. Employees shall not be paid for the first day of sick leave unless they have one-half of the annual accrual for sick leave.
5. Employees with less than one-half of the annual accrual for sick leave would be ineligible for the first day sick benefits but would be eligible for sick leave benefits beginning on the fourth consecutive day of illness. (After three (3) days' illness, department heads may require adequate proof of illness.)
6. Lost time, covered by Workmen's Compensation Act, is not counted against sick leave.

(e) After an employee has used all accrued sick leave credits, he may elect to use his annual leave earnings before being placed on leave without pay.

(f) Pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes as any other medical conditions. Time spent away from work shall be based on the employee's ability to work safely and efficiently.

(g) Employees who are excessively absent because of illness may be referred to their physician to ascertain their physical capabilities to carry out their duties.

(h) Paid sick leave is a privilege extended by the city and may be regulated or otherwise modified as necessary. The city reserves the right to adjust sick leave benefits for an employee who continually takes the maximum period allowed or uses sick leave excessively.

(i) Any period of leave without pay will be considered sick leave for the purpose of the sick leave incentive program.

(j) Upon leaving employment of the city, for whatever reasons, an employee will not be paid for unused accrued sick leave.

Section 5.1. Family and medical leave.

All requests for family and medical leave required to be allowed by the city under the terms of the federal law known as the Family and Medical Leave Act shall be processed and granted upon the following terms and conditions:

(a) [Terms] The Family and Medical Leave Act entitles employees to take up to twelve (12) weeks of unpaid leave in a twelve-month period for family and medical reasons. Upon completion of leave the employee generally has the right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions.

(b) [Eligibility] To be eligible, an employee must have worked for the city at least twelve (12) months and for at least one thousand two hundred fifty (1,250) hours during the year preceding the start of FMLA leave. The City shall use the "rolling" method for determining the 12-month period in which the 12 weeks of leave entitlement occurs as set forth in 29 CFR 825.200(b)(4). Pursuant to the rolling method the 12-month period is measured backward from the date an employee uses any FMLA leave. Under the rolling method, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 2003, four weeks beginning June 1, 2003, and four weeks beginning December 1, 2003, the employee would not be entitled to any additional leave until February 1, 2004. However, beginning on February 1, 2004, the employee would be entitled to four weeks of leave, on June 1 the employee would be entitled to an additional four weeks, etc.

(c) [Definition] The final regulations expanded the definition of a "serious health condition" to include any period of incapacity because of a "chronic serious health condition". A "chronic serious health condition" is one which (1) requires periodic visits for treatment by a health care provider or by a nurse or physician's assistant under direct supervision or a health care provider; (2) continues over an extended period of time (including recurring episodes of a single

underlying condition); and (3) may cause episodic rather than continuing period of incapacity. Any period of pregnancy or prenatal care is now expressly covered as a serious health condition.

(d) Reasons for leave of absence. An eligible employee will be granted a leave of absence under this law and policy if a serious health condition prevents the employee from being able to perform his job, if the employee's spouse, child or parent has a serious health condition and the employee must be absent from work in order to care for that relative, or to care for a natural child, adopted child, or formally placed foster child, provided that entitlement to leave to care for a child who is newly born or newly received in the employee's household shall end twelve (12) months after a natural child is born or twelve (12) months after an adopted or foster child is received in the employee's household. Proof of need for leave of absence may be required.

(e) Length of leave. An eligible employee may take up to twelve (12) weeks of leave during any twelve (12) consecutive months. Leave to care for a newly born or newly received child must be taken consecutively. Leave required because of the employee's own serious health condition or that of a spouse, child or parent, may be taken intermittently or by means of a modified work schedule when necessary.

(f) Effect of leave on paid time off. An employee who must be absent due to his own disability will be paid for time lost from work first from accrued sick leave balances and then from accrued annual leave balances. An employee who takes leave for any other reason will be paid for time lost from work from his annual leave balance.

(g) Effect of leave on accrual of fringe benefits.

1. Health benefit plan. Employees taking leave under this policy must pay their portion of any health/dental insurance plan premiums on the same date that such portion of premiums would be deducted from the employee's wages. (Normal paydays)
2. Unpaid time lost from work due to leave granted under this policy is not considered time worked for the purpose of accrual of paid time off.

(h) Employee responsibility. Employees who request a leave under this policy must give thirty (30) days advance notice or such lesser amount of notice as is possible in the particular circumstances.

(i) Termination of leave of absence. A leave of absence under this policy will end when the need for the leave of absence ends, or when the maximum leave described above has been taken, whichever occurs sooner.

(j) Reinstatement. At the conclusion of the leave of absence, the employee is entitled to reinstatement to his former position or to a position equivalent to his former position. The employee must demonstrate that he is fit for any duty and must give reasonable notice of intent to return to work.

(k) Extension of leave. An employee who has been completely unable to perform the duties of his position due to his own disability and who has exhausted his entitlement to leave under the Family and Medical Leave Act by taking twelve (12) weeks of leave may, upon written

City of North Charleston Personnel Policies: Page 10 of 27

application, be granted an additional fourteen (14) weeks of leave. Sick leave and/or vacation leave may be used during this time if the employee is eligible to use it. This additional leave of absence does not entitle the employee to reinstatement nor to payment of any portion of his health/dental insurance plan premiums unless the employee is on approved sick leave. If the employee is able to return to work prior to the exhaustion of his extended leave, he or she will be returned to his previous position if there is a vacancy which is to be filled. If the employee is not returned to active employment, he will be continued on extended leave of absence status until he is returned to active duty status or his extended leave of absence expires, whichever occurs sooner.

(l) In the absence of a previously granted accommodation, an employee's employment will automatically terminate if he/she does not return to full active employment status at the conclusion of his/her leave of absence or extended leave of absence. Employees absent three (3) or more months shall be notified in writing at least fourteen (14) days in advance of any termination under this section, and shall be permitted to request in writing an additional accommodation. The grant of additional accommodations shall be entrusted to the discretion of the mayor or his/her designee.

(m) Special situations.

1. Spouses. When both a husband and a wife are employed, their combined right to a leave of absence to care for a child or parent is twelve (12) weeks in a twelve (12) month period.
2. Key employees (salaried employee in highest paid ten (10) per of all employees). Such employees may be denied reinstated rights if reinstatement would cause substantial and grievous economic injury to operations.

(n) Not a contract.

1. This policy does not create contract rights.
2. In no case will an employee have a greater right to a job than he would have had if he had not taken leave under this policy.

Section 5.2. Leaves of absence for employees who do not qualify for the Family and Medical Leave Act.

Employees who have been employed less than twelve (12) months or who have worked less than one thousand two hundred fifty (1,250) hours during the preceding year do not qualify for benefits under the Family and Medical Leave Act. Requests for physical disability and personal leave for these employees shall be processed and granted upon the following terms and conditions:

(a) An employee who has completed his initial probation (and any extension thereof) is entitled to a leave of absence for up to six (6) months when unable to work because of sickness, pregnancy or injury on or off the job. Such an employee may also apply for leave of absence for personal reasons. Personal leaves are granted only in the discretion of the mayor upon recommendation by the employee's department head. Employees still in their probation periods who are absent for more than five (5) consecutive scheduled workdays because of any physical disability will be automatically terminated, but will be eligible for rehire.

(b) Employees are requested to apply for leaves of absence as far in advance of need as is possible, but an employee may be placed on leave status without application when the circumstances warrant such action.

(c) Physical disability leave will begin on the first day of absence.

(d) After the employee has exhausted his vacation and/or sick leave, as a general rule, an employee on leave of absence is not entitled to wages or fringe benefits and does not accrue fringe benefits. Certain exceptions may be established by law, but any other exceptions are or will be listed in this paragraph.

(e) Employees desiring to return to work from an unpaid leave of absence should notify their department head in writing at least ten (10) days prior to their desired date of return. If the city finds that the employee is fit to resume his duties, the employee shall be recalled to his former job if a vacancy exists which is to be filled. If no such vacancy exists, the employee shall be recalled to any job in which there is a vacancy which is to be filled and for which he is qualified. If no such vacancy exists at the time the employee desires to return to work, the employee's leave of absence shall be continued. Any employee who has not been reinstated within six (6) months following the commencement of a leave of absence shall be terminated. This action shall not affect the employee's eligibility to be considered for hire as a new employee at some future time.

(f) Not a contract.

1. This policy does not create contract rights.
2. In no case will an employee have a greater right to a job than the employee would have had if he or she had not taken leave under this policy.

Section 5.3. Sick leave donation program.

The sick leave donation program allows employees to donate their annual leave to a fellow full-time employee to be used as sick leave to cover periods of absence, due to serious illness or accident. In order to be eligible for the program, all requests by employees to donate annual leave to fellow employees shall follow the following terms and conditions:

(a) A serious illness or accident is defined as a medical condition requiring absence for at least ten (10) working days.

(b) The recipients must have exhausted all of their sick and annual leave to be eligible for donations.

(c) Donations must be made in increments of whole work days, with the aggregate donation not exceeding twelve (12) work weeks in any twelve (12) month period.

(d) Sick leave may not be donated to employees who are on extended leave pursuant to Part B Section 5.1 (k).

(e) Personnel desiring to donate annual leave to a fellow employee must submit a memorandum to the director of personnel via their department head stating the number of days donated and their recipient.

City of North Charleston Personnel Policies: Page 12 of 27

402250

- (f) The value of the donated leave will be calculated at the lower of the two (2) pay grades (donor or recipient).
- (g) Once donated, annual leave will not be restored to the donor.
- (h) Recipients must use annual leave as accrued while absent in addition to donated annual leave.
- (i) Employees scheduled to lose leave due to maximum accumulation may not donate the excess leave unless procedures to donate were started one month prior to the donor anniversary date.

Section 6. Bereavement leave.

- (a) Time off with pay may be granted to nonprobationary employees for up to three (3) consecutive days to allow employees to arrange for and to attend the funeral of a member of their immediate family. In the event of special or unusual circumstances, such as long distances to travel, multiple deaths or similar tragedies, two (2) consecutive days additional time off with pay may be granted at the discretion of the mayor.
- (b) "Immediate family" is defined as an employee's spouse, child (including grandchild), parent (including grandparent) and sibling; those same relatives of the employee's spouse, or any other relative living within the employee's household.
- (c) Time off without pay to attend the funeral of relatives or friends may be granted at the discretion of the employee's department head.

Section 7. Educational leave.

- (a) Generally. The policy set out in this section is provided in order to encourage all regular employees to continue their education in order to maintain and improve skills and knowledge useful in their current positions or necessary for assuming additional responsibilities in the future. Class should be scheduled during off-duty hours whenever possible.
- (b) Approved courses. As used in this section, an approved course shall be:
 - (1) Any course taken at an accredited institution which will help the employee improve his/her performance in his/her present position or prepare him/her for opportunities for advancement.
 - (2) All courses taken at an accredited institution as part of a curriculum leading to a certificate, diploma or degree which will help the employee improve his/her performance in his/her present position or prepare him/her for opportunities for advancement.
- (c) Educational leave without pay. "Educational leave without pay" is full-or part-time leave in a nonpay status requested by the employee so that he/she may take approved courses; such leave is approved in advance by the employee's department head and the personnel director. An eligible employee may apply by submitting a letter of request to his/her department head at least

thirty (30) days before the first day of leave requested or within five (5) days of notification of his/her acceptance for admission by the school, whichever is later. The letter of request must include:

- (1) The type and purpose of the leave requested.
- (2) The duration.
- (3) An attached copy of the letter of acceptance from the school at which the leave will be taken.
- (4) Such other information as may be helpful to the reviewing authority in reaching its determination.

(d) Notification. The employee's request shall be acted upon and the employee notified within ten (10) working days.

(e) Reinstatement. Upon an employee's successful completion of a full-time leave, the city shall reinstate the employee to his/her former position, provided a vacancy exists.

(f) Part-time educational leave with pay. When an approved course cannot be scheduled during off-duty hours, any regular, full-time employee may request time off from his/her regular work schedule so that he may meet classes. Such requests shall be made in writing using the form supplied by the department head and submitted to the employee's department head. If his/her request is endorsed by the department head and approved by the personnel director, the employee may be granted time off with pay to take one course per school term for up to the equivalent of three (3) semester hours credit, provided such time off will not interfere with the normal operation of the department.

(g) Required courses. From time to time it may be necessary for the city to require certain employees to take one or more courses. When this does occur, the city will pay all of the costs of the course including tuition, fees, books and reasonable transportation costs.

Section 8. Military leave.

Regular employees ordered to perform active duty for training shall be entitled to leave of absence from their respective duties without loss of pay, time or efficiency rating for a period not exceeding fifteen (15) days per calendar year. In the event any such person is called upon to serve during an emergency he shall be entitled to such leave of absence for a period not exceeding thirty (30) additional days. Employees going on military leave shall present a copy of their orders to the personnel department within three (3) days of receipt and provide a copy with all endorsements upon return from active duty.

Section 9. Civil leave.

(a) Jury duty. All regular city employees selected for jury duty shall be entitled to civil leave with pay for the period of absence required. Such leave shall not be charged to annual or sick leave earnings, except that on any day when such employee is excused from service on a jury he will be expected to report for duty at his regular place of work if within reasonable commuting distance or be charged annual leave for time excused from jury duty. Likewise, any period of time for which an employee is excused from jury duty because of illness shall be charged to sick leave. An employee shall be entitled to all fees received as a juror.

(b) Official court attendance. All regular employees subpoenaed or ordered to attend court to appear as a witness or to testify in some official capacity on behalf of the city shall be entitled to leave with pay for such period as his court attendance may require. Any fees paid for such service may be retained by the employee.

(c) Private litigation. Absence of a city employee to appear in private litigation in which he/she is a principal party shall be charged to annual leave or to leave without pay.

Section 10. Fringe benefits.

From time to time the personnel director may publish an employee's handbook explaining in detail additional fringe benefits, such as group insurance, hospitalization, credit union, etc. Information or clarification on employee benefits may be obtained from the personnel office any time during normal working hours.

C. Resignation, Retirement and Termination

Section 1. Compulsory resignation.

An employee who, without valid reason, fails to report to work for three (3) consecutive workdays without authorized leave shall be separated from the payroll and reported as having compulsorily resigned. Such an employee is not eligible for reemployment.

Section 2. Layoffs.

(a) When it becomes necessary to reduce the working force in a department or division thereof because of lack of funds or other causes, employees shall be laid off on the basis of the following factors to be weighed equally:

- (1) Length of service in a class;
- (2) Length of service with the city; and
- (3) The average performance rating for the last three (3) years of service or for the entire period if less than three (3) years.

(b) When a department head believes that a certain individual is essential to the efficient operation of the department or the organizational unit because of special skills or abilities, and he/she wishes to retain this individual in preference to a person with a higher rating as provided above, he/she must submit a written request to the personnel director for permission to do so. This request must set forth in detail the specific skills and abilities possessed by the individual and the reasons why such individual is essential to the effective operation of the department or organization unit. If the mayor approves the request, the individual may be retained.

(c) If a regular employee is scheduled to be laid off, he/she shall be offered a demotion to a lower class if qualified and provided a suitable vacancy exists.

(d) Prior to a reduction in force, the names and class titles of any and all regular employees scheduled for layoff shall be submitted to the personnel office for approval, and not until the personnel director has approved and confirmed the names submitted for layoff shall any layoff be consummated.

(e) Regular employees shall be notified in writing by the department head of their layoff at least fourteen (14) calendar days prior to the effective date of the layoff.

(f) Employees who are laid off will have recall rights for a specified period of time based on the length of their continuous service to the city, according to the following schedule:

- (1) Not less than six (6) months nor more than two (2) years of continuous service:
Recall rights for six (6) months from date of layoff.
- (2) More than two (2) years of continuous service: Recall rights for one full year from date of layoff.

During the period of recall rights, employees will be recalled to duty in the reverse order in which they were laid off. No new employees may be hired into any classification while there are employees with recall rights in layoff status who were laid off from that classification.

Section 3. Demotion.

If a regular employee is not performing up to expected levels, he/she may be demoted to a lower classification or reduced in salary if such action is recommended by the department head.

Section 4. Death of Employee.

When an employee dies, his/her estate shall be eligible to receive the cash equivalent of the employee's accumulated annual leave.

Section 5. Surrender of city property and exit interview.

(a) Property and equipment issued by the city to employees during the course of employment is considered to have been issued in advance of wages and, if not returned upon termination of employment, may result in the value being deducted from wages and amounts otherwise due. Thus, before receiving any payment as settlement of accrued wages or unused accumulated leave, an employee must have surrendered his/her ID card, any city property or materials assigned to him/her, and have completed other separation actions which may be prescribed by the personnel director. The final settlement payment to the employee for accrued wages and leave may be reduced by the amount of any actual and/or consequential loss experienced by the city as a result of any ID card, city property, or other materials assigned to the employee which he/she is unable to properly turn in or account for. Such actual and consequential losses may include, but shall not be limited to, the cost of replacement, cost of rekeying locks, or cost of reprogramming computer-controlled access devices compromised as a result of the employee's loss of the property/item.

(b) The personnel director may conduct an exit interview with each employee who resigns or otherwise is separated in good standing with a view towards reducing turnover and improving personnel administration generally. Exit interviews conducted by the personnel director shall not preclude such interviews by department heads.

Section 6. Retirement.

(a) Generally, Retirement benefits are available for city employees who are members of either the state retirement system or the state police officers retirement system. The department head shall provide assistance and direction for any employee eligible for retirement. In any case, retirement applications must be made in compliance with rules of the state retirement system. Details are available from the city personnel office.

City of North Charleston Personnel Policies: Page 16 of 27

(b) Insurance. Upon retirement from the city, employees who meet the requirements listed below have the option to retain health and dental insurance under the city's group plan by paying the applicable rate budgeted for full-time active employees:

- (1) Meet the state eligibility requirements for retirement with pay.
 - a. Regular retirement: Age sixty (60) or twenty-eight (28) years covered service.
 - b. Police/fire retirement: Age fifty-five (55) or twenty-five (25) years covered service.
 - c. Entitled to receive state disability retirement pay.
- (2) Have been employed by the city for a minimum of five (5) years.
- (3) Complete applicable forms and make a quarterly advance payment.
After initial enrollment, advance payments may be made in quarterly, semiannual, or annual installments. Coverage will terminate upon failure of the retiree to make the required advance payment, upon termination of the city's group plan, or when determined to be in the best interest of the city. The insurance rates will be reviewed semi-annually and adjustments made as necessary.
- (4) The City shall discount the retired employee's cost of the insurance benefits to retired employees based upon the employee's years of service as set forth below:
 - a. 15 through 19 years, employee pays 50%
 - b. 20 through 24 years, employee pays 33.5%
 - c. 25 through 29 years, employee pays 17%
 - d. 30 years or more, employee pays 0%

D. Transportation and Travel

Section 1. Use of city vehicles.

The use of city-owned vehicles or equipment for private business is strictly prohibited. Vehicles shall be used for official business only and shall be operated within the limits of the law at all times. Operators shall be held responsible for fines or damages resulting from their own negligence.

Section 2. Travel and subsistence.

(a) Generally.

All travel on official business by employees must be authorized by the department head and approved by the mayor. When employees or appointed officials of the city travel on official business, the city will pay reasonable amounts for transportation, meals and lodging provided that a full accounting of all costs so incurred be made to the director of finance within ten (10) days after such travel occurs except as otherwise provided in these policies as to meal allowances.

(b) Transportation costs.

- (1) The city may purchase tickets in advance for employees traveling by common carrier. All employees shall travel in tourist class whenever possible.
- (2) Employees who, with proper authorization, use their personal vehicles for official business may be reimbursed at the latest standard mileage rate established by the federal government and allowed for reimbursement by the Internal Revenue Service.

(3) Employees may be reimbursed, upon proper receipt, for all ferry, bridge, road and parking tolls. Receipts for taxi fare are not required, however, taxi expenses must be itemized.

(c) Meal allowance.

Employees or appointed officials may receive a per diem for meal expenses incurred while traveling on official business. Advance travel allowances shall be based on adopted administrative travel regulations in force at the time of travel. Accounting for advance travel allowance for meal expenses (per diem) or requests for meal expense reimbursement not exceeding the meal allowance above is not required. However, all travel settlements must be submitted to the finance department within ten (10) days after such travel occurs.

(d) Lodging.

When lodging is required, employees are expected to utilize standard, medium priced hotels and motels whenever possible. If an employee is to attend a formal, organized meeting or convention, he may stay at the hotel or motel where the meeting is to be held. In all cases, the city will pay no more than the regular single room rate. Receipts must be presented for all lodging.

(e) Advances.

Travel advances may be made to employees or elected or appointed officials of the city to cover anticipated travel expenses. All expenditures from travel advances, except as otherwise provided in these policies as to meal allowances, must be supported by an expense report which shall be made to the director of finance within ten (10) days after such travel occurs.

(f) Special operation expense allowance.

Special expense allowance will be determined on an individual basis and shall be approved in advance by the mayor. Allowances will be considered in connections with the preparation of the annual budget.

State law references: South Carolina Budget and Control Board of Regulations for reimbursement for Travel and Subsistence Expenses.

E. Drug and Alcohol Testing

Section 1. City drug and alcohol testing policy.

(a) Purpose. In keeping with the city's policy of a drug free workplace, the Drug Free Workplace Act of South Carolina SC Code Ann. 44-107-10 et. seq., the Drug Free Workplace Act 41 USC 701 et. seq. and the Omnibus Transportation Employee Testing Act of 1991*, it has become necessary to implement a drug/alcohol testing program. This policy will ensure that all municipal employees and contractors are not impaired by the effects of alcohol or drugs. The city maintains that the work environment is safer and more productive without the presence of alcohol, illegal or inappropriate drugs in the body or on city property. Furthermore, employees have a right to work in an alcohol and drug-free environment and to work with others who are free from the effects of alcohol and drugs.

* Public Law #102-143, Title V, 105 Stat, 952 (1991).

(b) Policy. It is the policy of the City of North Charleston to prohibit the possession or use of alcohol or controlled substances during work or on city premises. Each employee must be notified of the contents of the drug and alcohol testing policy as it applies to them. Violation of the City of North Charleston drug and alcohol policy may lead to dismissal. This policy applies

City of North Charleston Personnel Policies: Page 18 of 27

to all City of North Charleston employees, as defined by this policy. The issuance and enforcement of this policy shall not alter the presumptive at-will nature of the employment relationship.

(c) Definitions:

Alcohol means ethyl alcohol.

Accident. An accident within the meaning of this policy shall include, but not be included to, (a) any act resulting in injury or property damage occurring on the work site or during the performance of job duties; (b) any act by an employee resulting in damage to city property regardless of whether occurring on the work site or during the performance of job duties; (c) any act by an employee in which city property was the instrumentality which resulted in personal injury or property damage regardless of whether occurring on the work site or during the performance of job duties. The city may, in its sole discretion, waive the accident-related drug/alcohol testing requirement if in the city's opinion such test is not warranted.

Controlled substances. A controlled substance in Article 3, Chapter 53, Title 44 of the South Carolina Code of Laws. These substances shall include, but are not limited to, drugs such as amphetamines, cocaine and its metabolites, opiates, phencyclidine, marijuana and prescription drugs not being used for a prescribed purpose or in a prescribed manner.

Dilute specimen means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

Drug means a controlled substance as defined by this policy.

Employees means all direct employees of the City of North Charleston as well as those contractors employed by the City of North Charleston as required in the South Carolina Drug Free Workplace Act, the Federal Drug Free Workplace Act, and the Omnibus Transportation Safety Act.

On duty time means all time from the time an employee reports for work associated with the City of North Charleston or is required to be in readiness for work until he or she is relieved from work and all responsibility for performing the work. On duty time for purposes of this policy shall include the time when an employee is assigned to be on-call for emergency duty.

Reasonable suspicion. A supervisor's belief that an employee is using or is under the influence of drugs and/or alcohol. The determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. Such occurrences which may prompt reasonable suspicion include, but are not limited to, the following:

- (1) Abnormal conduct or erratic behavior while at work, suspicious or prolonged absenteeism, tardiness or deterioration in work performance.
- (2) A report of drug and/or alcohol use provided by a reliable and credible source which has been independently corroborated.

- (3) Evidence that an individual has tampered with a drug test during his or her employment with the City of North Charleston.
- (4) Information that an employee has caused or contributed to an accident while at work, along with corroboration of drug and/or alcohol abuse.
- (5) Evidence that an employee is involved in the use, possession, sale, solicitation or transfer of drugs and/or alcohol while working or while on the premises of the City of North Charleston or operating a vehicle, machinery or equipment owned controlled or maintained by the City of North Charleston.

Refusal or refuse to submit (to an alcohol or controlled substances test) means that the employee:

- (1) Fails to sign the test consent form; or
- (2) Fails to provide an adequate breath, blood, or urine sample for alcohol or controlled substances testing, absent a genuine inability to provide a specimen (as determined by a medical evaluation), after he/she has received notice of the testing requirement under this policy; or
- (3) Engages in conduct that clearly obstructs the testing process including violating the testing facility's policy to the extent that the facility refuses to test the employee.

Safety officer means the safety officer shall be entrusted with the responsibility of administering this policy and answering employee questions. In addition, the safety officer shall have the responsibility of interviewing those employees who have shown a positive confirmation test in order to determine what, if any, legitimate explanation could exist for those results. Any or all of the safety officer's responsibilities may be discharged by way of an authorized designee.

Safety-sensitive position means any position that has a direct impact on the safety of others including the general public, co-workers, and those for which the employee has a specific responsibility. These positions include, but are not limited to, police officers, fire suppression and command personnel, dispatchers, those employees who are required to possess a commercial drivers license (CDL) or operate heavy equipment, and those employees who maintain such vehicles and equipment. Such employees may be subject to suspicionless drug and alcohol testing under the aegis of the Department of Transportation regulations and decisions such as *National Treasury Employees Union v. Von Raab*, 109 S.Ct. 1384 (1989).

Test device means employee drug and alcohol testing maybe conducted by blood test, urinalysis, or the evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration.

Treatment agreement. Upon a violation of this policy, the employee may be required to sign a treatment agreement as a condition of continued employment. The signing of such an agreement shall obligate the employee to successfully complete recommended rehabilitation at the employee's own expense, indicates consent to periodic drug and alcohol testing for a period of four (4) years on a schedule to be determined by the assigned substance abuse counselor, and/or random testing for a period of up to six (6) months. Failure to successfully complete treatment or failure to pass any subsequent drug or alcohol test shall result in immediate dismissal. The success or failure of an employee to complete treatment shall be determined by the professional judgment of the rehabilitation program staff.

City of North Charleston Personnel Policies: Page 20 of 27.

(d) Standard practices.

- (1) Each department within the City of North Charleston must publish a statement notifying employees that possession or use of controlled substances in the workplace is prohibited and specifying actions to be taken against those who violate this policy. Each employee will be provided with a copy of the statement. The Personnel Director may issue a form for this purpose.
- (2) The personnel department and/or safety officer must establish an awareness program to educate employees about the dangers of workplace drug and alcohol abuse, the policy on "alcohol and drug abuse", potential penalties, and the services available to help those with substance abuse problems.
- (3) Each department shall require employees to abide by this policy as a condition of employment and the employee must promise to notify the personnel director within five (5) days of a conviction for a criminal drug offense. The Personnel Director may issue a form for this purpose.
- (4) The city shall, within ten (10) days of receiving actual notice or notice under subsection (d)(3), comply with the Drug Free Workplace Act by notifying all associated government grantor agencies or using agencies of employee's conviction.
- (5) Employees who sell, distribute, use, consume, or possess controlled substances or alcohol on city property, at any time, are subject to discharge. The use of alcoholic beverages at city sponsored functions is permitted provided approval by the executive branch is granted prior to the date of the function. In addition, evidence obtained by the city during the course of any such investigation may be turned over to the appropriate authorities for any use and action they deem appropriate.

(e) When testing will be performed.

- (1) Drug and/or alcohol testing of all employees may be conducted under any of the three (3) following general circumstances: reasonable suspicion testing, post-accident testing, and follow-up testing. Those employees in safety-sensitive positions may be subject to random testing, pre-employment testing, post-confrontation testing and return to duty testing.
- (2) Pre-employment testing. All new employees, or applicants selected for employment, will be tested for alcohol and controlled substances before first reporting for work in a safety-sensitive position. Applicants should be notified and advised that they will not be considered for employment unless a negative test result is obtained. Written consent to the test must be obtained from each applicant.
- (3) Reasonable suspicion testing will be performed on current employees when there is reasonable suspicion that they are under the influence of alcohol or drugs on the job, or just prior to coming to or returning to work. The determination of reasonable suspicion shall be based on those factors articulated within the "definitions" section of this policy.
- (4) Post-accident testing will be performed after any workplace accident as defined within this policy and shall include drug and alcohol testing.

- (5) Return to duty testing shall be performed prior to reinstatement of those employees in a safety-sensitive position who have been removed from duty pursuant to this policy or have been absent from work for a period exceeding three (3) weeks due to either illness, injury, or administrative suspension.
- (6) Follow-up testing may be performed as defined by the terms of the treatment agreement provided for within this policy. Follow-up testing may be either periodic (scheduled at regular intervals, whether announced or unannounced) or random in nature. The employee's signature on the treatment agreement indicates his/her consent to such testing.
- (7) Random testing may be required of employees holding a safety-sensitive position. In addition, employees may be subject to the City of North Charleston drug and alcohol Department of Transportation (hereinafter referred to as "DOT") testing policy.
- (8) Post-confrontation testing shall be performed upon safety-sensitive employees after the discharge of a firearm¹ in an inter-personal confrontation or after the use of force causing death or serious injury of another person.

¹Discharge of weapons by North Charleston Police Department Officers involved in approved departmental weapons training exercises shall not require "post confrontation testing".

(f) Procedure.

- (1) General testing procedures.
 - a. Prior to taking an employer requested drug or alcohol screen, the employee shall be given a consent form to sign, by which he consents to the testing. A refusal (as defined by this policy) shall be deemed as a positive test result.
 - b. Specimen collection and testing will be conducted in the manner specified by a forensic certified laboratory chosen by the City of North Charleston. The forensic certified laboratory and all persons involved in specimen collection shall maintain a competent chain of custody and shall specify the procedures and conditions under which samples may be collected. Samples shall be collected by way of a "split specimen" method with a portion of the sample reserved for independent testing by a certified forensic laboratory of the employees choosing. The employee may, within seventy-two (72) hours of notification of a positive test result, request that his/her portion of the specimen be transferred to a certified forensic laboratory of his/her own choosing and at his/her own expense. Should the test results differ between the laboratories selected by the city and the employee, the city may reimburse the employee reasonable costs associated with the independent test.
 - c. Upon an initial positive screen, the specimen shall be analyzed a second time by an independent confirmation test.
 - d. Should the confirmation test also yield a positive result, the safety officer or authorized designee shall be notified. The safety officer or authorized designee shall then confidentially contact the employee and interview the

employee to determine if any legitimate explanation may exist which would explain the positive test results. The safety officer or authorized designee may confidentially call upon outside experts to aid in this determination. Should the safety officer or authorized designee determine that the positive result is readily explainable on neutral grounds, the safety officer or authorized designee shall report the test results as "negative" and all records held in the physical possession of the city destroyed. If no legitimate or neutral explanation exist in the opinion of the safety officer or authorized designee, then the safety officer or authorized designee shall notify the department head of a positive test result.

- e. In all cases, upon receiving a report from the medical reporting officer of a dilute specimen, the employee or prospective employee will be retested as soon as possible.

(2) Random testing procedures.

- a. CDL license holders shall be subject to the City of North Charleston drug and alcohol DOT testing policy, in addition to any regulations contained herein. Where an employee is subject to DOT regulations, all random testing shall be compliant with DOT requirements.
- b. Every safety-sensitive employee shall submit to random alcohol and controlled substances testing as required in this section. The number of random tests shall be set by reference to the strictest of the DOT or any other national guidelines which are applicable to the employee's city department. Each employee subject to such national guidelines shall be provided with a copy of the applicable sections.
- c. The selection of employees for random alcohol and controlled substances testing shall be made by a scientifically valid method. Each employee shall have an equal chance of being tested each time selections are made.
- d. Random alcohol and controlled substances tests conducted under this section shall be unannounced and the dates for such tests shall be spread reasonably throughout the calendar year.
- e. An employee who is notified of selection for random alcohol and/or controlled substances testing shall proceed to the test site immediately, in the manner specified by the safety officer.
- f. An employee shall only be tested for alcohol under this section while the employee is performing safety-sensitive functions, just before the employee is about to perform safety-sensitive functions, or just after the employee has been released from performing safety-sensitive functions. The employee may be escorted to the testing site by the safety officer, his/her designee, or the employee's department head.

(3) Legal searches.

- a. Where there is reasonable suspicion that controlled substances or alcohol are on city premises, the appropriate law enforcement agencies will be notified and requested to conduct a search.
 - b. If controlled substances or alcohol are discovered on city property*, appropriate law enforcement agencies will be notified. The illegal substance will be kept under constant surveillance at the location at which it was discovered until the authorities arrive to conduct an investigation.
- * Alcohol and controlled substances on city property for legitimate law enforcement, educational, or court purposes shall be excepted.

- c. All formal legal proceedings, including formal charges, will be initiated by the proper law enforcement agency. City of North Charleston personnel will cooperate fully in all actions initiated by the law enforcement agencies.

(g) Violations.

- (1) Alcohol. An employee shall be deemed in violation of this policy if the employee's blood alcohol level exceeds .02 at the time that the employee reports for duty.
- (2) Drugs. An employee shall be deemed in violation of this policy if drug testing reveals a positive result for any of the controlled substances as defined within this policy.

(h) Consequences of violation.

- (1) Alcohol.
 - a. First violation (non safety-sensitive employee). For a first violation, if an employee registers an alcohol level between .02 and .039, then the employee shall be immediately removed from duty for a minimum of twenty-four (24) hours and shall not return to duty until that employee (a) signs a treatment agreement and (b) passes a return to duty alcohol test with a reading of .00. If an employee, upon reporting to duty, registers a blood alcohol level of .04 or above then the employee may be subject to arrest under the Omnibus Transportation Employee Testing Act, in addition to those consequences associated with violation between .02 and .039 under the North Charleston policy.
 - b. First violation (safety-sensitive employee). For a first violation, a safety-sensitive employee shall be subject to discharge.
 - c. Second violation (non safety-sensitive employees). For a second violation, the employee shall be subject to discharge.
- (2) Controlled substances.
 - a. First violation (safety sensitive and non-safety sensitive employees). The employee may be discharged.

(i) Responsibilities.

- (1) Employees.

- a. Employees will not use alcohol or prohibited or controlled substances which may impair the employees judgment or ability to perform duties.
- b. Employees have the responsibility to seek and complete treatment if a drug or alcohol problem exists. Employee assistance programs are confidential, but participation does not protect employees from disciplinary action for violation of this policy.
- c. The employee shall have the responsibility to inform supervisors of any possible prescription drug side effects and provide physicians certification for continued duties.
- d. The employee shall have a responsibility to report to his or her immediate supervisor if there is reasonable suspicion that a co-worker is under the influence of alcohol and/or controlled substance.
- e. The employee who has been exposed to a controlled substance in the course of their employment must make an immediate report to their supervisor. This exposure would include the ingestion, inhalation, or injection of any controlled substances. The substance, the type of exposure, and the extent of exposure shall be included in a brief report describing the circumstances surrounding the incident.*

* Positive test results associated with confirmed unintentional on-the-job exposure shall not be grounds for discharge.

(2) Department head--Supervisor.

- a. Department heads and supervisors shall undergo training designed to assist in the detection of substance abuse in the workplace.
- b. The department head or supervisor shall act promptly when there is a reasonable suspicion that an employee's ability or judgment is impaired by alcohol and/or a controlled substance by removing the suspected employee from duty.
- c. The department head or supervisor shall notify the safety officer so that arrangements can be made for drug or alcohol testing.
- d. The department head or supervisor shall have the responsibility to take proper disciplinary action, as mandated by this policy, upon notification by the safety officer of a positive drug or alcohol screen.
- e. The employee's department head shall have the responsibility to prepare proper disciplinary or termination paperwork when appropriate under this policy.

F. Appeals

Section 1. Right of appeal.

Any nonprobationary employee who is dismissed or who is suspended, involuntarily transferred, or demoted with resulting loss or reduction in pay may, within ten (10) days of such action, may appeal the dismissal or suspension in writing stating the basis therefore and requesting a hearing before the board of appeals, and:

- (a) The appeal and request for hearing shall be directed to the personnel director and mayor, and

- (b) Within ten (10) days of receipt of the employee's request, the personnel director shall schedule the requested hearing and notify the board of appeals and the employee requesting the hearing.

Section 2. Establishment, membership, and powers of board of appeals.

- (a) The board of appeals shall be comprised of five (5) members who shall be appointed by city council to serve for terms of three (3) years, except that the members appointed initially shall be appointed so that terms will be staggered with one member to serve for one year, two (2) members to serve for (2) years, and two (2) members to serve for three (3) years. Any interim appointment to fill a vacancy for any cause prior to the completion of a term shall be for that unexpired term. Any member may be reappointed for succeeding terms at the discretion of council.
- (b) Members of the board of appeals shall be selected on a broadly representative basis from among personnel of several municipal departments, provided that whenever an appeal comes before the board initiated by or involving an employee of a department of which a board member also is an employee, such member shall be disqualified from participating in the hearing, and city council may designate a temporary replacement in such case.
- (c) The board shall select its own chairman from among its members. The chairman shall serve as the presiding officer at all hearings which he attends but may designate some other members to serve as presiding officer in his absence. A quorum shall consist of at least two-thirds (2/3) of the board members, and no hearing may be held without a quorum.
- (d) The presiding officer will have control of the proceedings. He shall take whatever action is necessary to ensure an equitable, orderly, and expeditious hearing. Parties shall abide by his decision, excepting that when a board member objects to a decision to accept evidence, a majority vote of the board will govern.
- (e) The board shall have the authority to call for files, records, and papers pertinent to any investigation; to determine the order of the testimony and the appearance of witnesses; to call additional witnesses; and to secure the services of a recording secretary, at its discretion.

Section 3. Findings and decisions of the board of appeals; review.

The board shall make its findings and decision in writing and report such findings and decisions to the mayor or such other individual or body as may be vested with employment and discharge authority within twenty (20) days after hearing an appeal. If the mayor or other individual or body with employment and discharge authority approves, the decision of the board shall be final, and a copy of the decision shall be transmitted by the board to the employee, to the mayor, and to the particular department or agency involved. Should the mayor or other individual or body with employment and discharge authority reject the decision of the board, it may modify the decision of the board or make its own decision without further hearing; and that decision shall be final, with copies of that decision transmitted to the employee and the employing department or agency.

(d) The presiding officer will have control of the proceedings. He shall take whatever action is necessary to ensure an equitable, orderly, and expeditious hearing. Parties shall abide by his decision, excepting that when a board member objects to a decision to accept evidence, a majority vote of the board will govern.

(e) The board shall have the authority to call for files, records, and papers pertinent to any investigation; to determine the order of the testimony and the appearance of witnesses; to call additional witnesses; and to secure the services of a recording secretary, at its discretion.

Section 3. Findings and decisions of the board of appeals; review.

The board shall make its findings and decision in writing and report such findings and decisions to the mayor or such other individual or body as may be vested with employment and discharge authority within twenty (20) days after hearing an appeal. If the mayor or other individual or body with employment and discharge authority approves, the decision of the board shall be final, and a copy of the decision shall be transmitted by the board to the employee, to the mayor, and to the particular department or agency involved. Should the mayor or other individual or body with employment and discharge authority reject the decision of the board, it may modify the decision of the board or make its own decision without further hearing; and that decision shall be final, with copies of that decision transmitted to the employee and the employing department or agency.

G. Notice of at-will employment and disclaimer

IMPORTANT NOTICE

MANY OF THE POLICIES CONTAINED IN THIS EXECUTIVE ORDER ARE BASED ON LEGAL PROVISIONS, INTERPRETATIONS OF LAW, AND EMPLOYEE RELATIONS PRINCIPLES, ALL OF WHICH ARE SUBJECT TO CHANGE. FOR THIS REASON, THIS EXECUTIVE ORDER IS CONSIDERED TO BE A GUIDELINE AND IS SUBJECT TO CHANGE WITH LITTLE NOTICE. THE EXECUTIVE ORDER DOES NOT CONSTITUTE A CONTRACT OF EMPLOYMENT FOR ANY TERM.

NOTHING IN THIS EXECUTIVE ORDER SHALL BE CONSTRUED TO CONSTITUTE A CONTRACT. THE MAYOR HAS THE RIGHT, AT HIS DISCRETION, TO MODIFY THIS EXECUTIVE ORDER AT ANY TIME. NOTHING HEREIN LIMITS THE CITY'S RIGHTS TO TERMINATE EMPLOYMENT. ALL EMPLOYEES OF THE CITY ARE AT-WILL EMPLOYEES. NO ONE EXCEPT THE MAYOR HAS THE AUTHORITY TO WAIVE ANY OF THE PROVISIONS OF THIS EXECUTIVE ORDER, OR MAKE REPRESENTATIONS CONTRARY TO THE PROVISIONS OF THIS EXECUTIVE ORDER.

Executive Order #: 2008-001

AN EXECUTIVE ORDER

ESTABLISHING PERSONNEL POLICIES FOR CITY EMPLOYEES

WHEREAS, personnel policies are required for the effective management and compensation of employees in any successful organization; and

WHEREAS, the City's personnel policies were previously addressed by a series of ordinances; and

WHEREAS, the aforementioned ordinances were repealed and Executive Order 2004-001 set forth the City's personnel policies; and

WHEREAS, the Mayor deems it necessary to amend the probationary period for newly hired police officers and fire suppression personnel to six months, which coincides with all other employees in the City; and

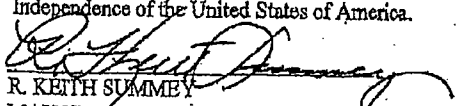
THEREFORE, EFFECTIVE IMMEDIATELY, THE CITY OF NORTH CHARLESTON PERSONNEL POLICIES ARE AMENDED AS FOLLOWS:

A. Personnel Department

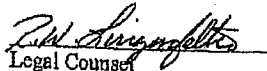
Section 4. Filling of vacancies.

- (f) Probationary period. All new employees shall serve a probationary period of six (6) months. During this period, the new employee's performance will be evaluated; if it is determined that the new employee's performance is not coming up to expected levels, he/she may be terminated at any time during the probationary period. If requested by the department head and approved by the personnel director, the probationary period may be extended for up to ninety (90) days. If, at the end of the probationary period, the employee has earned a satisfactory rating, he/she shall be given regular status. Upon promotion sworn police officers and fire suppression personnel shall serve a twelve month promotional probationary period. All other employees shall serve a six (6) month promotional probationary period. If it is determined that the new employee's performance is not coming up to expected levels, the employee may be demoted to the former position. Satisfactory completion of the promotional probationary period shall not prevent demotion at a future date.

Executed this 25th day of June, in the year of Our Lord, 2008, and in the 232nd year of the Independence of the United States of America.


R. KEITH SUMMEY
MAYOR

APPROVED AS TO FORM:


Legal Counsel

Code of Ordinances

North Charleston, South Carolina - Code of Ordinances

≡ Q :

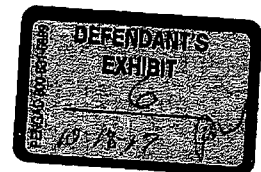
§ ◊ ◀ ▶

North Charleston, SC Code of Ordinances

CODE OF ORDINANCES CITY OF NORTH CHARLESTON, SOUTH CAROLINA

SUPPLEMENT HISTORY TABLE

- Chapter 1 - GENERAL PROVISIONS
- Chapter 2 - ADMINISTRATION
- Chapter 3 - ALCOHOLIC BEVERAGES
- Chapter 4 - ANIMALS AND FOWL
- Chapter 5 - BUILDINGS AND BUILDING REGULATIONS
- Chapter 6 - CIVIL DEFENSE
- Chapter 7 - ELECTIONS
- Chapter 8 - FIRE PREVENTION AND PROTECTION
- Chapter 9 - HEALTH AND SANITATION
- Chapter 10 - RESIDENTIAL AND COMMERCIAL STRUCTURES
- Chapter 10.5 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS
- Chapter 11 - MOTOR VEHICLES AND TRAFFIC
- Chapter 12 - MUNICIPAL COURT
- Chapter 13 - OFFENSES AND MISCELLANEOUS PROVISIONS
- Chapter 14 - PARKS AND RECREATION
- Chapter 15 - PLANNING



Code of Ordinances

■ Chapter 16 - POLICE

■ Chapter 17 - STREETS, SIDEWALKS AND PUBLIC PLACES

■ Chapter 17.5 - DRAINAGE AND STREET LIGHTING

■ Chapter 18 - SUBDIVISION REGULATIONS

■ Chapter 19 - TAXATION

■ APPENDIX A - ZONING REGULATIONS

PLANNED DEVELOPMENT DISTRICT (PDD)— - SPECIFIC ORDINANCE AMENDMENTS
DISPOSITION TABLE

CODE COMPARATIVE TABLE

Code of Ordinances

Supplement 59

Online content updated on July 25, 2017

CODE OF ORDINANCES

City of

NORTH CHARLESTON, SOUTH CAROLINA

Codified through

Ordinance No. 2017-036, enacted May 25, 2017.

(Supp. No. 59)

 VIEW WHAT'S CHANGED

 BROWSE TABLE OF CONTENTS

This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality.

Sec. 1-13. - Ordinances not affected by adoption of Code.

The repeal provided for in section 2 of the ordinance adopting this Code shall not affect any of the following:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of the ordinance adopting this Code;
- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness, or any contract or obligations assumed by the city;
- (3) The administrative ordinance or resolutions of the city not in conflict or inconsistent with the provisions of this Code;
- (4) Any ordinance or resolution fixing salaries of officers or employees of the city;
- (5) Any appropriation ordinance or resolution;
- (6) Any right or franchise granted by the council to any person, firm or corporation;
- (7) Any ordinance or resolution dedicating, naming, establishing, locating, relocating, opening, closing, paving, widening, vacating, etc., any street or public way in the city;
- (8) Any ordinance or resolution establishing and prescribing the street grades of any streets in the city;
- (9) Any ordinance or resolution providing for local improvements or assessing taxes therefor;
- (10) Any ordinance or portion thereof establishing fees, rates and charges, not inconsistent with this Code;
- (11) Any ordinance establishing city boundaries or annexing property to the city;
- (12) Any zoning ordinance of the city or amendments thereto;
- (13) Any ordinance authorizing formation of joint agencies with other governments;
- (14) Ordinances or resolutions prescribing traffic regulations for specific locations, prescribing through streets, parking limitations, parking prohibitions, one-way traffic, limitations on loads of vehicles or loading zones, speed limits and other specific traffic regulations, not inconsistent with this Code;
- (15) Any ordinance levying taxes;
- (16) Any ordinance enacted after April 26, 1984;

nor shall such repeal be construed to revive any ordinance or part of an ordinance that has been repealed by a subsequent ordinance which is repealed by the ordinance adopting this Code.

nor shall such repeal be construed to revive any ordinance or part of an ordinance that has been repealed by a subsequent ordinance which is repealed by the ordinance adopting this Code.

ARTICLE I. - IN GENERAL

Sec. 2-1. - Form of government.

A mayor/council form of municipal government, with a mayor and ten (10) councilmen elected from single-member districts, for four-year terms, as provided under the Code of Laws of South Carolina for 1976 and the other provisions of the North Charleston City Code, is hereby adopted for the city.

(Ord. No. 1991-29, 7-18-91)

Sec. 2-2. - Restriction as to contracting indebtedness.

No Indebtedness shall be contracted against the city by any officer, person or board whatsoever, save upon the authority of the city council, nor by any committee of the city council except within the limits of the appropriation made therefor.

Sec. 2-3. - Official bonds of city officers, employees and agents.

- (a) Every officer, employee or agent of the city who handles or has custody of more than one hundred dollars (\$100.00) of the city funds at any time shall, before assuming his duties as such, be required to enter into bond with good securities, in an amount sufficient to protect the city, payable to the city and conditioned upon the faithful performance of his duties and a true accounting for all funds of the city which may come into his hands, custody or control, which bond shall be approved as to form by the corporation counsel and as to substance by the city council and deposited with the municipal clerk; provided, that the bond of the municipal clerk, in whatever capacity he is bonded, shall be deposited in the office of the mayor; and provided further, that the bond of the finance director shall be in amount not less than ten thousand dollars (\$10,000.00) and the bonds for police officers shall be in the amount not less than five hundred dollars (\$500.00) each.
- (b) Premiums on bonds required by this section shall be paid by the city.
- (c) Bonds required by this section shall be subject to annual audit by a competent auditor designated by the city council.

Sec. 2-4. - Insurance.

The city council, by ordinance or resolution, may authorize the mayor, on behalf of the city to contract to the extent permitted by law with one or more insurance companies licensed to do business in this state, to protect the city and city officers, employees and agents while acting in line of duty, against losses arising from public liability, fire, theft, hail, windstorm and other causes, the amount and terms of policies to be as prescribed by the city council and agreed upon by the insurers.

Sec. 2-5. - Right of entry for purposes of inspection.

Whenever any officer or employee of the city is required or authorized by statute, the provisions of this Code or any ordinance, resolution or rules and regulations or orders issued thereunder, in order to carry out his duties thereunder, to enter any premises or vehicle for the purpose of making an inspection thereof or of anything therein contained, such officer or employee shall have the right to enter any such premises or vehicle, upon compliance with all applicable provisions of law, at any reasonable time in pursuance of such duties.

Secs. 2-6—2-20. - Reserved.

Sec. 2-86. - Who may draw on city funds.

Any city funds deposited shall be subject to the joint order of the mayor and the finance director; provided that, in the absence or disability of the mayor or finance director, the mayor pro tem or chairman of the finance committee shall have the authority to act for either.

Sec. 2-96. - Chief executive officer of city; powers and duties generally.

The mayor shall be the chief executive officer of the city. As such, he shall have the powers and perform the duties prescribed for him by statute, this Code and other ordinances, and he shall be vigilant and active at all times in causing the ordinances and laws for the government of the city to be duly executed and put in force.

Sec. 2-98. - Specific powers and duties.

It shall be the duty of the mayor, among his other duties, to:

- (a) Appoint, suspend and remove city employees and appointive administrative officers.
- (b) Direct and supervise all municipal agencies.
 - (1) Give such directions to subordinate officers of the city as may be necessary to carry the ordinances and the police laws and regulations into effect.
 - (2) Direct an annual audit to be made of the books of the municipal clerk, finance director and other officers of the city having custody or control of any funds or securities of the city.
 - (3) Call upon officers, boards, commissions and agencies of the city, from time to time, as he may deem necessary, to furnish him in writing with any information connected with any of their respective offices.
- (c) Prepare and submit the annual operating budget and capital program to the council for its consideration and approval.
- (d) Submit or cause the submission of all necessary reports on the operation of municipal agencies and the finances thereof.
- (e) Communicate to the city council from time to time such information and recommend to the council such measures as may tend to the improvement of the finances, the police, the health, security, cleanliness, ornament and general welfare of the city.
- (f) Compile, organize and prepare all data necessary and to submit reports, information, certifications and receipts to the Department of the Treasury of the United States of America to effect compliance with all federal statutes, guidelines and regulations governing the receipt, retention and expenditure of federal revenue sharing funds accruing to, or received by, the city pursuant to the state and local Fiscal Assistance Act of 1972, the mayor, being expressly allowed and required to submit in behalf of the city council, upon his sole signature, such reports, information, certifications and receipts. The city council further adopts, confirms and ratifies the prior submissions of the mayor to the Department of the Treasury made pursuant to the state and local Fiscal Assistance Act of 1972, and his acts and doings in effecting compliance.
- (g) Negotiate and make settlement of all legal claims upon the recommendation of the legal counsel for the city; provided, however, that, as to claims made against the city, such authority shall extend only to claims of two thousand five hundred dollars (\$2,500.00) or less.

(Ord. No. 1995-53, 10-24-95)

Sec. 2-176. - Mayor to be responsible for establishing policies.

Mayor shall be responsible for establishing personnel policies through executive order and shall notify the city council of all changes to the personnel policies at least ten (10) days prior to such changes.

(Ord. No. 2004-011, 2-12-04)

Sec. 2-179. - Delegation of responsibility by the mayor.

The mayor may delegate all or any part of any responsibility conferred upon him or her relating to hiring, complaints, discipline, discharge of employees or any other personnel issue to the personnel director or other designated city personnel.

(Ord. No. 2004-011, 2-12-04)

**NORTH CHARLESTON FINANCE COMMITTEE
SPECIAL BUDGET WORKSHOP MEETING**

Friday, May 1, 2009

MINUTES

A special budget workshop meeting of the North Charleston Finance Committee was called to order by Chairman Taylor at 9:15 a.m. in the Club Room North at the North Charleston Coliseum. Also in attendance were Mayor Summey and Messrs. Michael Brown, Sam Hart, Steve Ayer, Bob King, Bobby Jameson and Edward Astle and Mesdames Rhonda Jerome, Phoebe Miller, and Dorothy Williams. Also in attendance were Special Assistant to the Mayor Julie Elmore, Municipal Clerk Ellen Clark, Personnel Director Christine Ruth and Finance Director Warren Newton, various Department Heads and members of the public.

The media, organizations and interested individuals were advised of the special meeting in compliance with Sec. 34-4-80 (c) of the South Carolina Code of Laws for 1976, as amended.

Chairman Taylor announced that the purpose of this special workshop meeting is to provide the Finance Committee an opportunity to review and discuss the Mayor's proposed budget and will afford a better understanding and dialogue for the process. The text of Mayor Summey's memorandum to the City Council dated April 7, 2009 in its entirety is as follows:

"I am pleased to present you with a copy of the proposed 2009/2010 Budget for The City of North Charleston. Staff has been working for the past three months preparing their request. I extend my thanks to Warren Newton and our Finance Department staff for their effort in creating the budget information. They always do an excellent job!"

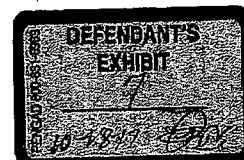
The budget book has a section on "Revenue Projections", one on "General Fund Expenditures", and another on the "Special Revenue Funds". In the rear of the workbook is a listing of the "Personnel Requests" for the next year by the various departments. In addition, we have included a section on the "Community Promotions" and a recap of their efforts for the past year. As always, I have provided you a full listing of what each Department requested for the year and my recommendations.

Revenue

With the downturn in the economy, our revenues have matched the downturn. We have scaled back projections for building permits by \$250,000, franchise fees by \$400,000, state shared revenue by \$600,000, sales tax collections by \$800,000, food and beverage by \$150,000, interest earning by \$500,000, Naval Base revenue by \$600,000, and other revenues by smaller amounts.

On the positive side, we will continue to see an upturn in the property taxes by \$1,725,000. This is due to property value increases from two years ago, with the value now coming online, and due to the decrease in the roll back credit available to citizens because of the decrease in sales tax collections.

This will have an impact on the ad valorem tax bill. No general fund balance appropriations are enclosed in the proposed budget.



Expenditures

In order to adjust for the decline in revenues, a decline in expenditures is necessary. Adjustments in the following general areas make up the difference.

I am recommending we maintain our current salaries for the 2009/2010 budget year. We have been very fortunate to provide salary increases for our employees since we switched to the Pay for Performance system. A large majority of other governments are maintaining their salaries for the next budget year. In any event, Dr. Archer will provide us with the employee cost index numbers, and we will have them as the economy adjusts in the next few years.

I have not included any general fund capital items for the 2009/2010 year. Again, Council has been very proactive in the past ten years on replacements of general fund capital. The revenue is not present to provide for the next budget year. On the flip side, we increased funding for vehicle repairs.

The Department Heads have done an outstanding job in reduction of their operational budgets as management requested they look for 7.5 to 10% reductions from the 2008/2009 approved budget.

I am recommending a continued freeze on those unfilled positions as of March 23, 2009. This saving alone is \$2.8 million. As the economy unfolds next year, we may be in a position to re-evaluate the freeze.

Travel and training expenditures have been reduced. Only training that is required for certifications will be recommended. This saves an approximate \$400,000 for the year.

I am recommending a break in the longevity supplement, sick leave bonus, homeowner incentive, and tuition reimbursement programs for one year.

Health Care costs are being reviewed and addressed in other workshop time frames. An overall reduction in health care costs is included in the budget. The GASB 45 initiative must be factored into the 2009/2010 budget, and this will increase future cost for the creation of the trust fund to assist the retired employees.

Overall Highlights of the Budget

General Fund Proposed Expenditures 6/30/10	\$ 82,293,051
General Fund Approved Expenditures 6/30/09	\$ 90,885,171
Proposed Decrease in Budget 6/30/10	\$ < 8,592,120 >
Percentage of Decrease	< 9.45% >

Special Funds

The Coliseum/Convention Center/Performing Arts Center is budgeted to receive transfers of \$1,163,566 from the General Fund, and \$193,000 from the Debt Services Fund to take care of their capital/maintenance issues.

The Golf Course Enterprise Fund is budgeted to receive a transfer from the General Fund in the amount of \$1,122,279 to cover operating capital and debt service.

The Stormwater Utility Fund is budgeted to receive a transfer from the General Fund in the amount of \$972,225 to cover the cost of operation.

Capital Needs

None included in the General Fund for 2009/2010.

Community Promotions

The only Community Promotions funding included are those which have a long term commitment by the City. These include:

<i>Lowcountry Food Bank</i>	<i>\$ 100,000</i>
<i>Lowcountry Aids</i>	<i>25,000</i>
<i>Charleston Animal Society</i>	<i>50,000</i>
<i>Hunley Restoration</i>	<i>50,000</i>

No others are included for the 09/10 budget year.

Conclusion

The City continues to manage its funds in a prudent fashion. As the national, state and local economies have adjusted downward during this year, the City has also had to adjust. Many revenue sources are down, and therefore we have to project accordingly. All of us hope the next year will be better!

The budget has been cut to reflect the economic times. It is important to me that we maintain our current workforce and not cut staff or reduce operations to the community. While we hold empty positions, many of those were new positions in the 08/09 budget that were never filled as we saw the economy turn downward in the year. I believe we should keep these positions for future staffing.

We continue to receive unfunded mandates from other governmental agencies. It is only becoming more acute with the economic times.

The issues that we have will continue to be issues for the future. Our overall capital needs continues to grow. A separate and dedicated revenue source is the only way we will put a dent into the needs.

We will continue to use the other sources of outside revenue to do those things that we can. The Transportation and Greenbelt initiative will allow us to improve roads and purchase land for future green space.

Funds generated from the sale of property on the former Naval Base will allow for construction of projects already approved by City Council.

The Stimulus funds will permit projects that will create jobs in the community, and our goal is to use them wisely.

All of us are working hard to impact the economy and turn it around. Private business is what drives the creation of jobs and tax base. The Lowcountry is fortunate to have an environment where people want to be for their businesses and a place to call home.

The proposed budget maintains the same ad valorem tax rate as last year; 92.8 mills.

We have to tighten our belts together, and I believe this budget does just that. I look forward in our discussions on May 1, 2009, beginning at 9:00 am in the Coliseum Club North meeting room. Thank you for your assistance with the budget process".

Finance Director Warren Newton distributed corrected copies of the Coliseum/PAC Center revenues and the Stormwater Utility Fund budget.

Mayor Summey reported that the proposed budget anticipates no reduction in employment levels through lay-offs or furlough and that no millage rate increase is anticipated. If the budget is approved as presented, \$400,000 will be made available from employees and retirees that are 65 and older as Medicare Supplemental Insurance, paid for by the employee/retiree, will become mandatory on July 1, 2009. The City is currently working on finding the lowest available rates.

The City continues to apply for as many ARRA (Stimulus Package) grants as possible and that this will hopefully have a positive impact on the City's future revenues. Mayor Summey stated that if consistent improvements in the City's revenues are seen, an additional budget workshop may become appropriate. If needed, this budget workshop would be held after January, 2010 as Business License fees are due at the end of January each year.

Mr. Ayer stated his displeasure with the amount of City funds spent on property during the fiscal year, especially the Dorchester Road property that the City paid \$3.7 million dollars for and that the PRC was supposed to repurchase or at least contribute toward. Mr. Ayer asked if the PRC had repaid the City for the property, could the City have continued with free medical insurance during the 2009-2010 fiscal year. Mayor Summey reminded those present that the PRC was not "obligated" to repay the City for the property, estimated at \$1.7 million dollars. Mr. Newton stated continuing the free medical coverage as in previous years would have resulted in a \$2.8 - \$3 million dollar budget shortfall. Mr. Newton reported that the City has approximately \$13 million dollars in Fund Balance coming forward, but that governmental accounting standards require that a percentage of a municipality's annual budget be retained as fund balance. Mr. Newton reported that the only other money due to the City for property purchase is from Greenbelt Funds for the Dolphin Street property in the amount of \$180,000.00.

Mr. Newton reported that he and the City's new Human Resources Director, Ms. Christine Ruth, have held a number of meetings with employees to discuss the proposed contribution by employees for family coverage and that additional meetings are being scheduled so every affected employee has an opportunity to receive information and ask questions.

Other expense items were discussed, including the amount of support from the City to the Coliseum/Performing Arts Center for their projected short-fall, the multi-year commitment to the Lowcountry Food Bank and a request from Ms. Williams that CBDG funds be used to support the Meals on Wheels program.

General Fund Revenues were then reviewed and discussed and Mayor Summey and Mr. Newton restated that if significant changes come as the result of ARRA funds, an additional budget workshop can be held.

401 - Executive Dept

It was recommended that \$25,000 be transferred from Special Projects (860) Other Postemployment Benefits to the Executive Department's Membership/ Dues/Subscriptions for the cost of membership and representation on the Charleston Area Regional Alliance.

402 - Building Operations

There were no adjustments or amendments.

410 - City Council

It was recommended that the SC World Trade Center, the Coastal Crisis Chaplaincy, the Lowcountry Food Bank and NAACP Annual Banquet line items be removed from Other Operating Expenses in the amount of \$1500 and that it be added to City Council Contingencies, resulting in no net change to the fund budget.

415 - Finance

There were no adjustments or amendments.

416 - Purchasing

There were no adjustments or amendments.

417 - MIS

There were no adjustments or amendments.

421 - Court

There were no adjustments or amendments.

Those present took a break at 10:25 a.m. and resumed at 10:40 a.m.

430 - Personnel

There were no adjustments or amendments.

440 - Legal

Following discussion about a lease rate for the offices of Attorney Brady Hair's location in the new City Hall, it was agreed that this item will be discussed at the May, 2009 Finance Committee meeting.

450 – Planning

There were no adjustments or amendments.

451 – Zoning

There were no adjustments or amendments.

452 – Code Enforcement

There were no adjustments or amendments.

470 – Community Promotions

There were no adjustments or amendments.

510 – Police Dept.

There were no adjustments or amendments.

530 – Fire Dept.

Mayor Summey reported that the cost to fund the eight (8) vacant Firefighter positions in 2009-2010 would be approximately \$375,000 and, that if Council wishes to fill the positions, the "Other Postemployment Benefits" line item in Department 860 (Special Projects) could be reduced by \$400,000, leaving a \$600,000 balance. The Mayor recommended that the remaining \$25,000 be transferred into the Executive Department's Membership/Dues/Subscriptions for the cost of membership and representation on the Charleston Area Regional Alliance.

540 – Building Inspection

There were no adjustments or amendments.

620 – Public Works Administration

There were no adjustments or amendments.

621 – Public Works Maintenance

There were no adjustments or amendments.

636 – Public Works Shop

There were no adjustments or amendments.

637 – Public Works Sanitation

There were no adjustments or amendments.

700 – Recreation & Parks

There were no adjustments or amendments.

710 – Cultural Arts

There were no adjustments or amendments.

715 – Fire Museum

There were no adjustments or amendments.

720 – Naval Complex

There were no adjustments or amendments.

860 – Special Projects

It was recommended that “Other Postemployment Benefits” be reduced by \$400,000 and that \$375,000 be transferred to the Fire Department Fund (530) to fund eight (8) Firefighters and that \$25,000 be transferred to the Executive Dept (401) Membership/ Dues/Subscriptions for the cost of membership and representation on the Charleston Area Regional Alliance. It was recommended that the \$25,000 “BRAC” expense line item be transferred to the “Employee Tuition Reimbursement Program” line item.

A lunch break was taken at 12:15 p.m. and the meeting resumed at 1:00 p.m.

Ms. Miller was excused at 1:00 p.m. for a previous appointment.

861 - Contingencies

There were no adjustments or amendments.

State Accommodations Tax Fund (101)

There were no adjustments or amendments.

HOME Grant Fund (103)

There were no adjustments or amendments.

CDBG Grant Fund (104)

There were no adjustments or amendments.

Mr. Hart was excused at 1:15 p.m. for a previous appointment.

Parking Fund (106)

The Committee discussed checks and balances and auditing procedures for the parking fund. There were no adjustments or amendments.

Coliseum and Convention Center Complex Operating Fund (107)

The Committee discussed the food vendor and the possibility of going out for bids next year. There were no adjustments or amendments.

Weed & Seed Grant Fund (108)

Ms. Williams suggested that this fund be moved from the Planning Department to the Police Department. There were no adjustments or amendments.

SCDOT Safe Routes to School Grant (113)

There were no adjustments or amendments.

High Crash & Pedestrian Grant Fund (115)

There were no adjustments or amendments.

North Charleston Finance Committee
Budget Workshop Meeting
May 1, 2009

City Accommodations Fund (116)

There were no adjustments or amendments.

City Center Tax Increment Financing Fund (119)

There were no adjustments or amendments.

Victims Advocate Fund (124)

There were no adjustments or amendments.

FEMA Assistance to Firefighters Grant (127)

There were no adjustments or amendments.

Oak Terrace Preserve Tax Increment Financing Fund (128)

There were no adjustments or amendments.

Navy Base TIF Fund (130)

There were no adjustments or amendments.

SC Department of Public Safety Gang Task Force (132)

There were no adjustments or amendments.

State Ports Authority Mitigation Grant (135)

There were no adjustments or amendments.

General Obligation Bonds Debt Service Fund (201)

There were no adjustments or amendments.

C.O.P. Debt Service Fund (202)

There were no adjustments or amendments.

Golf Course Enterprise Fund (304)

Motion by Mr. Ayer:

That the City put Wescott Golf Course up for sale.

Motion seconded by Mr. King. Mr. Newton reported that an estimated sale price might be \$3 - \$4 million dollars and that \$9 - \$10 million dollars is still due on it.

Motion failed with only Mr. Ayer voting yes and Ms. Miller and Mr. Hart excused. (1-8-0)

Stormwater Utility Fund - 306

There were no adjustments or amendments.

Motion by Mayor Summey:

To recommend approval of the following amendments:

1. Add \$25,000 into Memberships/Dues/Subscriptions for Executive Department for the Charleston Area Regional Development Alliance.
2. Reduce all the "Table" costs in Other Operating Expenses of Council budget, which totaled \$1,500 and add the \$1,500 to the "contingency" line item description in the same account which is "Other Operating Expenses". Net effect to the account and budget is \$0.
3. Add the 8 vacant Firefighters positions back into the Fire Department budget. The personnel and benefits accounts in Fire Department will be increased by \$375,000.
4. Reduce "Other Postemployment Benefits" line item in Department 860 (Special Projects) by \$400,000.
5. Reduce the "BRAC" expense line item in Department 860 by \$25,000.
6. Add \$25,000 to the "Employee Tuition Reimbursement Program" line item in Department 860.
7. Place the proceeds of the sale of property (Mazyck/Fasset) into the "Contingencies" account once the property sale closes. A Budget Adjustment will come before Council for approval.

Motion supported by Ms. Williams. The motion carried unanimously by voice vote. (9-0-0)

Motion by Mr. Hart:

To recommend approval of the fiscal year 2009-2010 City of North Charleston Budget as amended.

Motion supported by Mr. Brown. The motion carried unanimously by voice vote. (9-0-0)

There being no further business to come before the Committee, the meeting was adjourned at 1:50 p.m.

ATTEST

TRUE COPY
BY Sandra L. Brown
SANDRA L BROWN

Respectfully Submitted,



Ellen Clark
Municipal Clerk

NORTH CHARLESTON CITY COUNCIL

June 11, 2009

Minutes

The regular meeting of the North Charleston City Council was called to order by Mayor R. Keith Summey at 7:00 p.m. in the Council Chambers of North Charleston City Hall. City Council members in attendance were Messrs. Astle, Ayer, Brown, King, Hart and Mesdames Jerome, and Miller. Excused were Mr. Jameson, Mr. Taylor and Ms. Williams. Also in attendance was Special Assistant to the Mayor Raymond H. Anderson, Jr., Planning Director Bill Gore, Legal Counsel Tim Amey, Municipal Clerk Ellen Clark and other staff and members of the public.

The media, organizations and interested individuals were advised of the meeting in compliance with Sec. 30-4-80 (e) of the South Carolina Code of Laws for 1976, as amended.

Rev. Edwin Wright, Inner City Ministries, offered the invocation and Mayor Summey invited those present to join in reciting the Pledge of Allegiance.

Pastor Edwin Wright of the Inner City Ministries presented a description of the program basics and encouraged parents, students, church and school leaders and stressed the importance of each child to attend first day and every day of school. Additional activities will be scheduled throughout the summer.

Ms. Jamee Haley, Executive Director of Lowcountry Local First, a non-profit, grassroots organization that encourages communities to "Buy Local, Be Local" and to shift 10% of their purchases to Independent Business Networks across the United States.

Mayor Summey introduced Ms. Anita Zucker, owner of the S.C. Stingrays Hockey Team and Coach Jared Bednar and presented them with a Proclamation in honor of their recent victory over the Alaska Aces to win the Kelly Cup Championship for the third time. Ms. Zucker and Mr. Bednar expressed their appreciation to the City for its continued support and to the team members of the Stingrays for their dedication to the team and the positive influence that they have in the City.

Mayor Summey introduced the new Employees from the Police and Recreation Departments.

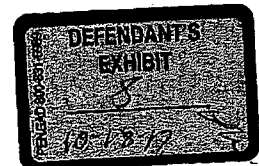
1. The first item on the agenda was the minutes from the May 28, 2009 City Council meeting.

Motion by Mr. Brown:

To approve the minutes of the May 28, 2009 City Council meeting as presented.

Motion seconded by Mr. Astle. The motion carried unanimously by roll call vote. (8-0-0)

2. The next item on the agenda was the final reading of an Ordinance adopting a bill to be entitled "The Budget Ordinance of the City of South Carolina, Fiscal Year Ending June 30,



2010." At the May 28, 2009 meeting, the City Council held a public hearing and approved the first reading of the budget ordinance for the fiscal year ending June 30, 2010 and is now being presented for the second and final reading. Staff agrees and recommends approval of the proposed budget for the fiscal year ending June 30, 2010. On May 21, 2009 the Finance Committee voted to recommend approval. On May 28, 2009, the City Council held a public hearing and voted to approve the Ordinance for a first reading and move it to a second reading.

Motion by Mr. Astle:

To approve final reading of an Ordinance adopting a bill to be entitled "The Budget Ordinance of the City of South Carolina, Fiscal year ending June 30, 2010," and that the name be changed to that of an Ordinance and engrossed for ratification.

Motion seconded by Ms. Jerome. The motion carried unanimously by roll call vote. (8-0-0)

3. The next item on the agenda was final reading of an Ordinance adopting a bill authorizing the Mayor to execute all necessary documents for the transfer of portions of the alleys running parallel to Holmes Avenue, Rugheimer Avenue, Marigold Street, and Mosstree Road to the adjacent property owners. City Council voted in September 2007 to abandon the rights-of-way for these alleys and to transfer the land to the adjacent property owners. Council further specified that the property owners incur all costs associated with the transfer, and that each parcel be returned to City Council for appropriate action. Staff contacted the property owners along these alleys regarding their interest in receiving half of the alleyway (adding approximately 10 feet to each property). All 25 property owners responded, and all but one property owner expressed interest and submitted checks for the \$75 deed preparation fee and the \$10 recording fee. A map and a list of these property owners were attached for reference.

Staff recommends approval of the Ordinance. On May 21, 2009 the Finance Committee voted to recommend approval. On May 28, 2009, the City Council voted to approve the Ordinance for a first reading and move it to a second reading.

Motion by Mr. Brown:

To approve the final reading of an Ordinance adopting a bill authorizing the Mayor to Execute all necessary Documents for the Transfer of Portions of the Alley Running Parallel to Holmes Avenue, Rugheimer Avenue, Marigold Street, and Mosstree Road to the Adjacent Property Owners, and that the name be changed to that of an Ordinance and engrossed for ratification.

Motion seconded by Ms. Miller. The motion carried unanimously by roll call vote. (8-0-0)

4. The next item on the agenda was the first reading of an Ordinance to approve the final Planned Development District (PDD) zoning for the property located at 8601 Dorchester Road (TMS #171-00-00-071) from ON, Neighborhood Office to a PDD to be known as Dorchester Senior Living along with a proposal to concurrently amend a portion of the Comprehensive

Development Plan Future Land Use Map changing the designation of a portion of the area from Neighborhood Business to Multi-family Residential.

Planning Director Bill Gore reported the vacant, heavily wooded parcel of land is located southwest of Dorchester Rd. at the corner of Netherby Lane and Dorchester Rd. adjacent to East Shore Racquet Health Club. The Whitehall residential community is rear of the site. The proposal meets all general conditions and specific requirements under the City of North Charleston's Zoning Ordinance. Under General Conditions, the applicant proposes more than one principal land use for the development.

The development is proposed to consist of approximately 150 Senior Living units on the 13.41 acre site. The mixed commercial land uses proposed for future development will occur on the remaining 3.41 acres of the 13.41 acres site. It will include all uses allowed in ON zoning; boutique retail spaces (3,500 sq. ft.) type uses such as a flower shop, bookstore, gift shop; restaurants containing full service bar without a dance floor or sexual references not suitable for a family environment with gross income generated from food sales; small food and beverage establishments such as a coffee shop, bakery, delicatessen, banks, and a sales center with the associated uses.

The uses proposed for inclusion in the PDD would require a concurrent proposal to amend the Comprehensive Development Plan Future Land Use Plan to support the uses proposed multi-family and B-1, Limited Business type uses.

Mr. Gore reported that following the April 13, 2009 Planning Commission meeting, the Planning Staff identified the following variances and that if the Planning Commission or Staff had a recommendation about the variance, it is noted shown below.

1. The applicant is proposing to construct .75 spaces per dwelling unit for the multi-family development versus fulfilling the parking standard requirement for: 1.5 spaces per apartment for multi-family development.
2. The applicant is proposing 22' two-way drive aisles versus the standard 24'.
3. The applicant is proposing a variety of setbacks different than the standard setbacks required under the zoning ordinance.
4. The applicant is proposing a buffer of 40' along Coosaw Creek instead of the 50' buffer required by ordinance. Staff recommends maintenance of the 50' standard.
5. The applicant proposes a 40' front buffer in which canopy trees would remain undisturbed. The 40' buffer includes understory trees and shrubs which should also remain undisturbed and the buffer should be opaque. Staff recommends maintenance of the existing 40' buffer standard.
6. A proposal for no internal buffers for adjoining parcels within the PDD project boundary has been included.

7. The applicant proposes that the site layouts for the commercial areas will be conceptual and that the Zoning Administrator will have the authority to review and approve a site plan using the PDD and ON Standards without an amendment to the PDD.

8. The applicant proposes to measure building heights based on finished floor elevations to the highest point on a structure as opposed to using the average elevation of the ground within 20 feet of the base of the structure. Staff recommends basing the measurement of building height on the distance above the ground, or adjusting the maximum height allowed to reflect a measurement based on finished floor elevation.

9. The existing tree survey is three years old, and the tree protection ordinance requires a tree survey less than two years old. Staff recommends an update to the tree survey.

10. Walking trails in the wetland buffers have been proposed for construction. As noted above, the staff recommends a 50' buffer along Coosaw Creek and recommends no walking trails within that buffer. For buffers adjoining other wetlands, staff recommends that any walking trails penetrate the buffer so as to leave at least 25' of undisturbed area adjacent to the wetland.

11. Tree cutting includes trees 1" dbh or greater with a proposal to replace grand trees in accordance with the City's mitigation requirement.

Mr. Gore reported that following the April 13, 2009 Planning Commission meeting, the applicant submitted an amended PDD plan, presented at this meeting and dated May 18, 2009, which Mr. Gore stated addresses or satisfies the listed variances and that the staff now recommends approval as submitted.

Mayor Summey reported that this was a duly published public hearing and invited anyone wishing to be heard to come forward. No comments were offered and without objection this item was referred to the Public safety Committee for further study and a recommendation.

Without objection, the Council members agreed to consider agenda items #5 - #10 together as read by title only.

Motion by Mr. Brown:

5. A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH ACS SOUND AND LIGHTING TO PROVIDE TURN KEY SUPPORT SERVICES FOR MARY WILSON OF THE SUPREMES CONCERT TO BE HELD ON JULY 4, 2009 AT THE RIVERFRONT PARK,

6. A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT FOR RENTAL OF QUARTERS K, L, M AND N PARKING AREA BETWEEN THE CITY OF NORTH CHARLESTON AND NOISETTE, LLC TO PROVIDE STORAGE AND EVENTS SPONSORS HOSPITALITY AREA FOR THE

CITY'S INDEPENDENCE DAY CELEBRATION AT THE RIVERFRONT PARK TO BE HELD ON JULY 4, 2009,

7. A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT FOR PUBLIC PARKING BETWEEN THE CITY OF NORTH CHARLESTON AND NOISETTE, LLC TO PROVIDE PUBLIC PARKING FOR THE CITY'S INDEPENDENT DAY CELEBRATION AT THE RIVERFRONT PARK TO BE HELD ON JULY 4, 2009,

8. A RESOLUTION ACCEPTING PORTIONS OF NANTUCKETT AVENUE AND NEWPORT PLACE AS SHOWN ON THAT CERTAIN PLAT BEARING THE LEGEND, "PLAT SHOWING THE SUBDIVISION OF TRACT A TMS 484-00-00-008 CONTAINING (39.030) ACRES INTO LOTS 26 THRU LOTS 64 AND LOTS 106 THRU LOTS 133 THE RESERVE AT COLONY NORTH PHASE II OWNED BY DAN RYAN BUILDERS-SOUTH CAROLINA, LLC. LOCATED IN THE CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" FOR PUBLIC MAINTENANCE BY THE CITY OF NORTH CHARLESTON SUBJECT TO RECORDING OF THE FINAL PLAT,

9. A RESOLUTION ACCEPTING HYDE PARK VILLAGE LANE AS SHOWN ON THAT CERTAIN PLAT BEARING THE LEGEND, "PLAT SHOWING A BOUNDARY SURVEY OF HYDE PARK SUBDIVISION AND UPDATED OWNERSHIP AND PARCEL INFORMATION LOCATED IN VILLAGE AT HYDE PARK PROPERTY OF NEW VILLAGE DEVELOPMENT, LLC, LOCATED IN THE CITY OF NORTH CHARLESTON, SOUTH CAROLINA" FOR PUBLIC MAINTENANCE BY THE CITY OF NORTH CHARLESTON SUBJECT TO RECORDING OF THE FINAL PLAT,

10. TO APPROVE CHANGE ORDER #1 FOR BUILDING 32 (FORMER POWERHOUSE).

Motion seconded by Mr. Hart. The motion carried unanimously by roll call vote for agenda items #4, 6, 7, 8, 9 were unanimously (8-0-0), with the exception of agenda item #5 (7-1-0), with Mr. Ayer voting no, and Mayor Summey abstained on item #10 (7-0-1).

9 Corrected 6-25-09

Mayor Summey gave a brief report on the MeadWestvaco/Capstone recent contract to acquire Watson Hill, a 6,600 acre property annexed to the City of North Charleston and the Mayor congratulated the Corporation on the purchase and their land management standards.

There being no further business to come before the Council, the meeting was adjourned at 7:35 p.m.

ATTEST:

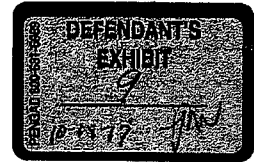
Respectfully Submitted,

Ellen Clark

Ellen Clark
Municipal Clerk

TRUE COPY
BY *Sandra L Brown*
SANDRA L BROWN

CITY OF NORTH CHARLESTON, SOUTH CAROLINA
POST-RETIREMENT HEALTH BENEFITS PLAN



The City of North Charleston, South Carolina Post-Retirement Health Benefits Plan ("Plan") provides post-retirement health benefits for certain retired and former Employees (and their Spouses and Dependents) of the City of North Charleston, South Carolina (the "City"). This Plan may be altered, modified or terminated in any manner, at any time and for any reason as provided herein. Assets (if any) that are set aside (or otherwise intended to be used) for the purpose of paying retiree health benefits may be held in trust.

WITNESSETH:

WHEREAS, pursuant to Section 5-9-30 of the Code of Laws of South Carolina 1976, as amended, the City has heretofore provided retiree health care benefits to certain of its retired and former Employees;

WHEREAS, this Plan sets out the terms and conditions of such benefits as such terms and conditions have been modified through July 1, 2009;

WHEREAS, effective for the City's fiscal year beginning July 1, 2008, based on the number of Plan Members (as hereinafter defined), Statements No. 43 and 45 of the Governmental Accounting Standards Board (collectively referred to as "GASB 45") applied to the City's financial reports with respect to certain benefits to be furnished to retirees, which benefits are known as "other post employment benefits" ("OPEB"), which are defined to include the retiree health care benefits provided to retired and former employees;

WHEREAS, it is in the best interests of the City to establish a trust and to make contributions to such trust in order to fund OPEB benefits provided by the City pursuant to the Plan;

WHEREAS, the City intends that such trust will comply with the requirements of Section 115 of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the City desires to establish this Plan to comply with the requirements of GASB 45 and Code § 115;

NOW, THEREFORE, the City hereby adopts this Plan effective July 1, 2009, for the benefit of eligible retired and former Employees:

ARTICLE I
INTRODUCTION AND DEFINITIONS

Section 1.01 Purpose of Plan. The purpose of this Plan is to provide health and dental care benefits for certain eligible retired and former Employees. This Plan document constitutes the substantive plan required under GASB 45 and Code § 115 and the regulations thereunder.

Section 1.02 Definitions. When the initial letter of a word or phrase is capitalized in this Plan, such word or phrase (unless the context otherwise clearly requires) shall have the following meaning:

(a) "Benefits" shall mean the benefits provided to or for Participants pursuant to this Plan as described in Section 2.03.

(b) "Code" means the Internal Revenue Code of 1986, as amended from time to time. Reference to a specific provision of the Code shall include such provision, any valid regulations promulgated thereunder, and any comparable provision of future legislation that amends, supplements or supersedes such provision.

(c) "City" means the City of North Charleston, South Carolina. Decisions, consents, or communications to be made or given (and powers or discretion to be exercised under this Plan) on behalf of the City under this Plan will be deemed sufficiently made, given or exercised if made, given or exercised by the Mayor or by a person designated by the Mayor.

(d) "Dependent" means, with respect to any Employee, an individual who is treated at any time at which such status is relevant under this Plan as a "dependent" of such Employee within the meaning of Code § 105(b) (by reference to Code § 152). Upon the death of an Employee, an individual who was a "Dependent" of such Employee ceases to be a "Dependent." The Plan Administrator may from time to time demand (from such Employee or other individual claiming benefits under this Plan) such evidence of such status as the Plan Administrator deems necessary.

(e) "Employed" refers to the status of an individual who satisfies either the requirements set forth in paragraph (i) or the requirements set forth in paragraph (ii):

(i) for such period of time as may be required by this Plan, (A) the individual is on the regular payroll of the City; (B) the City withholds employment taxes with respect to such individual's compensation; and (C) the City issues an IRS Form W-2 with respect to such individual's compensation;

--OR--

(ii) for such period of time as may be required by this Plan, (A) the individual provides services to the City in an Eligible Capacity; and (B) the City compensates such individual for the services provided in such Eligible Capacity.

The term "Eligible Capacity" means services provided as (x) a municipal judge or (y) a city attorney. The term "Eligible Capacity" specifically excludes any category of service provided on a volunteer basis. The City may designate, by amendment to this Plan, another category of compensated municipal service providers as an "Eligible Capacity."

(f) "Employee" means an individual who is or was Employed by the City. An individual's status as an Employee shall be determined by the Plan Administrator in its sole discretion.

(g) "Fiduciary" means a person who (i) exercises any discretionary authority or discretionary control respecting management of this Plan or exercises any authority or control respecting management or disposition of its assets, (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) has any discretionary authority or discretionary responsibility in the administration of this Plan. A person is a Fiduciary only to the extent that he or she actually acts as described herein or has the duties described herein.

(h) "Mayor" means the individual serving from time to time as the mayor of the City.

(i) "Participant" is a Plan Member who satisfies all of the requirements under the Plan to participate in, and receive Benefits under, the Plan in accordance with Section 2.01 hereof but such term excludes any person whose participation in the Plan has ceased.

(j) "Plan" means this City of North Charleston, South Carolina Post-Retirement Health Benefits Plan.

(k) "Plan Administrator" means the person designated from time to time by the City to administer this Plan.

(l) "Plan Member" means a current Employee, a former Employee who does not receive Benefits under the Plan but may subsequently satisfy the requirements for participation in the Plan and a retired or former Employee who is receiving Benefits under the Plan.

(m) "Plan Year" means a twelve (12) consecutive month period beginning on July 1 and ending on June 30 of the succeeding calendar year.

(n) "Program" means the program of the City to provide certain post-retirement health and dental benefits, which program consists of this Plan document and the Trust.

(o) "Spouse" means, with respect to any Employee, an individual who is at any time at which such status is relevant under the Plan married to such Employee. The term "Spouse" also includes an individual who was married to such Employee at the time of such Employee's death. The Plan Administrator may from time to time demand (from such Employee or other individual claiming benefits under this Plan) such evidence of such status as the Plan Administrator deems necessary.

(p) "Trust" means the trust established pursuant to the City of North Charleston, South Carolina Post-Retirement Health Benefits Investment Trust Agreement.

(q) "Trust Agreement" means this City of North Charleston, South Carolina Post-Retirement Health Benefits Investment Trust Agreement.

(r) "Trustee" means the person(s) serving from time to time as the trustee of the Trust.

ARTICLE II PARTICIPATION AND BENEFITS

Section 2.01 Requirements for Participation. The requirements for participation in this Plan as of the date of adoption of this Plan are set forth in Exhibit A, which is attached hereto and incorporated herein by reference. Only a Plan Member who, from time to time, satisfies all of the requirements for participation in this Plan may become and remain a Participant. The City may amend the participation requirements from time to time in any manner.

Section 2.02 Cessation of Participation. Participation in the Plan shall terminate with respect to a Participant upon the earliest to occur of the following events:

(a) ~~the death of the Participant (provided that the Spouse of a Participant may purchase benefits under the Plan in accordance with Exhibit B even after the Participant dies); or~~

(b) the failure of the Participant to meet or continue to meet any requirement for participation.

Notwithstanding any other provision of this Plan, no Plan Member (or Spouse or Dependent of a Plan Member) is entitled to purchase insurance under this Plan or to receive any other benefit under this Plan after such Plan Member (or Spouse or Dependent of such Plan Member) reaches the general age for Medicare eligibility (currently age 65 pursuant to 42 U.S.C. § 426(a)).

Section 2.03 Benefits. The Benefits provided under this Plan are provided only to Participants (and to their Spouses and Dependents but only to the extent set forth in Exhibit B). The Benefits that are provided under this Plan shall be provided only at the time, in the form, and in the amounts determined by the City in its sole discretion from time to time. The Benefits provided as of the date of adoption of the this Plan are set out in Exhibit B, which is attached hereto and incorporated herein by reference. The City may amend the Benefits provided under this Plan from time to time in any manner.

Section 2.04 Incompetent Recipient. If, in the opinion of the Plan Administrator, any individual is or becomes incapable of managing the benefits payable under this Plan and, on advice of counsel, the Plan Administrator does not determine that any person has been given a valid power of attorney or other legal instructions for dealing with such benefits, the Plan Administrator may apply to a court of competent jurisdiction for instructions for distribution on such individual's behalf that the court determines will be beneficial to such individual, including, without limitation, distribution to such individual's guardian or conservator.

Section 2.05 Unclaimed Benefits. If the Plan Administrator is unable, after reasonable efforts, to ascertain the whereabouts or identity of an individual who is entitled to benefits under this Plan, then the amount otherwise payable shall be forfeited and shall not ever be restored. Any such forfeitures may be used to provide benefits to other Participants under this Plan.

ARTICLE III CONTRIBUTIONS

Section 3.01 Discretion of City. The City shall determine, in its sole discretion, the amount of contributions (if any) that the City shall make to the Trust for any period and from time to time.

Section 3.02 Contributions to Trust. All contributions made under this Plan shall be deposited in accordance with the Trust Agreement to be held, invested, and disbursed in accordance with the terms of this Plan and the Trust Agreement. No contributions by a Plan Member or any other person will be accepted.

Section 3.03 Trust Agreement. The City has entered into a Trust agreement with the Trustee under which the Trustee will receive contributions made under this Plan and hold, manage, invest and reinvest the Trust property and all income from such property, in accordance with the terms of the Trust. The Trust agreement is incorporated herein by reference as a part of this Plan, and all persons who receive or claim benefits hereunder are subject to the terms of the Trust agreement. If there is a conflict between the terms of this Plan and the Trust agreement, the terms of this Plan shall control. In accordance with the terms of the Trust, the Trustee shall make distributions from the Trust in such amounts and to such person or persons as the City or the Plan Administrator shall direct.

ARTICLE IV
ADMINISTRATION

Section 4.01 General.

(a) Each Fiduciary shall discharge such Fiduciary's duties solely in the interest of the Participants who receive Benefits under this Plan and for the exclusive purpose of providing the Benefits that are provided herein to such Participants and defraying the reasonable expenses of administering this Plan. Each Fiduciary, in carrying out such duties and responsibilities, shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) A Fiduciary may serve in more than one fiduciary capacity, may employ one or more persons to render advice with regard to such Fiduciary's fiduciary responsibilities (with payment from the Trust), and may be reimbursed for reasonable expenses, and may be paid reasonable compensation (subject to the terms of any other agreement concerning such Fiduciary's compensation), from the Trust.

(c) A Fiduciary may delegate any of such Fiduciary's responsibilities for the operation and administration of this Plan to the extent consistent with such Fiduciary's fiduciary duties. The Fiduciary shall promptly notify the Plan Administrator (or if the Fiduciary is the Plan Administrator, shall notify the Mayor), in writing, of any such allocation or delegation.

Section 4.02 Information. The City shall supply such full and timely information for all matters relating to this Plan as the Plan Administrator and the Trustee may reasonably require for the effective discharge of their respective duties.

Section 4.03 Plan Administrator.

(a) The Plan Administrator shall have plenary authority to administer this Plan. All decisions, determinations and interpretations made by the Plan Administrator concerning this Plan will be final, conclusive and binding upon all persons affected thereby.

(b) The Plan Administrator shall have the power to construe this Plan and to determine all questions that may arise hereunder, at the Plan Administrator's sole discretion, relating to the administration of this Plan.

(c) All disbursements by the Trustee shall be made upon, and in accordance with, the written directions of the Plan Administrator who shall act in accordance with the written directions of City with respect to providing benefits hereunder. However, the payment or reimbursement to the Trustee or other person of reasonable expenses for the administration or investment of Trust assets may be made by the Trustee without such written direction by the Plan Administrator.

(d) The Plan Administrator shall establish rules and procedures to be followed by any individual who may apply for benefits under this Plan and for furnishing and verifying information necessary or appropriate for the payment of benefits under this Plan.

(e) ~~Subject to the terms of any other agreement between the Plan Administrator and~~
the City, the Plan Administrator may employ such counsel, accountants, and other agents as the Plan Administrator shall deem reasonable. The reasonable compensation of such counsel, accountants, and

other agents and any other expenses incurred by the Plan Administrator in the administration of this Plan and the Trust shall be paid from the Trust. The Plan Administrator may be paid reasonable compensation for administering this Plan (subject to the terms of any other agreement between the Plan Administrator and the City concerning such Plan Administrator's compensation).

(f) If the Plan Administrator is a City officer or employee, his/her duty under this Plan shall be treated as official duties and he/she shall be entitled to relief from liability, and defense and indemnification, to the same extent as provided for any government officer or employee in the conduct of his/her official duties. Additionally, neither the City, the Trustee, the Plan Administrator nor any other person will be liable for the direct or indirect consequences of any delay or failure to pay any benefits under this Plan.

(g) The City may replace the Plan Administrator at any time and from time to time. No cause, justification or approval by any court or person shall be required for the replacement of the Plan Administrator.

Section 4.04 Claims Procedures.

(a) In the event of any dispute over benefits under this Plan, all remedies available to the claimant under the claims procedure described below must be exhausted before legal recourse of any type (including but not limited to filing a lawsuit in court) is sought.

(b) All claims for benefits under this Plan shall be made and filed, in writing, with the Plan Administrator no later than 180 days after payment of the claimed benefit is due under this Plan or such claim shall be null and void. Upon receipt, the Plan Administrator shall review the claims and determine whether the claimant is entitled to receive any benefits pursuant to such claim. The Plan Administrator shall notify the claimant in writing of any adverse decision with respect to his/her claim within ninety (90) days after its submission, unless the Plan Administrator notifies the claimant before that time that additional time is needed for a decision. The notice of any adverse decision shall be written in a manner calculated to be understood by the claimant and shall include the specific reason or reasons for the denial.

(c) Any legal recourse of any type that is sought after all remedies under the claims procedure provided herein have been exhausted must be filed no later than 180 days after such procedures have been exhausted; otherwise such legal recourse shall be forever barred.

Section 4.05 Records.

(a) All material acts and determinations of the Plan Administrator shall be duly recorded and all such records together with such other documents as may be necessary in exercising its duties under this Plan shall be preserved for no less than six years. Such records and documents shall at all reasonable times be open for inspection by the City and for the purpose of making copies by any person designated by the City.

(b) The Plan Administrator shall provide to the City such reports and information (no less frequently than once every calendar quarter), resulting from the application of the Plan Administrator's responsibilities under this Plan, as is from time to time requested by the City.

~~Section 4.06 Limitation of Rights. Nothing herein will be construed to require the City to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of~~

the City from which any payment under the Plan may be made. Contributions are established by the City. Nothing in this Plan shall give any person any right to employment or continued employment with the City.

ARTICLE V GENERAL PROVISIONS

Section 5.01 Rules of Construction. The headings and subheadings in this Plan have been inserted for convenience of reference only and shall not affect the construction of the provisions hereof. In any necessary construction, the masculine shall include the feminine and the singular the plural, and vice versa.

Section 5.02 Administration Expenses. The reasonable expenses of administering this Plan and the Trust shall be paid from the Trust.

Section 5.03 Participant's Interests. No person shall have any right or interest in or to the Trust assets or benefits provided under this Plan other than as specifically provided herein.

Section 5.04 Prohibition Against Assignment and Alienation of Benefits. To the maximum extent provided by law, no right or claim to, or interest in, any part of any payment from this Plan shall be subject to voluntary or involuntary anticipation, alienation, sale, transfer, assignment, mortgage, pledge, garnishment, encumbrance, hypothecation, commutation, garnishment, charge, or any other process, of any court. No benefit payable from this Plan to any person shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, except as required by law. Any attempt to anticipate, alienate, sell, transfer, assign, mortgage, pledge, garnish, encumber, charge, or levy against any benefit under this Plan shall be void, except as required by law. No portion of the benefits payable under this Plan shall be subject to the bankruptcy estate of any person.

Section 5.05 Providing Information. An individual who applies for or claims benefits under this Plan may be required to furnish such information as may be requested by the Plan Administrator. If the Plan Administrator determines that an individual furnished erroneous information, the Plan Administrator may make such adjustment in any benefit payable hereunder as the Plan Administrator deems appropriate to correct such error.

Section 5.06 Correction of Errors.

(a) The Plan Administrator may require an adjustment to be made in any Plan benefit or may collect previously paid benefits if, after payment has commenced, any error in any pertinent information or any mistake in payment is discovered.

(b) Any person in receipt of Plan benefits paid (or on whose behalf benefits were paid) but not owed has an obligation to immediately notify the Plan Administrator of the overpayment and to return the overpaid benefits to this Plan.

(c) The Plan Administrator may, on behalf of this Plan, take whatever action is necessary or appropriate to enforce this Plan's right to recover a mistaken payment, whether or not it was made due to the error of the Plan Administrator, from the person to whom it was made or from any other appropriate party.

(d) Each person who receives or claims benefits under this Plan shall be bound by the terms of this Plan and the Trust Agreement including all amendments to this Plan and the Trust Agreement and shall also be bound by decisions made by the City, the Plan Administrator and the Trustee in accordance with the terms of this Plan or the Trust Agreement.

Section 5.07 Audit. An independent audit of this Plan shall be performed annually, with the results thereof reported to the City, the Plan Administrator, the Trustee and any other person approved by the City and available for review and copying by any Participant. Such audit may be performed by the City's external auditors in connection with the audit of the City's financial books and records.

Section 5.08 Federal or State Taxes. The City and the Plan Administrator do not guarantee that any particular federal or state income, payroll or other tax consequence will occur because of participation in the Program.

Section 5.09 Entire Agreement. The Plan document, the Trust agreement, and any properly adopted or executed amendments thereof, shall constitute the total agreement between the parties regarding the Program. No oral statement regarding the Program may be relied upon by any entity or person.

Section 5.10 Interpretation. In resolving any conflict between provisions of the Program and in resolving any other uncertainty as to the meaning or intention of any provision of the Program, the interpretation that

- (a) causes the Program to qualify as an irrevocable arrangement under GASB 45,
- (b) causes the Program to comply with all applicable requirements of the Internal Revenue Code, including, but not limited to, Code §§ 79, 104, 105, 106 and 115, and
- (c) causes the Program to comply with all applicable statutes and rules,

shall prevail over any different interpretation.

Section 5.11 Limitation on Rights. Neither the establishment nor maintenance of the Program nor any amendment thereof nor any act or omission under the Program (or resulting from the operation of the Program) shall be construed:

- (a) as conferring upon any Participant or any other person a right or claim against the Trust, the City or the Plan Administrator to receive any benefit;
- (b) as creating any responsibility or liability of the Trust, the City or the Plan Administrator for the validity or effect of the Program;
- (c) as a contract between the City and any Participant or other person or as vesting any benefit to a Participant or other person;
- (d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the City or any Participant or other person to continue or terminate the employment relationship at any time; or

(e) as giving any person the right to be retained in the service of the City or to interfere with the right of the City to discharge any person at any time.

Section 5.12 Release. Any payment with respect to any Participant shall, to the extent thereof, be in full satisfaction of the claim of such Participant.

Section 5.13 Liability. The Plan Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document or electronic transmission believed by the Plan Administrator to be genuine or to be executed or sent by an authorized person.

Section 5.14 Governing Laws. Except to the extent pre-empted by federal law, the laws of the State of South Carolina shall apply in determining the construction and validity of the Program.

Section 5.15 Severability. If any provision of the Program shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Program shall continue to be fully effective.

Section 5.16 Notice.

(a) Except as otherwise expressly provided in this Plan, any notice, payment, demand, consent or communication required or permitted to be given by this Plan ("Notice") to the City or the Administrator shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if delivered either personally, by facsimile, or by overnight mail or by regular mail, first class postage prepaid, addressed as follows:

If to the City:

City of North Charleston, South Carolina
Attn: _____
Post Office Box 190016 (29419-9016)
City Hall
2500 City Hall Lane
North Charleston, SC 29406

If to the Plan Administrator:

Thomas Cooper
Attn: _____

Charleston, SC 2940_

Any Notice hereunder shall be deemed to be given on the date on which it was delivered, either personally, by facsimile, or by overnight mail, or three (3) days after it was deposited in a regularly maintained receptacle for the deposit of United States mail addressed as set forth above. Any person may change his address for purposes of this Trust Agreement by giving Notice to the City and the Trustee in accordance with the foregoing provisions of this section.

(b) With respect to any Notice to a Plan Member or Participant, Notice may be provided in the manner specified in subsection (a) of this Section (to the address for such Plan Member or

Participant currently on file with the Plan Administrator (which may obtain an address for a Plan Member or Participant from the City)) or by email, newsletter or similar means (to the extent that the Plan Administrator determines that such similar means are appropriate).

ARTICLE VI MODIFICATION AND TERMINATION OF THIS PLAN

Section 6.01 Amendment of this Plan. The City shall have the right at any time and for any reason, in the City's sole discretion, to modify, alter, or amend this Plan, in whole or in part, in any manner and without limit, including reducing or eliminating the payment of any benefits under this Plan. Such modification, alteration or amendment may be made without providing any other benefits in lieu thereof and for any persons (including but not limited to persons then receiving benefits under this Plan). This Plan does not provide or create any contractual or other obligation of the City to provide any benefit to any person. Except as provided in this Plan or the Trust Agreement, any modification, alteration or amendment to this Plan shall not have the effect of (a) reverting to the City any part of the principal or income of the Trust or (b) permitting any part of the principal or income of the Trust to be used for, or diverted to, purposes other than the exclusive benefit of providing retiree health benefits to Participants (and their Spouses and Dependents) or defraying the reasonable expenses of administering this Plan.

Section 6.02 Termination of this Plan. This Plan is established with the intention of being maintained for an indefinite period of time. Nevertheless, the City expressly reserves the right to discontinue or terminate the Plan with respect to claims not yet incurred and make no further contributions. No person shall have or attain any vested right, contractual or otherwise, to any further contributions to the Plan or the Trust by the City after the City has discontinued or terminated the Plan. The continuance of this Plan is not a contractual or other obligation of the City. The City shall have the right at any time and for any reason, in the City's sole discretion, to terminate this Plan and immediately cease paying any benefits hereunder without providing any other benefits in lieu thereof. The Plan will automatically terminate if the City's group health insurance plan is for any reason (including a decision by the City in its discretion to terminate the City's group health insurance plan) terminated and not immediately renewed or replaced with another group health insurance plan.

ARTICLE VII EXCLUSIVE BENEFIT AND PLAN INFORMATION

Section 7.01 Exclusive Benefit. This Plan is maintained for the exclusive benefit of certain retired and former Employees of the City.

Section 7.02 Plan Information.

- (a) The employer identification number of the City is 57-0545285.
- (b) The City is the employer and the Plan sponsor:

City of North Charleston, South Carolina
Attn: _____
Post Office Box 190016 (29419-9016)
City Hall
2500 City Hall Lane
North Charleston, SC 29406

- (c) The initial Trustee of the Trust is:

(d) The initial Plan Administrator is:

(e) The agent for service of legal process upon the Plan is the Plan Administrator.

(f) The name of the plan is City of North Charleston, South Carolina Post-Retirement Health Benefits Plan.

(g) The Plan's tax year is July 1st through June 30th.

(h) The Plan Year is July 1st through June 30th. All Plan records will be kept on the basis of the Plan Year.

(j) The Plan is to provide post-retirement health and dental care benefits for certain eligible retired and former Employees (and their Spouse and Dependents) of the City of North Charleston, South Carolina.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, and to record the adoption of this Plan as set forth herein, the City has caused its authorized representative to execute this document on this ____ day of _____, 2009, to be effective on July 1, 2009.

CITY OF NORTH CHARLESTON, SOUTH CAROLINA

By: R. Keith Summey
Name: R. Keith Summey
Title: Mayor

Exhibit A
Requirements for Participation in Plan as of July 1, 2009

The requirements for a Plan Member to participate in, and receive benefits under, the Plan as of July 1, 2009, are as follows:

1. The Plan Member must have:
 - (a) been Employed by the City for at least twenty (20) years; and
 - (b) separated from service with the City (i.e., must no longer be Employed with the City).
2. The Plan Member (or the Spouse or Dependent of the Plan Member, as applicable) must properly complete and submit (as instructed by the Plan Administrator) such enrollment and application forms and other documentation (at such times) as the Plan Administrator determines to be necessary for the Benefits desired by the Plan Member (or the Spouse or Dependent of the Plan Member, as applicable).
3. The Plan Member (or the Spouse or Dependent of such Plan Member, as applicable) must pay (in the amounts, at the intervals, by the deadlines and otherwise in accordance with the instructions of the Plan Administrator) the premium required of such Plan Member (or Spouse or Dependent, as applicable) for the Benefits desired by such Plan Member (or Spouse or Dependent, as applicable).

Exhibit B
Benefits Provided under Plan as of July 1, 2009

The Benefits available under this Plan as of July 1, 2009, are the following:

1. A Plan Member who meets the requirements to participate in, and receive benefits under, the Plan may purchase:

(a) health insurance under the City's self-insured group health insurance plan at the same rates as are then budgeted for the City's active employees; and/or

(b) dental insurance under the City's self-insured group dental insurance plan at the same rates as are then budgeted for the City's active employees.

The rates described above are referred to as the "Regular Rates." The City will review the budgeted Regular Rates semiannually and make adjustments (increases or decreases) in such rates as necessary.

2. If a Plan Member becomes a Participant, then the rates payable by such Plan Member will be adjusted based on the following schedule if the Plan Member has sufficient years of Employment with the City:

Plan Member's years of service as Employee with the City:	Percentage of Regular Rate to be paid by such Plan Member:
More than 20 years but less than 25 years	50.0%
25 or more years but less than 30 years	33 ^{1/3} %
30 or more years	25.0%

3. The Spouse or Dependent of a Plan Member who has satisfied the requirements to participate in, and receive benefits under, the Plan may purchase:

(a) health insurance under the City's self-insured group health insurance plan at the same rates as are then budgeted for the City's active employees; and/or

(b) dental insurance under the City's self-insured group dental insurance plan at the same rates as are then budgeted for the City's active employees.

As clarification, a Spouse or Dependent of a Plan Member will pay 100% of the Regular Rates with no reduction, even if such Plan Member is entitled to a reduction in rates based on years of service (as provided in paragraph 2 of this Exhibit). Such Spouse (but not a Dependent) may continue to purchase such insurance even after the death of the Plan Member.

4. Notwithstanding any other provision of this Plan, no Plan Member (or Spouse or Dependent of a Plan Member) is entitled to purchase insurance under this Plan (or to receive any other benefit under this Plan) after such Plan Member (or Spouse or Dependent of such Plan Member) reaches the general age for Medicare eligibility (currently age 65 pursuant to 42 U.S.C. § 426(a)).

5. The only benefits available under this Plan are payments (directly or indirectly) to or for a Participant for the substantiated medical care (within the meaning of Code § 213(d)) expenses of such Participant (or the Spouse or Dependent of such Participant).



OFFICE OF THE MAYOR

R. KEITH SUMMEY
MAYOR

City of
North Charleston
SOUTH CAROLINA

May 4, 2009

To All Employees of the City of North Charleston,

During our budget workshop held Friday, May 1, 2009, the Council and I voted to recommend for final approval a general fund budget totaling \$82,293,051 for the fiscal year ending June 30, 2010. This represents a 9.5% reduction from the 2009 budget and is perhaps the most difficult budget any City Council has faced during its 37 years of existence. First reading of the budget ordinance and a public hearing will be held Thursday, May 28, 2009 and the second reading of the budget ordinance is scheduled for Thursday, June 11, 2009. I submit this letter in advance because many issues we face in recommending this budget impact all of us as employees of the City of North Charleston.

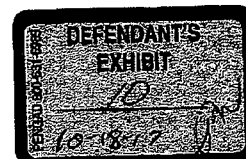
A 9.5% budget reduction represents a significant decline in our general fund budget, primarily driven by the downturn in the economy and an erosion of revenues from all areas, whether from the federal or state governments, local businesses or residential permit reduction. The Council and I maintain as an important goal that we do everything possible not to diminish the services provided to our citizens. Although we had to reduce operating expenses by over 11% from last year's approved budget and recommend no capital expenditures for the 2010 budget, we still feel confident that all of us will continue to deliver the high level of customer service our citizens have grown to expect. Yet, while reducing the operating and capital expenses for next year, we are still not able to balance the 2010 budget without impacting personnel costs and the fringe benefits our employees have enjoyed for so many years.

Our first goal with respect to the employees was to do everything possible to avoid furloughing employees or implementing a reduction in force policy. We were able to accomplish this by freezing vacancies as of March 23, 2009 and not funding those positions for the 2010 budget. Furthermore, we are not recommending any cost-of-living increases or pay-for-performance raises for the 2010 budget. With respect to healthcare benefits, we are requiring employees selecting family coverage to begin paying \$75 per pay period for that benefit beginning with the pay period ending July 12, 2009. As it relates to retiree healthcare benefits, we are requiring new retirees as of or after July 1, 2009 to meet new eligibility provisions and pay increased shared cost. Many employee meetings were conducted by our staff over the last several weeks to discuss these changes. If you were unable to attend any of these meetings or have any questions relative to these changes, please do not hesitate to contact our Human Resources Department.

We are confident that by working together, our employees and the citizens of the City of North Charleston will successfully face the challenges of this economy. It is always difficult to tighten our belts and make sacrifices; but our combined efforts will mean that we continue to provide the best possible services to our citizens. Together, we will lead North Charleston toward a better and more prosperous future.

Sincerely,

R. Keith Summey
Mayor



Post Office Box 190016 • North Charleston, S.C. 29419-9016 • Telephone (843) 740-2504 • Fax (843) 745-1085
www.northcharleston.org

403015

Company Name Here

Memo

To: Chief Leonard Judge

From: Michael Baxley

CC: Chief Jon Zumalt

Date: 09/30/05

Re: Employment

Due to medical reasons (knee surgery); my last day of employment with the Fire Department will be October 7, 2005. My operation will be on October 12, 2005.

It has been an honor and a pleasure to work under your leadership. If at anytime, I can be of assistance to you or the department give me a call.

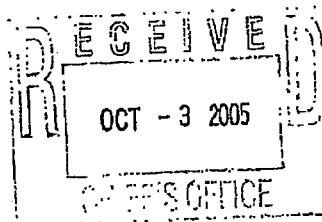
Received,
Chief *[Signature]*
10-4-05

Michael H. Baxley

Michael H Baxley
9-30-05

• Page 1

406006





ALVAR R. RISSANEN, FIRE CHIEF
P.O. Box 190016 / 4900 LaCross Road
North Charleston, SC 29419-9016
(843) 740-2616 / Fax (843) 745-1002

June 16, 2005

Dear Sir,

It has been an honor to serve the North Charleston Fire Department over the last 35 years. It is also an honor for me to have played a very small role in the history of this great City, and to serve under your able leadership.

However, I feel that it is time for me to move on, and to follow other rewarding avenues.

Therefore, I hereby respectfully submit my plans to retire effective Friday, September 30, 2005.

I have chosen this date to retire in order to allow the City ample time to find a replacement Fire Chief and in order for me to receive the maximum benefit, which I will need to retire.

I leave the Fire Department satisfied with what we have accomplished. I leave knowing that your Fire Department has never, in its recent history been better manned, better equipped, better trained, better prepared and better respected than it is today. I also know that it is in good hands, and that with your continued leadership and with the help of those loyal men and women of the Fire Department that it will continue to rise and stand among the best.

I have always prided myself with being the "Good Soldier" (Loyal Firefighter), and with having a real love for my job and the City I serve. With such in mind, in the future, if you or the City should ever need my services or support I again hope that you will call upon me to help.

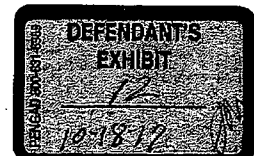
With all else said, I truly hope that I have fulfilled what you have expected of me as your Fire Chief, and I also hope that I have made a difference in the quality of life of our citizens.

Sincerely,

Alvar R. Rissanen
Fire Chief

Cc: Ray Anderson, Special Assistant to the Mayor
Bob Connella, Personnel Director

407002



City of North Charleston, SC

R. KEITH SUMMEY, MAYOR
HUMAN RESOURCES DEPARTMENT CHRISTINE A. RUTH, DIRECTOR

June 16, 2010

Mr. Willie Hood
1348 Coosaw Drive
Charleston, SC 29407

Dear Mr. Hood:

Our records indicate that you are eligible for retiree health care coverage with the City of North Charleston as a retiree. Effective July 1, 2010, the rates for your coverage will change. Please see new attached rate schedule.

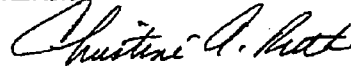
We are requesting that you complete the attached form and initial each section where indicated. This indicates you understand the City's terms and conditions for being enrolled for retiree health coverage. Even if you are not paying for your coverage, we are requiring that you complete, sign and send us the attached form. Please return the form to Liz Petit in the enclosed self-addressed, self-stamped envelope indicating which coverage you are requesting to enroll for during this open enrollment period. Deadline for return of your form is July 1, 2010. Failure to return the form is an indication that you do not wish to be covered under health benefits as a retiree and your coverage will terminate.

Employees that make payment directly to the City of North Charleston for health care coverage are required to make payment on a monthly basis no later than the 9th day of each month. If your health care coverage payment is deducted from your retirement check as a retiree under the PORS plan, the South Carolina Retirement System has been notified of the change based on your current choice for coverage. If there is a discrepancy in the amount owed we will contact you directly.

We are pleased to inform you that as a retiree of the City of North Charleston you are eligible to utilize the City's employee health club. If you are interested, please contact Liz Petit at 740-2494. You will be required to sign a waiver and pay \$20.00 for the badge for access to the employee health club.

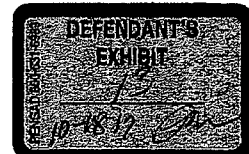
If you have any questions regarding this letter, please do not hesitate to contact any team member in the Human Resources Department with your questions at 740-2597. Thank you for your cooperation.

Sincerely,



Christine A. Ruth, PHR, IPMA-CP
Director - Human Resources

/car
Attachments



PO Box 190016 • North Charleston, SC 29419-9016 • 843-554-5700 • northcharleston.org

404006

City of North Charleston, SC

R. KEITH SUMMEY, MAYOR
HUMAN RESOURCES DEPARTMENT CHRISTINE A. RUTH, DIRECTOR

June 16, 2010

Mr. Clifford Forner
1170 Park Place North
North Charleston, SC 29405

Dear Mr. Forner:

Our records indicate that you are eligible for retiree health care coverage with the City of North Charleston as a retiree. Effective July 1, 2010, the rates for your coverage will change. Please see new attached rate schedule.

We are requesting that you complete the attached form and initial each section where indicated. This indicates you understand the City's terms and conditions for being enrolled for retiree health coverage. Even if you are not paying for your coverage, we are requiring that you complete, sign and send us the attached form. Please return the form to Liz Petit in the enclosed self-addressed, self-stamped envelope indicating which coverage you are requesting to enroll for during this open enrollment period. Deadline for return of your form is July 1, 2010. Failure to return the form is an indication that you do not wish to be covered under health benefits as a retiree and your coverage will terminate.

Employees that make payment directly to the City of North Charleston for health care coverage are required to make payment on a monthly basis no later than the 9th day of each month. If your health care coverage payment is deducted from your retirement check as a retiree under the PORS plan, the South Carolina Retirement System has been notified of the change based on your current choice for coverage. If there is a discrepancy in the amount owed we will contact you directly.

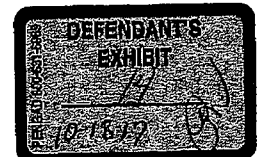
We are pleased to inform you that as a retiree of the City of North Charleston you are eligible to utilize the City's employee health club. If you are interested, please contact Liz Petit at 740-2494. You will be required to sign a waiver and pay \$20.00 for the badge for access to the employee health club.

If you have any questions regarding this letter, please do not hesitate to contact any team member in the Human Resources Department with your questions at 740-2597. Thank you for your cooperation.

Sincerely,

Christine A. Ruth
Christine A. Ruth, PHR, IPMA-CP
Director - Human Resources

/car
Attachments



PO Box 190016 • North Charleston, SC 29419-9016 • 843-554-5700 • northcharleston.org

405009

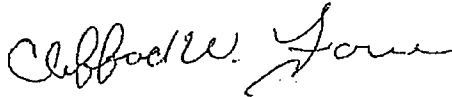
540

June 1, 2009

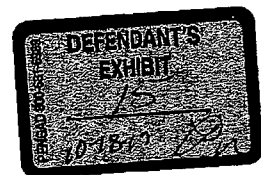
This is my formal retirement announcement after 27 plus years with the City of North Charleston Fire Department.

My last shift is June 28, 2009 and my retirement date is June 29, 2009.

It has been a pleasure working with City employees as well as the residents.



Clifford W Forner
Battalion Chief – B2
City of North Charleston



Leave ✓
Turn ✓
Ans ✓

405005

1 STATE OF SOUTH CAROLINA
 2 COURT OF COMMON PLEAS
 3 COUNTY OF CHARLESTON
 4 ALVAR R. RISSANEN, MICHAEL H. BAXLEY, CLIFFORD W.
 5 FORNER and WILLIE L. HOOD,
 6 Plaintiffs,
 7 vs. CASE NO. 2013-CP-10-3210
 8 CITY OF NORTH CHARLESTON,
 9 Defendant.
 10
 11 DEPOSITION OF: MICHAEL H. BAXLEY
 12 DATE: January 4, 2016
 13 TIME: 12:50 p.m.
 14 LOCATION: Foster Law Firm, LLC
 15 895 Island Park Drive, Suite 202
 16 Charleston, SC
 17 TAKEN BY: Counsel for the Defendant
 18 REPORTED BY: PATRICIA L. THOMPSON,
 19 Registered Professional Reporter
 20
 21 A. WILLIAM ROBERTS, JR., & ASSOCIATES
 22 Fast, Accurate & Friendly
 23 Charleston, SC Hilton Head, SC Myrtle Beach, SC
 24 (843) 722-8414 (843) 785-3263 (843) 839-3376
 25
 26 Columbia, SC Greenville, SC Charlotte, NC
 27 (803) 731-5224 (864) 234-7030 (704) 573-3919

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFFS

3 ALVAR R. RISSANEN, MICHAEL H. BAXLEY,
4 CLIFFORD W. FORNER and WILLIE L. HOOD:

5 FOSTER LAW FIRM, LLC
6 BY: NANCY BLOODGOOD
7 895 Island Park Drive, Suite 202
8 Charleston, SC 29492
9 (843) 972-0313
10 nbloodgood@fosterfoster.com

11 ATTORNEYS FOR THE DEFENDANT

12 CITY OF NORTH CHARLESTON:

13 CLEVELAND & CONLEY, LLC
14 BY: BOB J. CONLEY
15 171 Church Street, Suite 310
16 Charleston, SC 29401
17 (843) 577-9626
18 bconley@clevelandlaborlaw.com

19 (INDEX AT REAR OF TRANSCRIPT)
20
21
22
23
24
25



MICHAEL H. BAXLEY

being first duly sworn, testified as follows:

EXAMINATION

BY MR. CONLEY:

Q. Mr. Baxley, my name is Bob Conley. I introduced myself a minute ago. I represent the City of North Charleston in the lawsuit that you and three others have brought against it.

A. Yes, sir.

Q. Have you ever been deposed before? Have you ever sat in a room and answered questions under oath?

A. No, sir.

Q. Just a couple of minor things for efficiency purposes more than anything. The biggest one being --

A. Yeah. I was going to back up on that, is that I -- a lot of employees that might have lost their job and stuff like that as personnel, I would get with the personnel director and meet with him to try and get their job back. That's the only thing that I can come close to saying ...

Q. I understand. But what is going to happen today is essentially I'm going to ask you questions and you're going to give me answers, and



1 the court reporter down here is going to transcribe
2 everything we say.

3 A. Yes, sir.

4 Q. The most important part of this from my
5 point of view and I think everybody's point of view
6 is that we get an accurate transcript of what I
7 asked you and what you tell me in response. The
8 importance of that is make sure you understand my
9 question before you answer it.

10 The main reason I tell you that is I
11 have no intent to confuse you or trick you or
12 anything like that. So if you don't understand my
13 question or I've asked it in a confusing manner,
14 just ask me to restate it or rephrase it. Don't
15 hesitate to look at me and say: You know what? I
16 don't really understand what you're asking me. Can
17 you ask that again? I am happy to do that. All
18 I'm trying to do is get information. That's it.

19 If you need to take a break at some
20 point, we can take a break. But I don't think that
21 this is going to take so long that will probably
22 necessitate that, but if you need a break at some
23 time we can certainly do that.

24 A. Thank you, sir.

25 Q. The court reporter, again, needs to get



1 an accurate record. So if at some point in time I
2 might look at you and say "is that a yes or no,"
3 it's just because you might have nodded your head
4 in response or something that many of us are prone
5 to do. She can't put into the record a nod of the
6 head. She's got to have a yes or a no or "maybe"
7 or whatever the answer is. Okay?

8 A. Yes, sir.

9 Q. Any questions about any of that?

10 A. No, sir, not at this time.

11 Q. I need your full name for the record.

12 A. Michael H -- Hayward -- Baxley.

13 Q. And what is your current residential
14 address?

15 A. 1827 Orangeburg Street, North
16 Charleston, 29405.

17 Q. I don't need exact dates. Any
18 approximation how long you've lived at that
19 address?

20 A. All my life. I live right next door to
21 my parents' house and I live the house next door
22 that my father helped build.

23 Q. Who lives in the home with you?

24 A. My wife, Lois C. Baxley.

25 Q. Can you give me her age and date of

1 birth.

2 A. Her date of birth is November the 8th,
3 1954. Her age is -- I'm three years older than
4 her. So she's 62. She will be 62 November the
5 8th.

6 Q. And your date of birth is what?

7 A. 6/12/51.

8 Q. So you will be 65 years of age this
9 year; correct?

10 A. Yes, sir.

11 Q. In looking at your records I think --
12 but you correct me if I'm wrong -- your situation
13 is similar to some of the others, and that is that
14 you were originally hired as an employee of what
15 was then a public service district in North
16 Charleston and then later stayed on as a city
17 employee once the city became a city. Is that
18 true?

19 A. Yes, sir.

20 Q. I'm just trying to sort that out and
21 get some dates. In looking at your records that's
22 what I saw.

23 The records indicate -- but you
24 probably remember better than the rest of us --
25 that you started your employment with the City of

1 North Charleston in February of 1974. Does that
2 sound right?

3 A. I know I started with the fire service
4 in '71. Whenever the city took over -- I guess
5 that was in 1974.

6 Q. And I'm going to assume when you say
7 that -- did you begin as a firefighter for what was
8 then the public service district --

9 A. North Charleston Public Service
10 District.

11 Q. In '71; correct?

12 A. Yes, sir.

13 Q. And then when it became the city -- I
14 think it was maybe January of '74 or February of
15 '74 when the city became an actual municipality.
16 You transitioned into the city's, quote, fire
17 department and became a city employee?

18 A. Yes, sir. I was working at a city
19 station at the time, and they just continued it on.

20 Q. I would assume for you as an employee
21 at that point it was kind of a seamless transition.
22 I mean --

23 A. Yes. One day come to work; the next
24 day you was working for the city, and we had to
25 sign a paper saying we were a city employee.



1 Q. Right. And that's how I knew about the
2 '71 versus '74, because actually it looks like when
3 the city became a city you had to fill out some new
4 employment paperwork for the city.

5 A. Yes, sir.

6 Q. Your work in '71 for the then public
7 service district, was that your first job as a
8 firefighter?

9 A. Yes, sir.

10 Q. And you subsequently retired in 2005;
11 correct?

12 A. Yes, sir.

13 Q. And I'm a little confused on the date
14 because I see some varying paperwork where it looks
15 like originally you were going to retire in June of
16 2005, but then it looks like later you might have
17 actually retired in October of 2005.

18 A. I retired June 30th of 2005. I was
19 asked to stay in as a consultant for John Zumalt,
20 the chief of the police department, to help run the
21 fire department because we did not have a chief at
22 that particular time, and I stayed on to run the
23 fire department until October.

24 Q. So what was your status between June
25 and October of '05? Were you retired or were you



1 still employed by the city?

2 A. I was retired and employed by the city.

3 Q. And then in October of '05 I assume
4 that's when you last worked for the City of North
5 Charleston in any capacity.

6 A. Yes, sir.

7 Q. Between February of '74 when you became
8 a city employee and when you retired in June of '05
9 did you work for any other fire departments? Even
10 on a part-time basis.

11 A. No, sir.

12 Q. You know what I mean? I know some
13 firefighters -- they might work weekends for St.
14 Andrews Public Service District or something like
15 that.

16 A. I understand what you're saying.

17 Q. So you did not have any other
18 firefighting jobs?

19 A. No, sir. I worked for the South
20 Carolina Fire Academy and the National Fire Academy
21 as an instructor, training instructor, part time.

22 Q. And did you do that while you were also
23 employed by the City of North Charleston?

24 A. On my off duty days. Only off duty
25 days.



1 Q. I understand. But you did not work for
2 any other fire departments during that 31 plus
3 years?

4 A. No, sir.

5 Q. Do you remember what period of time you
6 worked for the fire academy even on a part-time
7 basis?

8 A. From 19 -- I think it was '72 to -- I
9 don't know. A few years before 2005.

10 Q. So a long time?

11 A. Oh, yes, sir. I worked a long time
12 there, but it was a few years before 2005. I don't
13 remember the exact date on that.

14 Q. I don't need an exact date.

15 A. I can probably get that if you need it.

16 Q. I do not. I'm just trying to get a
17 general nature of the time frame of what we're
18 talking about. The precise dates aren't important.

19 In general what kind of work did you do
20 for the fire academy over that 30-some odd years?

21 A. Teach classes. I was a paid
22 instructor.

23 Q. Did you teach classes here locally in
24 the Charleston area or all over?

25 A. All over the state.

1 Q. Do you do any of that kind of work any
2 longer?

3 A. No, sir. I gave up my certifications
4 before I retired because I wanted to devote my full
5 time to the fire department, and it was just -- you
6 know, being a chief officer -- we just had an
7 assistant chief officer at that time. I had to
8 devote more time to the fire service.

9 Q. And that's a good segue-way into my
10 next question, is my assumption is you would have
11 started out as sort of a rank and file firefighter
12 when you first started work for the public service
13 district back in '71?

14 A. Yes, sir; as a firefighter.

15 Q. Were you in that same role in '74 when
16 the city became the city, or had you moved up in
17 the ranks by then? I know we're going back a long
18 time.

19 A. I was about to say you're going back a
20 long time. I think I was classified as a back-up
21 driver. When the driver was out you would fill in
22 as the driver. But it was not a paid position,
23 just a back- up driver's position. Shortly
24 thereafter --

25 Q. You were not an engineer yet at that



1 point?

2 A. No, sir. I don't think -- I don't
3 remember my rank structure going through, you know,
4 when I was promoted. That's a long time ago.

5 Q. At the time you retired I'm correct
6 that you were an assistant fire chief?

7 A. Assistant chief. Yes, sir.

8 Q. And do you remember what year you
9 became an assistant fire chief?

10 A. No, sir. I do not. I can also find
11 that out if --

12 Q. I've actually got it because I've seen
13 your employment file. I don't have it in front of
14 me.

15 Prior to being assistant chief you
16 would have been a battalion chief; correct?

17 A. I was battalion chief, safety chief
18 officer.

19 Q. And I assume you don't have any
20 recollection of when you became a battalion chief.

21 A. No, sir. I'm sorry to say that.

22 Q. It's in your records. No worries.

23 During the 31 plus years you worked for
24 the City of North Charleston's fire department did
25 you ever apply for employment at any other fire



1 departments?

2 A. No, sir.

3 Q. Did you ever even make inquiry of any
4 other fire departments about open positions or the
5 possibility of moving into a role or a position
6 with a different fire department?

7 A. Yes, sir.

8 Q. And how many fire departments did you
9 make that inquiry of?

10 A. I would say some of the departments
11 that I was teaching at, that they would confront me
12 and say: We would like to have you come join our
13 fire department.

14 At one time I was thinking about going
15 to Westvaco, and I even applied there and I went
16 for an interview, but I did not change it or
17 anything. The reason why -- and I like to kind of
18 explain the reason why I was doing that was I had
19 run across a lot of deaths at that particular year.
20 A lot of deaths that I had run across.

21 Q. What year was that, do you remember?

22 A. No, sir, I don't.

23 Q. And the number of deaths I assume led
24 you to consider other types of employment other
25 than firefighting.



1 A. But once you get it in your blood you
2 can't leave it, sir, unless there is a major reason
3 such as family or any other reason like that. No,
4 sir.

5 Q. Did you get offered a job at Westvaco
6 ultimately and you turned it down or you just
7 interviewed for a job?

8 A. I interviewed and did not return or
9 anything.

10 Q. Was it a firefighting position?

11 A. No, sir.

12 Q. Other than the Westvaco position you
13 clearly applied for any other positions you applied
14 for during that 31 plus years that were not
15 firefighter related other than the Westvaco
16 position?

17 A. I did not apply for any other than that
18 particular one, but I could have. I was offered
19 various jobs at various places. I was even offered
20 jobs -- because they had opening as head chief at
21 different jobs, different fire departments.

22 Q. But you never applied for any; is that
23 correct?

24 A. No, sir, but I could have.

25 Q. And do you know what fire departments

1 you could have applied for?

2 A. Well, one was Moncks Corner. Moncks
3 Corner City.

4 Q. Do you remember what year that was?

5 A. No, sir, I do not.

6 Q. And when you say you could have
7 applied, do you know what kind of position was open
8 in Moncks Corner?

9 A. It was a fire chief's job.

10 Q. Is it safe to assume that position was
11 open sometime toward the latter part of your
12 employment with the city?

13 A. I don't recollect on that.

14 Q. And you don't know what year it was?

15 A. No, sir. I do not remember what year
16 it was.

17 Q. Do you remember anything about the
18 wages or fringe benefits they were offering with
19 that position?

20 A. It was equivalent -- pretty much almost
21 equivalent to what I would have made.

22 Q. In wages?

23 A. Yes, sir.

24 Q. With the City of North Charleston?

25 A. Yes, but it wasn't there at it.



1 Q. Was it less or more than the City of
2 North Charleston? If you remember.

3 A. I don't recall.

4 Q. What about the benefits; were those
5 roughly equivalent with the city's benefits?

6 A. That was negotiable. It would have
7 been -- they said it could have been negotiable.

8 Q. I assume you never got to any stage of
9 negotiation with Moncks Corner.

10 A. No, sir.

11 Q. Other than the fire chief with the city
12 of Moncks Corner any others you can specifically
13 identify?

14 A. There was openings for the South
15 Carolina Fire Academy as regional directors of
16 various different regions that they handled the
17 course curriculums throughout the state and they
18 had different regions that you could -- those were
19 openings. In fact, we even had one of our retired
20 chiefs that went to that.

21 Q. Did you ever apply for any of those
22 positions?

23 A. No, sir.

24 Q. Why not?

25 A. It was just talked about.



1 Q. And why did you not apply for them?

2 A. Well, because I was doing -- what I had
3 here at the city was wonderful and what I was
4 promised was what I could rely on, because I was
5 relying on that for my future for me and my family.

6 Q. Do you know anything about how the
7 wages and benefits with these positions with the
8 fire academy compared to what you were getting from
9 the City of North Charleston?

10 A. I don't recall, sir.

11 Q. Do you know whether any of those
12 positions with the fire academy or the Moncks
13 Corner fire chief position -- whether any of those
14 positions would have provided with a fully paid for
15 Medicare supplement after retirement or after age
16 65?

17 A. I don't recall.

18 Q. Do you know if any of those positions
19 with the fire academy or the city of Moncks Corner
20 -- if those would have provided your dependents
21 such as your wife with access to health care
22 benefits through the city or through the
23 firefighters academy even after you had turned 65
24 and were eligible for Medicare?

25 A. Could you explain that a little bit

1 more?

2 Q. One of your complaints in this case is
3 that the city is not going to continue to provide
4 health insurance benefits to your wife once you
5 reach Medicare age; correct? Right? That's one of
6 your complaints?

7 A. Yes, sir.

8 Q. All I'm asking you is: Do you know if
9 this fire chief position with the city of Moncks
10 Corner or these positions with the South Carolina
11 Fire Academy -- would those have provided your
12 spouse with access to health care benefits through
13 those organizations even after you had obtained
14 Medicare age?

15 A. That I do not know. I do know they
16 would have been insured, yes.

17 Q. But do you know if they would have
18 continued to provide insurance even after you
19 reached Medicare age?

20 A. No, sir.

21 Q. Do you know of any position of
22 employment that you either did not apply for or did
23 not look into that would have provided you with a
24 free Medicare supplement even after you were
25 Medicare eligible?



1 A. Explain that a little bit clearer for
2 me.

3 Q. That's fine. Again, one of your
4 complaints in this case is that the city is now
5 refusing to pay for a Medicare supplement for you
6 once you become Medicare eligible this year; right?

7 A. Right.

8 Q. Can you identify for me any employer
9 who you could have gone to work for during the 31
10 years you worked for the city where had you gone to
11 work for that employer instead of the City of North
12 Charleston you would be getting a paid Medicare
13 supplement when you turned 65?

14 A. That I don't recall, because I was -- I
15 wasn't hardly looking out there as hard as I would
16 have been had I been not promised what I was
17 promised.

18 Q. And I appreciate that, but can you
19 identify for me any entity today, public or
20 private, where had you worked for that entity
21 during that 31 years you would now be getting a
22 fully paid Medicare supplement once you turned 65?

23 A. Not that I can recall.

24 Q. And just to make sure -- because I
25 confused you earlier.



1 A. I was a little confused about that
2 right now.

3 Q. The same question in regard to -- one
4 of your complaints in this case is that the city is
5 now refusing to allow your spouse to continue on
6 the city's health insurance plan after you turn 65;
7 correct?

8 A. Right. Because I was promised that.

9 Q. I understand that. I understand why
10 you're making the claim. So my next question is:
11 Can you identify for me any employer, public or
12 private, during the 31 years you worked for the
13 City of North Charleston that had you gone to work
14 for that employer and left the City of North
15 Charleston to go to work for that employer your
16 wife, once you turned 65, would continue to have
17 access to that employer's health insurance plan?

18 A. Well, it's like I just said. I really
19 can't answer that because I was counting on -- and
20 I wasn't out there searching for anything else
21 because I was relying on what I was promised, and
22 I've worked around that -- or working to rely on
23 that.

24 Q. But it sounds like you can't identify
25 any public or private employer who would now



1 provide you with that benefit at 65; right? Can
2 you give me the name of one?

3 A. Not to my knowledge right now. Maybe I
4 might think of one later, but not right now.

5 Q. And all I can ask you about is what you
6 can tell me today.

7 A. Yes, sir.

8 Q. You don't know of any?

9 A. No, sir.

10 Q. Did any employer, public or private,
11 during the 31 plus years you worked for the city
12 specifically offer to you an employment benefit
13 package that would have included a free Medicare
14 supplement once you turned age 65?

15 A. I didn't look.

16 Q. And the same with your coverage through
17 your spouse. Any employer, public or private,
18 during the 31 years you worked for the city offer
19 you a position that would have come with a benefit
20 package that would have allowed your wife to
21 continue to access that employer's health care plan
22 even after you turned 65?

23 A. I didn't look because I was relying on
24 the promise that was made to me.

25 Q. And so the answer to the question is:



1 No, I can't identify any employer?

2 A. No, sir. That's not my answer. My
3 answer is that I did not rely on that. I was
4 relying on what was promised with me. That's what
5 I built my future on.

6 Q. I understand. What I'm asking: Can
7 you identify any employer who made such an offer to
8 you?

9 A. Not at this time.

10 Q. At the time you first went to work as a
11 firefighter for what was then the public service
12 district in '71 was there any offer made to you at
13 that time of a free Medicare supplement at the time
14 you turned age 65?

15 A. No, sir. That didn't come until later.

16 Q. And we're going to work through that.
17 And some of this I'm just going to try to keep it
18 in a little bit of a sequential fashion here so I
19 hopefully don't confuse you either.

20 What about in '74 once you became a
21 direct employee of the city and once the city
22 became a city? In '74 were you offered by the city
23 or told you were going to get a fully paid for
24 Medicaid supplement at age 65?

25 A. No, sir.



1 Q. Go back to '71 for just a moment. In
2 '71 when you went to work for the public service
3 district did anyone make any offer to you or make
4 any guarantees to you or promises -- whatever label
5 you want to put on it -- that even after you turned
6 age 65 your spouse or other dependents would
7 continue to be allowed to participate in the public
8 service district's health insurance plan?

9 A. No, sir.

10 Q. The same question in regard to '74 when
11 you become an employee of the City of North
12 Charleston. At that time did the city make any
13 promises or representations to you that once you
14 turned 65 your spouse or other dependents were
15 going to be allowed to continue to participate in
16 the city's health insurance plan?

17 A. No, sir.

18 Q. When is it that you first recall being
19 told by anybody with the city -- anybody who is an
20 employee of the city -- that subsequent to you
21 turning age 65 you would be provided with a fully
22 paid for Medicare supplement? Assuming you had
23 also worked 30 years for the city.

24 A. That was done by Mayor Summey, and I
25 don't recall exactly the year. At this time I



1 can't recall the exact year when it was.

2 Q. What do you recall about it? Did you
3 first hear it verbally or in writing?

4 A. Verbally.

5 Q. And do you remember where you were and
6 how you heard it and maybe anybody else that was
7 there?

8 A. We used to have luncheons. The mayor
9 wanted to get to know the employees, and we had
10 yearly luncheons. And we had 11 stations and two
11 shifts, three shifts, and they had to arrange no
12 more than three trucks or stations at a time to
13 come to these luncheons. And the mayor would --
14 you know, he brought up the fact that we were
15 losing employees. We were losing employees.
16 Because we were known in the state of South
17 Carolina as the training grounds for the state of
18 South Carolina, and we weren't keeping employees.
19 We were getting over and over --

20 Q. There was a high turnover rate?

21 A. A high turnover rate. It was extremely
22 high. Constantly hiring. Constantly training and
23 hiring, training and hiring.

24 So he wanted to find a way to keep
25 employees, and he brought it up and he said he was



1 working on a promise, a program.

2 Q. Earlier today I took former Chief
3 Hood's deposition.

4 A. Right.

5 Q. And his recollection was -- and I'm not
6 suggesting this is yours, but his recollection was
7 he first heard Mayor Summey talk about this in 1998
8 at a meeting up at Station 4 or sort of, I gather,
9 similar to what you're describing. Mayor Summey
10 came and spoke to a group of people from various
11 station at Station 4, and that was the first time
12 he heard about it. Does that sound --

13 A. That sounds about the right year. But
14 I had to attend all of them because I was the
15 personnel chief at the fire department at that
16 particular time. So I heard it many, many, many
17 times.

18 Q. Because you would have been to all
19 those meetings?

20 A. I had to make arrangements with the
21 battalion chiefs to get the people there. And he
22 would say: Working on a honey of a deal. Working
23 on a honey of a deal. Sweet deal. And this went
24 on for years after that.

25 Q. Right now I'm asking when you first



1 heard about it, and you don't remember the exact
2 year?

3 A. That sounds particularly about right,
4 but I couldn't say if it was '96, '97, '98. I
5 would say probably around '98.

6 Q. Do you remember if after you first
7 heard it verbally spoken about by Mayor Summey if
8 you subsequently saw something in writing? A
9 memorandum or something come out from him about it?

10 A. Yes, sir.

11 Q. Mr. Baxley, let me show you what we've
12 marked as Defendant's Exhibit 1 for Mr. Hood's
13 deposition, and I'll just use it for purposes of
14 yours, too.

15 This is a memo that he has identified
16 from May of '98. Do you have any recollection of
17 ever seeing that memorandum?

18 A. Yes, sir.

19 Q. Do you recall if you would have seen
20 that memorandum before or after you first hearing
21 about it verbally from Mayor Summey?

22 A. That I don't actually recall. I do
23 recall him bringing it up, but then -- these papers
24 would come out on a -- sort of like a yearly basis
25 when they give you your worksheet up or how many



1 years is it going to be. But I do recall talking
2 to him about it and Mr. Cannella about it also.

3 Q. Other than you being at this -- I'll
4 call it a forum where Mayor Summey spoke about the
5 provision of these benefits to retired city
6 employees did you ever have direct conversation
7 with Mayor Summey about the issue as well?

8 A. This?

9 Q. Yes, sir.

10 A. Yes, sir.

11 Q. Tell me about those. What you remember
12 about those.

13 A. Just conversations during the meetings
14 and after the meetings. You know, I would walk up
15 to him -- in fact, I remember saying: Boy, you're
16 saying a lot of "a honey of a deal," "a honey of a
17 deal."

18 He would always say that. It was kind
19 of a joke. Not a joke. It was a saying like you
20 hear on TV or something. "Honey of a deal."
21 "Honey of a deal." Because he wanted to improve
22 the qualify of life for his firefighters.

23 Q. Well, do you think that program was --
24 or the implementation of the benefit, it didn't
25 apply to just firefighters. I mean, it applied



1 citywide?

2 A. Citywide. Yes, sir.

3 Q. Did you have access to -- while you
4 were with the fire department and certainly while
5 you were an assistant chief did you have access to
6 the city's policies and procedures?

7 A. The department head would have those.

8 Q. Did you know how to access them if you
9 wanted to look for a particular city policy?

10 A. Yes, sir. I would get them from him
11 and then we would look it up if we had a question
12 on a particular policy or whatever.

13 Q. Did you ever see any of these
14 retirement benefits we're talking about in any of
15 the city's policies or in the city's handbook?

16 A. That I did not -- actually would say I
17 did look up or anything. Because this was going
18 out as a memorandum from the mayor, so it was going
19 particularly to the policy book. And looking at
20 the policy book to see if it was in there? No. I
21 did not go in there and look and see it.

22 Q. At any time while you were employed by
23 the city do you ever remember looking at the city's
24 employee policies in regard to fringe benefits for
25 retirees?



1 A. I don't recall, no.

2 Q. Would you agree that you could have
3 gone and looked at those had you wanted to?

4 A. Yes; if I had found a need for it, but
5 I had -- these were memorandums that were sent out,
6 so I just -- you never assume, but I guess I could
7 say I was basically trying to assume that these
8 were already in there.

9 Q. But my point is: The employee policies
10 while you were at the City of North Charleston
11 weren't kept secret from you; correct? I mean, you
12 could have gotten them?

13 A. They were far and scarce. They were
14 far and scarce. Only a few times in my career did
15 I ever see our book taken up and taken back to
16 Mr. Cannella's office and upgraded or anything.

17 Q. But did you ever look at it in terms of
18 retirement benefits? It sounds like you did not.

19 A. No.

20 Q. Did you ever look at the city's
21 ordinances in regards to retirement benefits?

22 A. I thought that's what you asked me.

23 Q. I asked you about policies.

24 A. Oh, wait a minute. You're talking
25 about an employee handbook? That's a different

1 thing.

2 Yes. As far as policies go and things
3 of that nature, employee policies, when I had
4 orientation classes when I took over as the
5 personnel chief I went in and one of the things
6 that they told me to do is to revamp the hiring
7 procedures, and that was brought down from the
8 mayor's office to Mr. Cannella, to Chief Rissanen
9 and then to me. Because they wanted to revamp them
10 because the policies are not -- not the policies,
11 but the hiring procedures -- they didn't pretty
12 much like them that much. So I had to rewrite
13 them, and when I rewrote them the city attorney's
14 office -- I would go in and talk to Dirk and talk
15 with his assistant and Mr. Cannella, and they would
16 basically tell me what programs I would have to
17 talk on: Tardiness -- I had an orientation class
18 that I would explain tardiness, sick leave
19 programs, hourly rates, benefits, health
20 benefits.

21 When the city did the orientation class
22 they would give them one of those books.

23 Q. Correct.

24 A. And while I was doing these orientation
25 classes and then afterwards we would have a --



1 Chief Judge and I would bring them in after I did
2 orientation with them, and then they were asked
3 under oath did Chief Baxley go over these -- this,
4 this, this, such as the tardiness program, sick
5 leave program, benefit program, retirement system,
6 retirement programs, 1% fund.

7 And it was two things that basically I
8 dwelled on a lot because of the fact -- like I told
9 you, we were losing a lot of employees, and this
10 was one way to try to get people to stay. Because
11 you work 30 years -- we was told this promise that
12 we would have. We would have our health insurance.

13 Q. Did you ever look at the actual
14 employee handbook to see what it said about those
15 retirement benefits?

16 A. Well, there was years that we didn't
17 get an employee handbook. There was years we
18 didn't get them. And there was an orientation
19 class that was done by the personnel department in
20 the city under Miss Leslie Holt and Bob Cannella
21 that would give that orientation class, and
22 Mr. Cannella's assistant would give that class to
23 explain all that stuff to them.

24 Q. Did you ever look at the city's policy
25 to see what exactly it said in the handbook about

1 these retirement fringe benefits?

2 A. Yes, sir.

3 Q. Do you recall it saying anything about
4 the city -- they were subject to change and subject
5 to modification?

6 A. Yes.

7 Q. What does "subject to modification"
8 mean to you?

9 A. That things can change.

10 Q. And what does "subject to change" mean
11 to you?

12 A. What it means to me is that things can
13 change; and if something does change, it changes.

14 Q. Meaning the policies in the handbook
15 and the policies are subject to change; correct?

16 A. Yeah, but it wasn't in the handbook.

17 Q. You're telling me that nothing about
18 these fringe benefits was ever in an employee
19 handbook?

20 A. No. No. I'm talking about that to my
21 knowledge these weren't in there, the promise that
22 he had made us, the promise that he made to us --
23 verbally made to us in an open forum.

24 Q. So to your knowledge have you ever seen
25 these benefits in a written form other than that



1 memorandum in front of you?

2 A. The yearly sheets that we have to check
3 off and sign off.

4 Q. Did you ever see those in an actual
5 employee handbook?

6 A. Honestly, I don't recall. I really
7 don't. You know, no. I can't say that I can
8 recall.

9 Q. That's fine. All you can do is what
10 you can remember.

11 A. Right.

12 Q. That's fine. Since you've retired from
13 the city in 2005 have you continued to get
14 information on a yearly basis from the health
15 insurance provider that the city utilizes?

16 A. I get -- are you talking about
17 self-insured?

18 Q. Exactly.

19 A. I get a yearly sheet that they send out
20 that we have to sign, and it's changed over the
21 years. They come in and changed them in 2011.

22 Q. Do you get on a yearly basis anything
23 that might be referred to as a summary of plan
24 benefits from the city that might summarize what
25 your health insurance benefits are?



1 A. Repeat that again, sir.

2 Q. Most insurance companies if you have
3 health insurance through a health insurance company
4 like I do -- Blue Cross and Blue Shield sends me a
5 summary of benefit every year. It lists all the
6 benefits, how much I'm going to pay in co-pays, how
7 much I'm going to pay for emergency room visits,
8 oftentimes referred to as Summary of Benefits.

9 Do you get anything like that on a
10 yearly basis for your health insurance you have
11 through the city?

12 A. They would have them if you would ask
13 for them. They did not send them out to us, no.

14 Q. Have you ever asked for one?

15 A. Yes, sir.

16 Q. And have you been given it when you
17 asked for it?

18 A. Yes, sir.

19 Q. Did you read it?

20 A. Yes, sir. Well, yeah. Yeah. I scan
21 it and review it.

22 Q. Over the ten years you've been retired
23 would you say that those benefits have remained the
24 same, or have there been changes to them over the
25 years since you've been retired?



1 A. Well, over the last ten years?

2 Q. Yes.

3 A. I would say there has been some
4 changes, yes.

5 Q. You clearly wouldn't say that they're
6 the same now as they were ten years ago.

7 A. Nothing is ever the same.

8 Q. So there have been changes to the plan
9 benefits you get through your health insurance with
10 the city; is that correct?

11 A. Yes.

12 Q. So there have been changes to the plan;
13 correct?

14 A. Yes.

15 Q. There has been increases to the cost of
16 the plan for your dependents?

17 A. Oh, definitely. Most definitely.

18 Q. It's staggering when you look at that.

19 A. Every 30 days I have to write a check.

20 Q. Well, this isn't a question, but in
21 preparing for these depositions you quickly realize
22 the crazy increase in the cost of health insurance.

23 So there have been changes to those
24 benefits and the plan over the years as you've been
25 retired from the city; correct?



1 A. Yes, sir.

2 Q. You did not expect your plan with the
3 city to stay static, did you?

4 A. I expected that what I retired for in
5 2005, the benefits that I had in 2005 -- because I
6 was told I was grandfathered in, that my benefits
7 would not change five years after I retired. I was
8 in a comfortable position for me and my family, and
9 five years later after I retire for them to slam
10 dunk you with a baseball bat and tell you that your
11 benefits has changed that you planned your future
12 on -- I could have very well easily years ahead of
13 that or before that -- I could have changed my job
14 standard and I could have prepared myself better
15 for it than what I have today. Yes, sir.

16 Q. What would you have done differently
17 before 2005 had you known that you weren't going to
18 get --

19 A. If I was going to lose my insurance?

20 Q. I need to finish the question. I
21 understand when people are passionate about
22 something. That doesn't bother me. But for a
23 clear record I promise I won't cut you off.

24 A. I apologize for doing that. I'm sorry.

25 Q. What is it you would have done



1 differently before you retired in 2005 had you
2 known the city was not going to provide you with a
3 fully paid for Medicare supplement once you turned
4 age 65?

5 A. I would have looked for another job
6 where I could -- or I would have continued on
7 working at the city until I turned 65. That's one
8 of the main things that I think I would have done.
9 I would have stayed there until I turned 65.

10 Q. You mean you would have continued in
11 your employment with the city?

12 A. Yes, sir. I would have.

13 Q. And is that something that would have
14 been possible?

15 A. Yes, sir.

16 Q. The city doesn't have any kind of -- to
17 my knowledge, but maybe it is. Does the city have
18 any kind of policy you can only work there 35 years
19 or 40 years? To your knowledge.

20 A. No, sir.

21 Q. And what about in terms of the
22 insurance for your wife, who I understand to be the
23 only dependent on the city's plan -- am I right?

24 A. Yes, sir.

25 Q. -- what would you have done differently



1 before your retirement in 2005 had you known that
2 once you turned 65 she would no longer be eligible
3 for the city's plan?

4 A. Like I said, I would have -- I probably
5 would have stayed, because she would have been 100%
6 covered then until I would have left at -- or
7 whatever year I wanted to leave. 65 or whenever.
8 The city would have still provided insurance for
9 dependents like they do, even though today they
10 have to pay a partial amount.

11 Q. Even if you had stayed at the city
12 until you were 65, though, you still wouldn't get
13 Medicare supplement once you turned 65; right?

14 A. Unless -- no; I guess I wouldn't. But
15 I would have better prepared myself to be able to
16 take care of that.

17 Q. It looks like -- let me look at the
18 date again, but your wife is roughly what? 40
19 months younger than you are?

20 A. Yeah. About that.

21 Q. 41 months younger than you are.

22 A. Uh-huh.

23 Q. In the Complaint that Miss Bloodgood
24 filed on your behalf there is indication in there
25 that your wife has potentially some preexisting



1 health problems; is that right?

2 A. Yes, sir.

3 Q. And that you're concerned that once you
4 turn 65 and she's no longer eligible for the city's
5 plan that she won't be able to find health care
6 coverage. That's what the Complaint says.

7 A. And that was based on the fact that
8 Miss Ruth with the city, the personnel director --

9 Q. Christine Ruth?

10 A. Christine Ruth. She tried to -- after
11 we met with her and met with the mayor and the
12 mayor advised her to please -- he understood
13 exactly what we were fighting for. Not fighting
14 for but asking for, for assistance and help in our
15 future and to work on a plan for us to help us;
16 that he understood and he could feel about it. He
17 understood it.

18 Q. When was this meeting that you're
19 describing right now?

20 A. This was after -- about 2010. 2010.

21 Q. Once you got notice that the city was
22 not going to provide those things any longer; is
23 that right?

24 A. Yeah, but we didn't feel -- I didn't
25 feel that it pertained to me because I was



1 grandfathered. I had been told since 2005 that I
2 was grandfathered in.

3 Q. And I think you indicated that was Bob
4 Cannella.

5 A. Bob Cannella and the mayor.

6 Q. So the major told you that as well?

7 A. Yes, sir.

8 Q. I'm just trying to confirm who has done
9 what here.

10 So if I understand you correctly, in
11 2005 both Mr. Cannella and the mayor told you that
12 even if the benefits changed it would not affect
13 you and others who had already retired at that
14 point; is that right?

15 A. No. He said that we had our years in
16 existence. We had our years of service in, over 30
17 years, so therefore Mr. Cannella would say that we
18 were grandfathered.

19 Q. That's what I'm saying. So what they
20 basically told you is: Listen, Chief Baxley. Even
21 if it did later change it's not going to affect you
22 because you've already got your 30 years.

23 A. Exactly.

24 Q. And both Mr. Cannella and the mayor
25 made that representation to you; is that correct?



1 A. Yes, sir.

2 Q. How did that topic come up in 2005, do
3 you remember? How was it that the topic came up in
4 2005 that you remember having these conversations
5 with the mayor and Mr. Cannella about them?

6 A. I was looking at pretty much getting my
7 -- I had my years in and everything, and my health
8 wasn't a hundred percent to what I thought it
9 should be at that particular time, and it was time
10 for the old timers to leave and let the new blood
11 come in and make some different changes in the fire
12 department. You know, make it a better fire
13 department.

14 We built it brick by brick over the
15 years for a long time. So when I started we didn't
16 have but a few firefighters.

17 Q. You didn't even have a fire department
18 at the city when you started.

19 A. Exactly. We built it up from the
20 ground up, and we've got a first class fire
21 department throughout the state of South Carolina.

22 But anyway, I went and I checked on
23 what possibly my retirement would be because of the
24 fact I had already max'd out on my yearly raises or
25 yearly -- you know, usually we would look forward

1 to a 3.5% or whatever. And I was at the top of my
2 rank. I could not go any farther. The only other
3 place I could go would be to take over the chief's
4 job.

5 Q. Otherwise you had sort of max'd out on
6 wages?

7 A. Max'd out on wages.

8 Now, they did do something for the
9 department heads, because they had max'd out, too.
10 They gave them a 10 or 15 percent pay raise, but
11 the rest of us they didn't.

12 Q. So again, tell me how this topic came
13 up that you came to have these conversations with
14 Mr. Cannella and the mayor directly in '05 about
15 this issue you're talking about.

16 A. When I went to him to see what my
17 retirement would be -- you know, I guess you would
18 say that you might be just working for the tax man
19 instead of working for yourself. So I was trying
20 to figure out what I would do for the future, and
21 Mr. Cannella said: You know, it might be a time
22 for y'all to leave. It might be a time for y'all
23 to leave. He said a possibility they might not be
24 able to continue this program on. It might be a
25 good time to leave.



1 Q. And the program you've talking about
2 are these --

3 A. Yes, sir.

4 Q. -- fringe benefits of your retirement?

5 A. Yes, sir. Because you would be
6 grandfathered because you have -- if you retire now
7 you would be grandfathered in.

8 Now, the position -- now, I've had a
9 couple of conversations with Mr. Cannella about
10 that. Now, with the mayor I don't recall where I
11 actually talked with him about it, but it was a
12 conversation that me and him personally had just
13 the two of us together.

14 I've known Keith for many years. I've
15 known Keith before he made mayor. I worked with
16 emergency preparedness in Charleston County. I
17 knew him from when he was over in Charleston County
18 and all. I've known his whole family for years.
19 He's an outstanding man as far as I'm concerned.
20 He's a man of his word.

21 Q. If I understand you correctly, is it
22 your testimony that Mayor Summey made a
23 representation the same or similar to what
24 Mr. Cannella made, and that is: Listen. If you
25 retire now, even if it does change later -- you've



1 already got your 30 in. You're already retired.

2 Those changes wouldn't affect you.

3 A. Yes, sir. Something similar to that.

4 I can't give you word for word.

5 Q. And I'm not asking you to, but what I'm
6 asking you to confirm is that -- when you left the
7 conversation with this one-on-one you had with the
8 mayor, is that the impression he gave you?

9 A. Yes, sir.

10 Q. Is that he echoed what Mr. Cannella had
11 told you?

12 A. Right.

13 Q. Did you ever have any conversations
14 about this issue in 2005 with any city council
15 members at that time? And I don't know who was on
16 city council in '05, but do you remember having
17 direct conversation with anybody on city council
18 about these health insurance issues?

19 A. I didn't directly. I didn't directly
20 have a conversation. Well, I didn't have any
21 formal conversation.

22 I believe at one time at a ball game or
23 something I had mentioned it to Rhonda Jerome, and
24 she said: I thought y'all were grandfathered in
25 because you have over your 30 years, which is what

1 the program stated. You have over 30 years. But
2 it was just a casual conversation because she was
3 running a concession stand.

4 Q. It wasn't a formal conversation such as
5 you had with Mr. Cannella and you later had with
6 the mayor?

7 A. No, sir, it was not.

8 Q. Did you ever speak or have you ever
9 spoken to others who were employed by the fire
10 department who have told you that Mr. Cannella made
11 similar representations to them about the
12 grandfathering issue?

13 A. Yes.

14 Q. If you can recall who has told you that
15 Mr. Cannella made similar comments to them about
16 this grandfathering.

17 A. Chief Rissanen, my boss.

18 Q. Anybody who told you that Mr. Cannella
19 had made a similar representation to them about the
20 grandfathering?

21 A. Well, during the process and all during
22 that, too, there was people that I talked to in his
23 office. Leslie Holt was one.

24 Q. In the Human Resource office?

25 A. Yeah. In Human Resources. And she

1 said: Well, I thought y'all were grandfathered.
2 You've got your 30 years. What are you worried
3 about?

4 Q. This is all before you actually
5 retired; is that right?

6 A. Yes, sir.

7 Q. Once you found out in 2009 that the
8 city was going to make these changes did you try to
9 go talk to the mayor at that point? Did you reach
10 out to the mayor to talk to him directly about this
11 change?

12 A. Yes, sir. We sure did.

13 Q. Tell me about your effort to do that or
14 any conversations you had with the mayor about the
15 issue.

16 A. Well, first we went and talked to
17 Miss Ruth -- I call her Miss Ruth.

18 Q. That's fine.

19 A. We went and talked to her because we've
20 always been taught in the job you have to follow
21 the chain of command. So we went to talk to her
22 about it, and she couldn't really give us any
23 pertinent information about it as per se what was
24 what and why. So we asked for a meeting with the
25 mayor.



1 Q. And you and I would agree Miss Ruth
2 wasn't working for the city in 2005 when you
3 retired?

4 A. No, sir, she was not. I don't recall
5 what year she come. It was between that --

6 Q. She wasn't there in 2005?

7 A. Right. I understand that.
8 Mr. Cannella was the person I was talking to when I
9 left. And we met with -- Chief Rissanen, myself,
10 and Chief Judge met with the mayor, and we asked
11 the mayor what our concerns was, that this was --
12 we knew that it didn't become effective until June
13 of 2010. We knew that it didn't become effective
14 until 2010. So we were asking what they could do
15 for us to help us out, and he said he understood,
16 that it was -- you know, we understood.

17 And one of his people that was in the
18 room said: Now you've got to remember the
19 financial portion of this, too. And the mayor
20 says: I understand that, but I can understand
21 where these people are coming from, that this was a
22 promise that was made -- or this was a statement
23 that was made and a promise that was made, and I
24 want to try to help them out as much as I can.

25 Q. Who else was there besides you,



1 Rissanen and Judge and the mayor?

2 A. Mr. Newton, Warren Newton. And I
3 cannot for the life of me remember the young lady's
4 name --

5 Q. Julie Elmore?

6 A. Julie Elmore. She was in there.

7 Q. Anyone else you remember being at that
8 meeting? I don't know if there was; I'm just
9 asking if there was.

10 A. No, sir. I don't think there was.

11 Q. And this was in 2009?

12 A. 2009.

13 Q. Subsequent to the meeting did you have
14 meetings with anybody else with the city? Did you
15 then go and meet with Miss Ruth? What happened
16 after this meeting with the mayor?

17 A. She contacted us --

18 Q. "She" being Miss Ruth?

19 A. Miss Ruth contacted us and wanted us to
20 come to City Hall, that she had a plan that maybe
21 would help us get insurance. And it was some
22 gentleman -- it's in our paperwork that we had
23 that we turned over and everything. I can't
24 remember the name of the company, but it was a
25 company from over here in Mount Pleasant that was

1 trying to work with the city. And they started
2 talking. It sounded like a pretty good plan. But
3 then they give us a packet and it said if any of
4 you or any of these ailments or these conditions
5 that you might have -- you're ineligible for
6 insurance.

7 Q. This is back in '09; right?

8 A. Yes, sir. And the first couple of
9 things on there -- my diabetes was on there and my
10 conditions with my wife, with her --

11 Q. You don't have to tell us what they
12 are.

13 A. My Type 2 diabetes is on there. We
14 would be ineligible for it. So I wasn't eligible
15 for the program.

16 Q. And this was some kind of Medicare
17 supplement program?

18 A. Yes, sir. And then --

19 Q. Were there more meetings with Miss Ruth
20 after that?

21 A. At that particular meeting also -- can
22 I back up about that meeting?

23 Q. Absolutely. Just make sure I know
24 where you are in the timeline.

25 A. The meeting we had with the mayor. We

1 had also found out that if you look on our sheets
2 where our wives' insurance plan was increased and
3 everything else -- we had found out that they were
4 charging us too much for the program, so we brought
5 that to their attention. And Chief Rissanen and I
6 met with Miss Ruth on another occasion on that, and
7 he now give her the facts of that.

8 And then we found out -- in fact, there
9 is a letter -- there should be in the paperwork
10 here too -- that she had made a mistake. So for
11 the next month or one or two months after that our
12 premium went down. I think it was \$75 or however
13 much it was.

14 Q. So they fixed it?

15 A. So they fixed it after they had made
16 that mistake. And also I brought this to their
17 attention. It says on here -- and this is from
18 July of 2011. Because there was a period of time
19 that we were meeting -- we had met with the mayor.
20 Met Miss Ruth and all. And I can't remember. It
21 was a period of time based on -- I think '09, '10
22 and '11. It was a couple of years that we was
23 waiting on these -- and we never would hear back,
24 so we called the city. We would call them back.

25 And it says here: Coverage with the



1 City of North Charleston will end when I or my
2 dependent become eligible for Medicare benefits.

3 And I asked Miss Ruth -- I said: Would
4 you please read this. And I didn't read it. She
5 read it out loud. And I stopped her and I said:
6 Would you please read it one more time.

7 And the mayor at that meeting -- he
8 says: I see where he's coming from.

9 Q. So this is another meeting that you had
10 with the mayor --

11 A. No. That was the one meeting that we
12 had.

13 Q. So Miss Ruth was there as well?

14 A. Oh, yes. She was there all the time.

15 Q. But this letter is from 2011. You told
16 me the meeting with the mayor happened in '09.

17 A. No. I'm bad with dates. I'm bad with
18 dates. It was during that period of time, 2009,
19 '10, '11. A lot went on during that period of
20 time, and I apologize.

21 Q. I'm not trying to challenge you. I'm
22 just trying to make sure you and I both have some
23 dates we're comfortable with.

24 A. I think it was during 2011 that we met
25 with the mayor, because that was the last kind of

1 meetings we had other than the fact that we started
2 looking around to other avenues of what to do,
3 which would lead us up to where we are today.

4 Q. And the meeting with the mayor in 2011,
5 that would have been the one where you -- Mr. Judge
6 was there, Mr. Rissanen was there and Julie Elmore
7 was there and the mayor and --

8 A. Exactly.

9 Q. But was Miss Ruth at that meeting, too?

10 A. Yeah. Oh, yeah.

11 Q. She was there, too?

12 A. She was sitting right beside us. I
13 messed the dates up there, and I apologize for
14 that.

15 Q. That's all right. You don't have to
16 apologize.

17 A. The only dates that I can guarantee
18 that I can remember is my grandchildren.

19 Q. Is that the only time that you met with
20 the mayor after your retirement about this issue?

21 A. Yes, sir. Yes. Yeah. But like I
22 said, I said -- it says here: I and/or my
23 dependent become eligible for Medicare benefits.
24 And I said that tells me right there -- and the
25 mayor says: I see it. We've got to change that.



1 So if you look before these dates and
2 you look after these dates, that was changed also,
3 and this was after 2009 that the original letter
4 come out. This was after the 2010 it took effect.
5 So I brought that to their attention also.

6 Q. And after this meeting in 2011 with the
7 mayor where you, for instance, brought this issue
8 to his attention did you have more meetings with
9 Miss Ruth at that point, or was that the end of the
10 meetings?

11 A. I think Chief Rissanen had a meeting
12 with her.

13 Q. I only ask because the lawsuit is filed
14 in June of 2013. So do you recall having any
15 meetings after that where you were present for
16 meetings with the mayor?

17 A. No, sir. No, sir, I do not.

18 Q. Have you ever had any discussions at
19 any point with Miss Ruth or anybody in the city's
20 human resources department about your wife's
21 eligibility for three years of COBRA coverage once
22 you become Medicare eligible?

23 A. I thought COBRA coverage was 18 months,
24 but I've recently been aware that in the 2005
25 handbook it says three years.

1 Q. Well, I don't want to give you legal
2 advice, and I'm not pretending to give you legal
3 advice. I would only tell you you can at least
4 look at -- you can have Miss Bloodgood look at what
5 the COBRA coverage is for a qualifying event such
6 as the person -- the employee or former employee
7 becoming Medicare eligible.

8 It doesn't sound like you've had any
9 conversations with anybody at the city that there
10 is up to 36 months of continued coverage under the
11 city's plan once you became Medicare eligible; is
12 that correct?

13 A. Not to my knowledge, no.

14 Q. Do you recall anybody at the city ever
15 mentioning that to you, that: You know, Chief
16 Baxley, even once you become Medicare eligible your
17 wife would still be eligible to continue her
18 coverage with the city until June of 2019.

19 Any conversations like that with anyone
20 at the city?

21 A. That she would be eligible until 2019?

22 Q. Yes.

23 A. I don't recall that date ever being
24 said to me.

25 Q. 36 months.



1 A. Yeah.

2 Q. So nobody at the city has ever had that
3 conversation with you?

4 A. They said that you can get COBRA
5 insurance, but that's outrageous.

6 Q. Have you asked them what the price is
7 for COBRA as compared to what you're paying per
8 month --

9 A. No, but I know some people that has had
10 to go to COBRA insurance, and it's almost twice as
11 much of what I'm paying right now.

12 Q. Have you spoken to anybody who has had
13 to go to COBRA insurance with the City of North
14 Charleston or only people who have had to go to
15 COBRA coverage through other employers?

16 A. Yes, I have.

17 Q. With the city?

18 A. Yes, sir.

19 Q. And has their dependent coverage gone
20 up?

21 A. I don't know about that, just what the
22 person would tell me, and that was Grant Mishou.

23 Q. So my question is really this, sort of
24 like my question about the length of potential
25 COBRA coverage for your wife: Have you had any



1 direct conversations with Miss Ruth or anybody in
2 her office to ask them -- obviously they can't
3 predict three years out because insurance rates
4 change --

5 A. Exactly.

6 Q. But have you asked anybody: Well,
7 Miss Ruth, if my wife went on COBRA today, what
8 would that rate be compared to what I'm paying
9 right now? Have you ever had that conversation?

10 A. No, sir. I don't think I have. I
11 don't recall that.

12 Q. The reason I ask: Is it your
13 understanding right now that you pay the full cost
14 of your wife's health insurance through the city's
15 plan?

16 A. Yes, sir. \$1,177.05 every 30 days.

17 Q. So your understanding is --

18 A. I got a check in the car to pay it
19 tomorrow.

20 Q. So your understanding is the city is
21 not paying any portion of her health insurance?
22 She's just allowed access to their policy and you
23 have to pay for it; correct?

24 A. No. Can you repeat that again?

25 Q. Is it your understanding that the city



1 is supplementing your wife's health care costs at
2 all at this point, or are you paying the full cost
3 of it?

4 A. That I don't know.

5 Q. Have you ever asked?

6 A. No, sir.

7 Q. So sitting here today you don't know
8 the difference in what COBRA coverage would cost
9 compared to what you're already paying for your
10 wife's health insurance?

11 A. No, sir. The only thing I've always
12 heard through the grapevine, as you want to say or
13 whatever, that COBRA insurance is usually about
14 twice as much of what you actually pay through a
15 municipality or anything of that nature.

16 Q. Would you be interested to know what
17 those numbers are?

18 A. Yes, sir. I really would.

19 Q. Would you be interested to know whether
20 she is eligible for 36 months versus 18 months?

21 A. Yes, sir, I would. Could you tell me?

22 Q. I could, but I would rather verify the
23 information and pass it to your lawyer.

24 A. I understand.

25 Q. This is really not the right place to



1 do it, but there is certainly other ways to provide
2 you with that information.

3 A. That is no problem. I understand.

4 Q. If she were eligible for 36 months of
5 coverage by the dates that you've given me, that
6 would leave her by about five months where she
7 won't be eligible for the city's coverage until she
8 turned 65.

9 A. Okay. That sounds good.

10 Q. The lawsuit indicates and the Complaint
11 that you've made some general inquiries to what
12 health insurance might cost for your wife if you
13 had to go on the open market to get it, even if you
14 could get it, given her preexisting conditions; is
15 that right?

16 A. As far as the prices go?

17 Q. Yes, sir.

18 A. No. The only one -- I've talked to a
19 couple of them, and one was Blue Cross/Blue Shield.
20 And they advised me -- well, they advised my wife
21 first, and then I called them back and I actually
22 talked to them. And they advised me that my wife
23 would have to quit -- cancel her policy with the
24 City of North Charleston and then reapply with Blue
25 Cross/Blue Shield. In other words, she could not



1 be insured by anything.

2 Now, I have also inquired on another
3 one -- I'm in the process of -- I just -- you might
4 not believe this, but not too long ago we just
5 found out that Humana, which is basically kind of
6 -- I don't want to say offered by the city, but the
7 information was given out by the city to myself and
8 Chief Rissanen, and we met with Kathy to explain
9 that program to us about supplement insurance and
10 for coverage for our wife.

11 Q. Kathy who?

12 A. Kathy in the personnel department.

13 Q. When did you have this meeting?

14 A. Three weeks ago. About three weeks
15 ago. And she give us the packet in her office, and
16 I asked her -- she said that's what they're giving
17 -- basically giving out to people that are
18 retiring. And I asked her -- I said: Well, who
19 has gotten this package that has retired? And then
20 I said: No. Wait a minute. Don't answer that.
21 Because I don't want you to give me somebody else's
22 information. And it was like a supplemental
23 insurance for \$54 a month.

24 Q. So you would have to pay for it,
25 though?



1 A. Right. Yeah. And I was even shocked
2 that that -- I had never knew that. I had never
3 known that all these years and months from the
4 city.

5 Q. Did you check into it after you met
6 with Kathy or --

7 A. Did I check into Humana?

8 Q. Yes.

9 A. I've been studying the book. I have
10 the book sitting on my kitchen table along with
11 four others. I'm in the process of working with
12 AARP. I'm in the process of working with --

13 Q. That all revolves around your Medicare
14 supplement -- right?

15 A. Yeah.

16 Q. -- that you anticipate getting in June?

17 A. Or for my wife. Because I can't wait
18 -- you know, I'm hoping and praying to God that
19 this goes through so I can have it for my family.
20 I'm not prepared for it.

21 Q. And the research that you've been doing
22 about both your Medicaid supplement and coverage
23 for your wife, have you consulted with anybody on
24 her eligibility for access to health insurance
25 through what most people refer to commonly as Obama

1 Care, which is the Affordable Care Act?

2 A. Yes, sir. My son-in-law owns -- does
3 taxes. He has a company and it's just recently
4 selling Obama Care insurance, and he's working up a
5 program for me, to do the comparison for me.

6 So yes; I have been trying to -- I'm
7 not a hundred percent active because I don't turn
8 65 until June.

9 Q. That's not that far off.

10 A. No, sir, it's not. It's right around
11 the door, sir. But I believed on this promise ever
12 since it was promised to me and I still -- I still
13 think that this promise should be given to me.

14 Q. And the promise being that the city
15 will pay for a Medicare supplement for you from the
16 time you're 65 until you die; correct?

17 A. Yes, sir. For my life.

18 Q. And the second promise that they would
19 continue to allow your wife to participate in the
20 city's health insurance plan until she turned 65;
21 correct?

22 A. Or unless I pass away or employment --
23 that I'm not with them anymore.

24 Q. Is there any other promises you're
25 seeking to have the city comply with other than



1 those two?

2 A. Well, basically I want what was
3 promised to me. Again, I'm not out to get glory or
4 anything else. If a promise was made to me, I want
5 that, and I've relied on that. I relied on that
6 and I based my future on it, and I have spent four
7 years or three or four years here on pins and
8 needles -- nights without sleeping. Everything
9 else -- because of the fact that now I'm at the
10 bottom of the line -- just facing 65. And now five
11 years after I retire they throw this bomb at you.
12 And then I give the city an opportunity to talk
13 within them to get them to understand us, and they
14 understood us and they said they would get back
15 with us and they would do something for us. And so
16 now this is where we're at today, and I've run
17 into --

18 Q. Has anybody at the city ever told you
19 why they're not complying with the promise you say
20 they made?

21 A. No, sir. I've been told -- before I
22 was even talking to Miss Bloodgood -- we were
23 talking to Miss Bloodgood -- I run across an
24 ex-city attorney. Rich -- I have a problem with
25 that name.



1 Q. Lingenfelter?

2 A. Rich Lingenfelter.

3 Anyway, I saw him in the parking lot
4 and he asked me -- he says: Did y'all ever get a
5 lawsuit going on with the City of North Charleston?
6 And I said: We're trying to. We're trying to work
7 something out.

8 And he said: Well, that was a promise.
9 And he mentioned about that that was a -- a promise
10 is a promise, whether it's verbal or whether it's
11 written, that a man of his stature made that
12 promise. And that was right before he left the
13 city and went to another job.

14 And he even told me -- he says -- he
15 was telling me about the fact that that was a
16 promise that was made, that he even mentioned it to
17 the mayor and Mr. Cannella, and the mayor mentioned
18 it instead to him: Whose side are you on? Are you
19 on our side or are you on their side?

20 And he said: Well, you made the
21 promise to them. This is what he physically was
22 telling me one-on-one in a parking lot, and that's
23 when I turned around and I called -- and he also
24 said that the mayor told him in that meeting, too,
25 that -- he said: Well, you know, y'all not got a



1 lawsuit going on against it? And he said that the
2 mayor said that the firemen was too dumb to hire
3 somebody to do a lawsuit. And when that happened
4 that hit hard.

5 Q. You say in your Complaint that you
6 relied on both verbal and written representations.

7 A. Not written. I said that's what he was
8 saying, that it could be verbal or written.

9 Q. Let me finish.

10 A. That's fine. I get emotional about it.

11 Q. You don't need to step on me here. I'm
12 going to give you all the time you need.

13 A. I'm not stepping on you, sir.

14 Q. I think we've talked about the verbal
15 promises you believe the city made to you by way of
16 both Mr. Cannella and the mayor.

17 A. Yes, sir.

18 Q. Your Complaint also says you relied on
19 written promises.

20 Do you know what written promises the
21 city made to you in this respect?

22 A. There is one right there, sir.

23 Q. Are you referring to this document you
24 brought in here?

25 A. Yes, sir. Just like you have in your



1 packet.

2 MR. CONLEY: Let's mark this as
3 Defendant's Exhibit 1.

4 (Defendant's Exhibit 1, copy of City of
5 North Charleston Retiree Election Form - Health
6 Benefit Coverage, marked for identification.)

7 BY MR. CONLEY:

8 Q. Defendant's Exhibit 1, which is Bates
9 stamped 206, is that something you got in 2011?

10 A. Yes, sir. It had to be before --
11 sometime in 2011, because you had to sign them.
12 Every year they sent them to us after the first of
13 the year, and we had to sign them and date them,
14 and we had to initial beside each one of them. If
15 not our insurance would be cancelled.

16 Q. The better way I should have asked my
17 question is: Prior to your retirement in 2005 what
18 written promises can you direct me to that the city
19 made to you about these retiree health insurance
20 benefits? Where would I find the written promises
21 you're talking about in your Complaint?

22 A. I don't know. That I can't answer.

23 Back to what I was saying about
24 Mr. Rich, that's when we -- he contacted -- he
25 said: Maybe I can help you out. And that's when



1 we went and talked to Miss Stark over here in Mount
2 Pleasant.

3 Q. Jennifer Munter Stark?

4 A. We talked to her.

5 Q. Don't tell me anything that you talked
6 to Miss Stark about. It's privileged between you
7 and her.

8 A. Okay. But that didn't pan through. So
9 I heard about Miss Bloodgood, and through an
10 acquaintance we contacted her.

11 Q. Prior to you retiring in 2005 other
12 than the verbal representations that you and I have
13 spent time talking about do you know of any other
14 verbal representations made to you by Mr. Cannella,
15 the mayor, or anyone else from the city about these
16 retiree health benefits?

17 A. Explain that just a little bit better.

18 Q. What I'm asking you is -- you've done a
19 great job of telling me about the promises verbally
20 that the mayor made to you and you've done a good
21 job telling me about the verbal promise that
22 Mr. Cannella made to you, such as: Well, you'll be
23 grandfathered.

24 Other than the mayor and Mr. Cannella
25 and the verbal promises they made to you did



1 anybody else in the city make verbal promises to
2 you in regard to these health insurance benefits?
3 Both the Medicare benefit and the benefit for your
4 wife.

5 A. It was passed down to me from my chief.

6 Q. Chief Rissanen?

7 A. Chief Rissanen, yes, sir.

8 Q. Anyone else other than Chief Rissanen?

9 A. I don't recall. No, sir.

10 Q. That's fine. And as to written
11 promises made to you about these health insurance
12 benefits prior to your retirement in 2005, you
13 can't identify where that promise is in writing; is
14 that correct?

15 A. Right, other than the documentation
16 that we have provided. But it's not written out
17 per se. I understand where you're coming from.

18 Q. One of the allegations in the
19 Complaint, Mr. Baxley, is that the city paid you
20 and others lesser salaries while you were employed
21 by the city with the promise of these monetary
22 savings in health care issues during retirement.

23 Can you identify for me comparatively
24 speaking who would have paid you more in salary
25 than the city did during the 31 years you worked

1 there?

2 A. If I had taken another job with another
3 municipality or another company or whatever, that
4 would have paid more money.

5 Q. Who is that, though? Can you
6 specifically identify one that paid more money?

7 A. That was not really gotten into by me.
8 I never did go into looking into it because I felt
9 -- you've got to understand that these promises
10 made me physically, financially, mentally stable to
11 know that my family and I would be taken care of,
12 and I depended and I relied on those promises.

13 After I retired or before I was going
14 to retire -- because I had been told for those
15 years that I was going to have this privilege and I
16 would have this. And why would I -- I didn't
17 actually steer into researching to say: Hey, I
18 want to change this job. There was jobs out there
19 that I possibly could have gone to.

20 Now, to tell you how much they were --
21 I'm not going to sit here and tell you what those
22 salaries were. Because over the many years that I
23 was in the fire service, in the fire department,
24 there was times that life insurance policies -- not
25 benefits. I don't want to say "benefits." Life



1 insurance policies were lessened because they were
2 going to provide other benefits for us. And they
3 wouldn't give you a salary increase until half of
4 the year instead of giving you one in -- it's
5 usually in July. Like a COBRA raise like they do
6 for retirees now. Just like basically the one
7 today, that we didn't get a pay raise in your
8 social security because the gas prices are down.

9 Q. And I appreciate --

10 A. And I don't apply to that.

11 Q. And I appreciate your motivation and
12 your passion. My question is very simply: Can you
13 identify for me another employer that was going to
14 pay you more money than you made during the time
15 you worked for the city; and if you can, who is
16 that employer?

17 A. No, sir, I can't.

18 Q. You mentioned a moment ago the package
19 of information you got from the city about access
20 to some kind of Medicare supplement through Humana
21 or somebody, and I think you mentioned something
22 about \$54 a month.

23 Have you done some pricing of what
24 these Medicare supplements will most likely cost
25 you starting in June? And if you have, can you

1 give me sort of a range of what you've seen, what
2 kind of range of price you're looking at to pay for
3 a Medicare supplement starting in June.

4 A. Yes, sir, I have. I don't recall --
5 what do they call it? I Plan, Y Plan, K Plan and L
6 Plan and things of that nature. But they basically
7 range anywhere from \$54 up to about 175 to right at
8 \$200.

9 Q. And I guess that depends on what piles
10 of coverage you want.

11 A. Exactly. And the deductibles that you
12 want and everything. Insurance is a weak subject
13 with me, because I've always been --

14 Q. I would suggest to you that insurance
15 is a weak subject with a lot of people.

16 A. You're right. And I wish for many,
17 many years that I had studied that, but I felt so
18 comfortable with the way I was being treated by the
19 city and with this promise. I relied on that for
20 my future.

21 Q. You clearly articulated to me that the
22 city, according to you, promised you that once you
23 turned age 65 they were going to provide you with a
24 Medicare supplement; correct?

25 A. Yes, sir.



1 Q. In conjunction with that did the city
2 ever make any promise to you of the kind or extent
3 of Medicare supplement it would provide for you?

4 A. No, but I would think it would be
5 equivalent to what I already have.

6 Q. But did the city ever make any promise
7 to you in terms of the type and extent of coverage
8 they would provide in a Medicare supplement?

9 A. No, sir, they did not. And I don't see
10 how they could back when the promise was made.

11 Q. And why is that?

12 A. Because they changed.

13 Q. Exactly.

14 A. Exactly. They changed. The prices
15 changed on it. But I was grandfathered. I was
16 told I was grandfathered and I was based on being
17 grandfathered.

18 Q. As we sit here today you are still
19 participating -- you're still getting your health
20 insurance paid for 100% by the city; correct?

21 A. Yes, sir. 100%.

22 Q. So in that regard, as we sit here today
23 the city is fulfilling its promise to you?

24 A. Yes, sir.

25 Q. Even based on your own testimony of



1 what the promise is, they're fulfilling that
2 promise today?

3 A. Yes, sir. And they're doing a
4 wonderful job at it.

5 Q. And in regard to coverage for your
6 wife, your dependent, the city is likewise
7 fulfilling its promise to you as we sit here today;
8 correct?

9 A. Yes, sir, they are, and in a wonderful
10 way.

11 Q. As we sit here today you would agree
12 with me the city has broken no promise? As we sit
13 here today.

14 A. Exactly. Until I turn age 65.

15 Q. And you're not 65, are you?

16 A. No, sir. I'm not 65 yet.

17 Q. So as we sit here today the city has
18 broken no promise to you, have they?

19 A. No, sir. Caused a lot of hardship, but
20 not a promise -- they have not broken that. It's
21 caused a lot of ache and pain, sleepless nights.

22 Can I add one other thing? Maybe I can
23 do it later.

24 Q. You're welcome to add whenever you
25 want.



1 A. I just thought about something. In
2 that meeting that we had with the mayor and all I
3 even brought up that this was so upsetting and
4 everything to me and my wife and everything that we
5 didn't even know -- we didn't -- we might have
6 would probably got a divorce and her go on
7 disability or something. And the mayor -- that's
8 when the mayor said again: I understand where
9 you're coming from.

10 So that's what type of a bold slap in
11 the face or in the gut that I felt about this. I
12 feel, not I felt. I feel about this.

13 Q. Your wife is not a party to this
14 lawsuit; correct?

15 A. Is not a party to this lawsuit?

16 Q. She's not a plaintiff in the lawsuit;
17 right?

18 A. A plaintiff in the lawsuit?

19 Q. Right.

20 A. I can't answer that because I guess I
21 have to ask my attorney that. I really don't ...

22 Q. To your knowledge has your wife sued
23 the city?

24 A. No, sir. I am the employee. So I
25 would say I am the employee, so ...



1 Q. Have you had any discussions with your
2 wife about suing the city?

3 A. About --

4 Q. About her suing the city.

5 A. No, sir. No, sir. I have not.

6 Q. Did the city make any promises to her?

7 A. Other than what -- other than
8 statements that she knew that it was like this,
9 yes. But not a physical statement; a written
10 statement like that.

11 Q. Did the city ever make any verbal
12 promises to her?

13 A. No.

14 Q. As we sit here today do you know
15 exactly how much your Medicare supplement is going
16 to cost you beginning in June of 2016?

17 A. No, sir, because I don't know what plan
18 that I would receive from the city or that I would
19 receive on my own. I would hope it would be
20 equivalent to what I have today.

21 Q. Do you know if the provision or the
22 providing of benefits to retirees by the City of
23 North Charleston requires the approval of city
24 council?

25 A. I would think everything would be



1 approved by city council.

2 Q. Did you ever make any inquiry as to
3 whether the retirement benefits that you claim
4 Mayor Summey ever promised to you were ever
5 approved by city council?

6 A. Not directly to -- I know that as a
7 group -- myself, Chief Rissanen, Willie and Cliff
8 -- that Chief Rissanen confronted his city
9 councilman for the area. And he asked the mayor
10 about it and then sent a letter back to Chief
11 Rissanen stating that he thought they were
12 grandfathered, too, which is in your documentation.

13 Q. Have you ever seen a document where the
14 North Charleston City Council approved the
15 retirement health benefits that you're claiming as
16 part of your lawsuit?

17 A. No, sir, but I can name other things in
18 the city that was not written down and approved and
19 the city did. I can name a few other things to
20 where they grandfathered things.

21 Q. I'm asking have you ever seen where
22 North Charleston City Council approved these
23 benefits that you're claiming in your lawsuit.

24 A. Well, first of all, if this come out --
25 if this was sent out and it was sent out to the

1 members of the finance committee to health
2 insurance and retired employees and it's labeled by
3 the City of North Charleston and it's from the
4 mayor's office, that includes the city council.

5 Q. Who does it say it's to?

6 A. It says: To members of the finance
7 committee.

8 Q. From who?

9 A. From the memorandum of the City of
10 North Charleston.

11 Q. It says it's to who? The members of
12 the finance committee. From who? Who is RKS?
13 R. Keith Summey?

14 A. Okay. Keith Summey. You had me there.

15 Q. So Exhibit 1 to Mr. Hood's deposition
16 is a memorandum from Mayor Summey to members of the
17 finance committee?

18 A. But it was also sent out to the
19 employees.

20 Q. What I'm asking you is: Is it a memo
21 from Mayor Summey to members of the finance
22 committee?

23 A. But it was also sent out to the
24 employees, sir. And I can sit here and repeat that
25 over and over.



1 Q. I'm asking you: Is that who it's from
2 and to?

3 A. This particular paper in front of me,
4 it says: To the members of the finance committee.
5 Reference: Health insurance for retired employees.
6 And this was sent out to the employees.

7 Q. And does this anywhere in it say that
8 that plan proposed by Mayor Summey in this memo is
9 approved by city council?

10 A. No. But it was done. But it was done.
11 That was the program that was done by the city. So
12 it had to be approved by the city council.

13 Q. Is city council of North Charleston a
14 legislative body? They have to approve things;
15 right?

16 A. They have to approve things?

17 Q. Yes, sir.

18 A. Yes, sir. Along with the mayor. Yes.
19 Mayor Summey was a strong leadership.

20 MR. CONLEY: I think that's all I have.

21 MS. BLOODGOOD: I have a few followup.

22 EXAMINATION

23 BY MS. BLOODGOOD:

24 Q. You were asked a question about written
25 promises; and you said they weren't written out,



MICHAEL H. BAXLEY - EX. BY MS. BLOODGOOD
1 but there were other documents that you think might
2 have been relevant.

3 So when you did your orientation
4 classes was there any written document that you had
5 to fill out that indicated that promise of
6 subsidized retiree health benefits was explained to
7 the new hires?

8 A. Yes, ma'am. It was a check-off sheet
9 that I come up with for the hiring program, and it
10 was checked off. It was signed off by myself and
11 Chief Judge and also documented and notarized by
12 the employee in orientation class. And these
13 orientation classes or new hires were also
14 recorded. And when I retired from there I left
15 file cabinets of that stuff in my office at my
16 headquarters company. And it said down here that
17 Chief Baxley -- it was subtitled that Chief Baxley
18 reviewed these. And I think there was 23 subject
19 matters that Chief Baxley explained these benefits
20 to you, and on certain times representatives from
21 Mr. Cannella's office, including Mr. Cannella, sat
22 in on those classes when I talked about that.

23 Q. Your orientation classes were recorded?

24 A. No, not the orientation classes, but
25 the hiring review boards. And they answered and



MICHAEL H. BAXLEY - EX. BY MS. BLOODGOOD
1 they signed, and they were documented.

2 Q. And were you aware when you were doing
3 these orientations that the firefighters that were
4 working in North Charleston could have gone to any
5 other municipalities in the county and made more
6 money?

7 A. Yes, ma'am.

8 Q. Which municipalities in the county were
9 paying entry level firefighters more than North
10 Charleston?

11 A. City of Charleston, Mount Pleasant.
12 And we were doing a survey on that. It's been so
13 many years ago, but I believe there was three fire
14 departments locality. I think it was Johns Island,
15 City of Charleston, and Mount Pleasant.

16 Q. And because North Charleston was paying
17 less did that attribute to the turnover in North
18 Charleston of firefighters?

19 A. We were losing firefighters to all over
20 the state. But yes, ma'am. They were leaving
21 because of -- it was dealing back with that Garcia
22 stuff. The more hours you worked the less money
23 you made when you went to get into overtime pay and
24 all that. If you worked overtime you would get
25 less pay because it was divided into it.

MICHAEL H. BAXLEY - EX. BY MS. BLOODGOOD

1 Q. When you had the meeting with the mayor
2 in 2011 --

3 A. Yes, ma'am.

4 Q. -- did you leave that meeting thinking
5 that the mayor was going to do something to address
6 your situation?

7 A. Yes, ma'am, I did.

8 Q. And did you tell any other firefighters
9 about your impression that you would be
10 grandfathered or the mayor would fix and fulfill
11 his promise to you in 2011?

12 A. Yes, ma'am. We sure did. We had other
13 firefighters that was interested in what we were
14 doing, and we kept them appraised of what was going
15 on. And when I walked out -- when we walked out of
16 that meeting I felt very, very good that the mayor
17 understood. And he even said he understood and he
18 felt for us and that he was going to do everything
19 within his powers to be able to take care of this
20 and render the program, and he turned around very
21 sincerely to Miss Ruth and said: Fix this
22 situation and let's find out what we can do for
23 these -- they worked for me. They backed me. They
24 took care of us. We need to take care of them.

25 Q. Was it after that meeting with the



1 MICHAEL H. BAXLEY - EX. BY MS. BLOODGOOD
2 mayor that Rich Lingenfelter told you the mayor
3 said that the firefighters were too dumb to get a
4 lawyer?

5 A. Yes, ma'am, it was. Yeah. There was a
6 lot going on there.

7 Q. And after that meeting in 2011 when you
8 thought the mayor was going to fix it and fulfill
9 the promise would you have -- who were some of the
10 people that you reported that conversation to who
11 you said you still thought the mayor was going to
12 fix it?

13 A. Well, we talked to Cliff Forner, Diane
14 Hillborn, Willie Hood, Ed Padgett, James Huger,
15 Benjie Norris. There was a lot of other people
16 that were with us on this program.

17 MS. BLOODGOOD: I don't have any other
18 questions.

19 (Defendant's Exhibit 2, copy of City of
20 North Charleston Retiree Election Forms - Health
21 Benefit Coverage, marked for identification.)

22 EXAMINATION

23 BY MR. CONLEY:

24 Q. Mr. Baxley, I've marked three pages
25 here as one exhibit. I'm just trying to identify
26 that this is your signature on each one of these



1 documents that make up Defendant's Exhibit 2.

2 A. Yes, sir, they are, because I wouldn't
3 -- just like I initialled that, because I didn't
4 want to be charged with the dental at that
5 particular time. And I write like a chicken
6 anyway.

7 Q. My subsequent question is: Likewise as
8 you've identified your signature, are those your
9 initials on each page, too, in the boxes?

10 A. Yes, sir.

11 MR. CONLEY: I don't think I have
12 anything further, Mr. Baxley.

13 (Deposition concluded at 2:30 p.m.)

14 (The deponent waives reading and
15 signing of the transcript.)
16
17
18
19
20
21
22
23
24
25

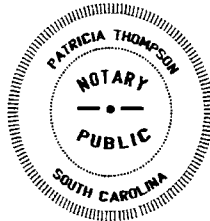


CERTIFICATE OF REPORTER

I, Patricia L. Thompson, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate
and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed by
official seal this 6th day of January 2016 at
Charleston, Charleston County, South Carolina.



Patricia L. Thompson

Patricia L. Thompson
Registered Professional Reporter
My Commission Expires
October 15, 2025

1	I N D E X		84
2		Page	Line
3	EXAMINATION		
4	By Mr. Conley	3	3
5	EXAMINATION		
6	By Ms. Bloodgood	77	22
7	EXAMINATION		
8	By Mr. Conley	81	21
9	Certificate of Reporter	83	1
10	(NO INFORMATION REQUESTED.)		
11			
12			
13	E X H I B I T S		
14		Page	Line
15	DEFENDANT'S		
16	EXH. 1 Copy of City of North Charleston		
17	Retiree Election Form -		
18	Health Benefit Coverage	65	4
19	EXH. 2 Copy of City of North Charleston		
20	Retiree Election Forms - Health		
21	Benefit Coverage	81	18
22			
23			
24			
25			



Exhibits	7:1,5	21:11,18 67:25	98	allowed
DFT.EXH.001	1998	35	26:4,5,16	21:20 23:7,15
26:12 65:3,4,8	25:7	37:18		56:22
76:15 84:15	2	36	A	amount
DFT.EXH.002		54:10,25 57:20		38:10
81:18 82:1 84:17	2	58:4	AARP	and/or
	49:13 81:18 82:1	4	60:12	52:22
\$	2005	4	Absolutely	Andrews
	8:10,16,17,18	4	49:23	9:14
\$1,177.05	10:9,12 33:13	25:8,11	academy	answers
56:16	36:5,17 37:1 38:1	40	9:20 10:6,20 16:15	3:25
\$200	40:1,11 41:2,4	37:19 38:18	17:8,12,19,23	anticipate
70:8	44:14 47:2,6 53:24	41	18:11	60:16
\$54	65:17 66:11 67:12	38:21	access	anymore
59:23 69:22 70:7	2009	6	17:21 18:12 20:17	61:23
\$75	46:7 48:11,12		21:21 28:3,5,8	apologize
50:12	51:18 53:3		56:22 60:24 69:19	36:24 51:20 52:13, 16
0	2010	6/12/51	accurate	applied
	39:20 47:13,14	6:7	4:6 5:1	13:15 14:13,22
05	53:4	62	ache	15:1,7 27:25
8:25 9:3,8 42:14	2011	6:4	72:21	apply
44:16	33:21 50:18 51:15,	65	acquaintance	12:25 14:17 16:21
09	24 52:4 53:6 65:9,	6:8 17:16,23	66:10	17:1 18:22 27:25
49:7 50:21 51:16	11 80:2,11 81:6	19:13,22 20:6,16	Act	69:10
1	2013	21:1,14,22 22:14,	61:1	appraised
26:12 65:3,4,8	53:14	24 23:6,14,21	active	80:14
76:15	2016	37:4,7,9 38:2,7,12,	61:7	approval
1%	74:16	13 39:4 58:8 61:8,	actual	74:23
10	2019	16,20 62:10 70:23	7:15 31:13 33:4	approve
42:10 50:21 51:19	54:18,21	72:14,15,16	add	77:14,16
100%	206	7	72:22,24	approved
38:5 71:20,21	65:9		address	75:1,5,14,18,22
11	23	71	5:14,19 80:5	77:9,12
24:10 50:22 51:19	78:18	7:4,11 8:2,6 11:13	advice	approximation
15	29405	22:12 23:1,2	54:2,3	5:18
42:10	5:16	72	advised	area
175	2:30	10:8	39:12 58:20,22	10:24 75:9
70:7	82:13	74	affect	arrange
18	3	7:14,15 8:2 9:7	40:12,21 44:2	24:11
53:23 57:20	3.5%	11:15 22:20,22	Affordable	arrangements
1827	42:1	23:10	61:1	25:20
5:15	30	8	age	articulated
19	23:23 31:11 35:19		5:25 6:3,8 17:15	70:21
10:8	40:16,22 44:1,25	8th	18:5,14,19 21:14	assistance
1954	45:1 46:2 56:16	6:2,5	22:14,24 23:6,21	39:14
6:3	30-some	9	37:4 70:23 72:14	assistant
1974	10:20		agree	11:7 12:6,7,9,15
	30th	96	29:2 47:1 72:11	28:5 30:15 31:22
	8:18	26:4	ahead	assume
	31	97	36:12	7:6,20 9:3 12:19
	10:2 12:23 14:14	26:4	ailments	13:23 15:10 16:8
	19:9,21 20:12		49:4	29:6,7
			allegations	
			67:18	



Assuming 23:22	12:16,17,20 25:21	73:10	43:9,24 44:10	Charleston's 12:24
assumption 11:10	Baxley 3:1,5 5:12,24	bomb 62:11	45:5,10,15,18 47:8	check 33:2 35:19 56:18
attend 25:14	26:11 31:3 40:20	book 28:19,20 29:15	63:17 64:16 66:14,	60:5,7
attention 50:5,17 53:5,8	54:16 67:19 78:17,	60:9,10	22,24 78:21	check-off 78:8
attorney 62:24 73:21	19 81:23 82:12	books 30:22	Cannella's 29:16 31:22 78:21	checked 41:22 78:10
attorney's 30:13	begin 7:7	boss 45:17	capacity 9:5	chicken 82:5
attribute 79:17	beginning 74:16	bother 36:22	car 56:18	chief 8:20,21 11:6,7
avenues 52:2	behalf 38:24	bottom 62:10	care 17:21 18:12 21:21	12:6,7,9,15,16,17,
aware 53:24 79:2	believed 61:11	boxes 82:9	38:16 39:5 57:1	20 14:20 16:11
B	benefit 21:1,12,19 27:24	Boy 27:15	61:1,4 67:22 68:11	17:13 18:9 25:2,15
back 3:17,21 11:13,17,	31:5 34:5 65:6	break 4:19,20,22	80:19,24	28:5 30:5,8 31:1,3
19 23:1 29:15	67:3 81:20	brick 41:14	career 29:14	40:20 45:17 47:9,
49:7,22 50:23,24	benefits 15:18 16:4,5 17:7,	bring 31:1	Carolina 9:20 16:15 18:10	10 50:5 53:11
58:21 62:14 65:23	22 18:4,12 27:5	bringing 26:23	24:17,18 41:21	54:15 59:8 67:5,6,
71:10 75:10 79:21	28:14,24 29:18,21	broken 72:12,18,20	case 18:2 19:4 20:4	7,8 75:7,8,10
back- 11:23	30:19,20 31:15	brought 3:8 24:14,25 30:7	casual 45:2	78:11,17,19
back-up 11:20	32:1,18,25 33:24,	50:4,16 53:5,7	caused 72:19,21	chief's 15:9 42:3
backed 80:23	24 36:5,6,11 40:12	64:24 73:3	certifications 11:3	chiefs 16:20 25:21
bad 51:17	43:4 51:2 52:23	build 5:22	chain 46:21	Christine 39:9,10
ball 44:22	65:20 66:16 67:2,	built 22:5 41:14,19	challenge 51:21	city 3:7 6:16,17,25 7:4,
baseball 36:10	12 68:25 69:2	cabinets 78:15	change 13:16 32:4,9,10,	13,15,17,18,24,25
based 39:7 50:21 62:6	74:22 75:3,15,23	call 27:4 46:17 50:24	13,15 36:7 40:21	8:3,4 9:1,2,4,8,23
71:16,25	78:6,19	70:5	43:25 46:11 52:25	11:16 12:24 15:3,
basically 29:7 30:16 31:7	Benjie 81:14	called 50:24 58:21 63:23	56:4 68:18	12,24 16:1,11
40:20 59:5,17 62:2	biggest 3:16	cancel 58:23	changed 33:20,21 36:11,13	17:3,9,19,22 18:3,
69:6 70:6	birth 6:1,2,6	cancelled 65:15	40:12 53:2 71:12,	9 19:4,10,11 20:4,
basis 9:10 10:7 26:24	bit 17:25 19:1 22:18	Cannella 27:2 30:8,15 31:20	14,15	13,14 21:11,18
33:14,22 34:10	66:17	40:4,5,11,17,24	charged 82:4	22:21,22 23:11,12,
bat 36:10	blood 14:1 41:10	41:5 42:14,21	charging 50:4	19,20,23 27:5
Bates 65:8	Bloodgood 38:23 54:4 62:22,		Charleston 3:7 5:16 6:16 7:1,9	28:9,23 29:10
battalion	23 66:9 77:21,23		9:5,23 10:24 15:24	30:13,21 31:20
	81:16		16:2 17:9 19:12	32:4 33:13,15,24
	Blue 34:4 58:19,24		20:13,15 23:12	34:11 35:10,25
	boards 78:25		29:10 43:16,17	36:3 37:2,7,11,16,
	Bob 3:5 31:20 40:3,5		51:1 55:14 58:24	17 38:8,11 39:8,21
	body 77:14		63:5 65:5 74:23	41:18 44:14,16,17
	bold		75:14,22 76:3,10	46:8 47:2 48:14,20
			77:13 79:4,10,11,	49:1 50:24 51:1
			15,16,18 81:19	54:9,14,18,20



23 75:1,5,8,14,18, 19,22 76:3,4,9 77:9,11,12,13 79:11,15 81:18 city's 7:16 16:5 20:6 23:16 28:6,15,23 29:20 31:24 37:23 38:3 39:4 53:19 54:11 56:14 58:7 61:20 citywide 28:1,2 claim 20:10 75:3 claiming 75:15,23 class 30:17,21 31:19,21, 22 41:20 78:12 classes 10:21,23 30:4,25 78:4,13,22,23,24 classified 11:20 clear 36:23 clearer 19:1 Cliff 75:7 81:12 close 3:22 co-pays 34:6 COBRA 53:21,23 54:5 55:4,7,10,13,15,25 56:7 57:8,13 69:5 comfortable 36:8 51:23 70:18 command 46:21 comments 45:15 committee 76:1,7,12,17,22 77:4 commonly 60:25 companies 34:2 company 34:3 48:24,25 61:3 68:3 78:16	comparatively 67:23 compared 17:8 55:7 56:8 57:9 comparison 61:5 Complaint 38:23 39:6 58:10 64:5,18 65:21 67:19 complaints 18:2,6 19:4 20:4 comply 61:25 complying 62:19 concerned 39:3 43:19 concerns 47:11 concession 45:3 concluded 82:13 conditions 49:4,10 58:14 confirm 40:8 44:6 confront 13:11 confronted 75:8 confuse 4:11 22:19 confused 8:13 19:25 20:1 confusing 4:13 conjunction 71:1 Conley 3:4,5 65:2,7 77:20 81:22 82:11 Constantly 24:22 consultant 8:19 consulted 60:23 contacted 48:17,19 65:24 66:10	continue 18:3 20:5,16 21:21 23:7,15 42:24 54:17 61:19 continued 7:19 18:18 33:13 37:6,10 54:10 conversation 27:6 43:12 44:7, 17,20,21 45:2,4 55:3 56:9 81:9 conversations 27:13 41:4 42:13 43:9 44:13 46:14 54:9,19 56:1 copy 65:4 81:18 Corner 15:2,3,8 16:9,12 17:13,19 18:10 correct 6:9,12 7:11 8:11 12:5,16 14:23 18:5 20:7 29:11 30:23 32:15 35:10,13,25 40:25 54:12 56:23 61:16,21 67:14 70:24 71:20 72:8 73:14 correctly 40:10 43:21 cost 35:15,22 56:13 57:2,8 58:12 69:24 74:16 costs 57:1 council 44:14,16,17 74:24 75:1,5,14,22 76:4 77:9,12,13 councilman 75:9 counting 20:19 county 43:16,17 79:5,8 couple 3:14 43:9 49:8 50:22 58:19 court 4:1,25 coverage 21:16 39:6 50:25 53:21,23 54:5,10, 18 55:15,19,25	57:8 58:5,7 59:10 60:22 65:6 70:10 71:7 72:5 81:20 covered 38:6 crazy 35:22 Cross 34:4 Cross/blue 58:19,25 current 5:13 curriculums 16:17 cut 36:23 D date 5:25 6:2,6 8:13 10:13,14 38:18 54:23 65:13 dates 5:17 6:21 10:18 51:17,18,23 52:13, 17 53:1,2 58:5 day 7:23,24 days 9:24,25 35:19 56:16 deal 25:22,23 27:16,17, 20,21 dealing 79:21 deaths 13:19,20,23 deductibles 70:11 defendant's 26:12 65:3,4,8 81:18 82:1 dental 82:4 department 7:17 8:20,21,23 11:5 12:24 13:6,13 25:15 28:4,7 31:19 41:12,13,17,21 42:9 45:10 53:20 59:12 68:23	departments 9:9 10:2 13:1,4,8, 10 14:21,25 79:14 depended 68:12 dependent 37:23 51:2 52:23 55:19 72:6 dependents 17:20 23:6,14 35:16 38:9 depends 70:9 deponent 82:14 deposed 3:10 deposition 25:3 26:13 76:15 82:13 depositions 35:21 describing 25:9 39:19 devote 11:4,8 diabetes 49:9,13 Diane 81:12 die 61:16 difference 57:8 differently 36:16 37:1,25 direct 22:21 27:6 44:17 56:1 65:18 directly 42:14 44:19 46:10 75:6 director 3:20 39:8 directors 16:15 Dirk 30:14 disability 73:7 discussions 53:18 74:1 district 6:15 7:8,10 8:7



9:14 11:13 22:12 23:3	eligibility 53:21 60:24	event 54:5	February 7:1,14 9:7	fixed 50:14,15
district's 23:8	eligible 17:24 18:25 19:6 38:2 39:4 49:14	everybody's 4:5	feel 39:16,24,25 73:12	follow 46:20
divided 79:25	51:2 52:23 53:22 54:7,11,16,17,21 57:20 58:4,7	ex-city 62:24	felt 68:8 70:17 73:11, 12 80:16,18	followup 77:21
divorce 73:6	Elmore 48:5,6 52:6	exact 5:17 10:13,14 24:1 26:1	fighting 39:13	form 32:25 65:5
document 64:23 75:13 78:4	else's 59:21	EXAMINATION 3:3 77:22 81:21	figure 42:20	formal 44:21 45:4
documentation 67:15 75:12	emergency 34:7 43:16	exhibit 26:12 65:3,4,8 76:15 81:18,24 82:1	file 11:11 12:13 78:15	Forms 81:19
documented 78:11 79:1	emotional 64:10	existence 40:16	filed 38:24 53:13	Forner 81:12
documents 78:1 82:1	employed 9:1,2,23 28:22 45:9 67:20	expect 36:2	fill 8:3 11:21 78:5	forum 27:4 32:23
door 5:20,21 61:11	employee 6:14,17 7:17,20,25 9:8 22:21 23:11,20 28:24 29:9,25 30:3 31:14,17 32:18 33:5 54:6 73:24,25 78:12	expected 36:4	finance 76:1,6,12,17,21 77:4	forward 41:25
driver 11:21,22	employees 3:18 24:9,15,18,25 27:6 31:9 76:2,19, 24 77:5,6	explain 13:18 17:25 19:1 30:18 31:23 59:8 66:17	financial 47:19	found 29:4 46:7 50:1,3,8 59:5
driver's 11:23	employer 19:8,11 20:11,14, 15,25 21:10,17 22:1,7 69:13,16	explained 78:6,19	financially 68:10	frame 10:17
duly 3:2	employer's 20:17 21:21	extent 71:2,7	find 12:10 24:24 39:5 65:20 80:22	free 18:24 21:13 22:13
dumb 64:2 81:2	employers 55:15	extremely 24:21	fine 19:3 33:9,12 46:18 64:10 67:10	fringe 15:18 28:24 32:1, 18 43:4
dunk 36:10	employment 6:25 8:4 12:13,25 13:24 15:12 18:22 21:12 37:11 61:22	F	finish 36:20 64:9	front 12:13 33:1 77:3
duty 9:24	end 51:1 53:9	face 73:11	fire 7:3,16 8:21,23 9:9, 20 10:2,6,20 11:5, 8 12:6,9,24,25 13:4,6,8,13 14:21, 25 15:9 16:11,15 17:8,12,13,19 18:9,11 25:15 28:4 41:11,12,17,20 45:9 68:23 79:13	fulfill 80:10 81:7
dwelled 31:8	engineer 11:25	facing 62:10	firefighter 7:7 8:8 11:11,14 14:15 22:11	fulfilling 71:23 72:1,7
E	entity 19:19,20	fact 16:19 24:14 27:15 31:8 39:7 41:24 50:8 52:1 62:9 63:15	firefighters 9:13 17:23 27:22, 25 41:16 79:3,9, 18,19 80:8,13 81:2	full 5:11 11:4 56:13 57:2
earlier 19:25 25:2	entry 79:9	facts 50:7	firefighting 9:18 13:25 14:10	fully 17:14 19:22 22:23 23:21 37:3
easily 36:12	equivalent 15:20,21 16:5 71:5 74:20	farther 42:2	firemen 64:2	fund 31:6
echoed 44:10	essentially 3:24	fashion 22:18	fix 80:10,21 81:7,11	future 17:5 22:5 36:11 39:15 42:20 62:6 70:20
Ed 81:13		father 5:22		G
effect 53:4				game 44:22
effective 47:12,13				Garcia 79:21
efficiency 3:15				
effort 46:13				
Election 65:5 81:19				



gas 69:8	gut 73:11	hesitate 4:15	I	instance 53:7
gather 25:8	H	Hey 68:17	identification 65:6 81:20	instructor 9:21 10:22
gave 11:3 42:10 44:8	half 69:3	high 24:20,21,22	identified 26:15 82:8	insurance 18:4,18 20:6,17 23:8,16 31:12 33:15,25 34:2,3,10 35:9,22 36:19 37:22 38:8 44:18 48:21 49:6 50:2 55:5,10,13 56:3, 14,21 57:10,13 58:12 59:9,23 60:24 61:4,20 65:15,19 67:2,11 68:24 69:1 70:12, 14 71:20 76:2 77:5
general 10:17,19 58:11	Hall 48:20	Hillborn 81:13	identify 16:13 19:8,19 20:11,24 22:1,7 67:13,23 68:6 69:13 81:24	insured 18:16 59:1
gentleman 48:22	handbook 28:15 29:25 31:14, 17,25 32:14,16,19 33:5 53:25	hire 64:2	implementation 27:24	intent 4:11
give 3:25 5:25 21:2 26:25 30:22 31:21, 22 44:4 46:22 49:3 50:7 54:1,2 59:15, 21 62:12 64:12 69:3 70:1	handled 16:16	hired 6:14	importance 4:8	interested 57:16,19 80:13
giving 59:16,17 69:4	happen 3:24	hires 78:7,13	important 4:4 10:18	interview 13:16
glory 62:3	happened 48:15 51:16 64:3	hiring 24:22,23 30:6,11 78:9,25	impress 44:8 80:9	interviewed 14:7,8
God 60:18	happy 4:17	hit 64:4	improve 27:21	introduced 3:6
good 11:9 42:25 49:2 58:9 66:20 80:16	hard 19:15 64:4	Holt 31:20 45:23	included 21:13	Island 79:14
grandchildren 52:18	hardship 72:19	home 5:23	includes 76:4	issue 27:7 42:15 44:14 45:12 46:15 52:20 53:7
grandfathered 36:6 40:1,2,18 43:6,7 44:24 46:1 66:23 71:15,16,17 75:12,20 80:10	Hayward 5:12	Honestly 33:6	including 78:21	issues 44:18 67:22
grandfathering 45:12,16,20	head 5:3,6 14:20 28:7	honey 25:22,23 27:16,20, 21	increase 35:22 69:3	J
Grant 55:22	headquarters 78:16	Hood 81:13	increased 50:2	James 81:13
grapevine 57:12	heads 42:9	Hood's 25:3 26:12 76:15	increases 35:15	January 7:14
great 66:19	health 17:21 18:4,12 20:6,17 21:21 23:8,16 30:19 31:12 33:14,25 34:3,10 35:9,22 39:1,5 41:7 44:18 56:14,21 57:1,10 58:12 60:24 61:20 65:5,19 66:16 67:2,11,22 71:19 75:15 76:1 77:5 78:6 81:19	hope 74:19	indication 38:24	Jennifer 66:3
ground 41:20	hear 24:3 27:20 50:23	hoping 60:18	ineligible 49:5,14	Jerome 44:23
grounds 24:17	heard 24:6 25:7,12,16 26:1,7 57:12 66:9	hourly 30:19	information 4:18 33:14 46:23 57:23 58:2 59:7,22 69:19	job 3:19,21 8:7 14:5,7 15:9 36:13 37:5 42:4 46:20 63:13 66:19,21 68:2,18 72:4
group 25:10 75:7	hearing 26:20	hours 79:22	initial 65:14	
guarantee 52:17	helped 5:22	house 5:21	initialled 82:3	
guarantees 23:4		Huger 81:13	initials 82:9	
guess 7:4 29:6 38:14 42:17 70:9 73:20		human 45:24,25 53:20	inquired 59:2	
		Humana 59:5 60:7 69:20	inquiries 58:11	
		hundred 41:8 61:7	inquiry 13:3,9 75:2	



jobs 9:18 14:19,20,21 68:18	lady's 48:3	lived 5:18	71:2,6 74:6,11 75:2 82:1	meet 3:20 48:15
John 8:19	lawsuit 3:7 53:13 58:10 63:5 64:1,3 73:14, 15,16,18 75:16,23	lives 5:23	making 20:10	meeting 25:8 39:18 46:24 48:8,13,16 49:21, 22,25 50:19 51:7, 9,11,16 52:4,9 53:6,11 59:13 63:24 73:2 80:1,4, 16,25 81:6
Johns 79:14	lawyer 57:23 81:3	locality 79:14	man 42:18 43:19,20 63:11	members 44:15 76:1,6,11, 16,21 77:4
join 13:12	lead 52:3	locally 10:23	manner 4:13	memo 26:15 76:20 77:8
joke 27:19	leadership 77:19	Lois 5:24	mark 65:2	memorandum 26:9,17,20 28:18 33:1 76:9,16
Judge 31:1 47:10 48:1 52:5 78:11	leave 14:2 30:18 31:5 38:7 41:10 42:22, 23,25 58:6 80:4	long 4:21 5:18 10:10,11 11:17,20 12:4 41:15 59:4	marked 26:12 65:6 81:20, 23	memorandums 29:5
Julie 48:5,6 52:6	leaving 79:20	longer 11:2 38:2 39:4,22	market 58:13	mentally 68:10
July 50:18 69:5	led 13:23	looked 29:3 37:5	matters 78:19	mentioned 44:23 63:9,16,17 69:18,21
June 8:15,18,24 9:8 47:12 53:14 54:18 60:16 61:8 69:25 70:3 74:16	left 20:14 38:6 44:6 47:9 63:12 78:14	lose 36:19	max'd 41:24 42:5,7,9	mentioning 54:15
K	legal 54:1,2	losing 24:15 31:9 79:19	mayor 23:24 24:8,13 25:7,9 26:7,21 27:4,7 28:18 39:11,12 40:5,11, 24 41:5 42:14 43:10,15,22 44:8 45:6 46:9,10,14,25 47:10,11,19 48:1, 16 49:25 50:19 51:7,10,16,25 52:4,7,20,25 53:7, 16 63:17,24 64:2, 16 66:15,20,24 73:2,7,8 75:4,9 76:16,21 77:8,18, 19 80:1,5,10,16 81:1,7,10	messed 52:13
Kathy 59:8,11,12 60:6	legislative 77:14	lost 3:19	mayor's 30:8 76:4	met 39:11 47:9,10 50:6,19,20 51:24 52:19 59:8 60:5
keeping 24:18	length 55:24	lot 3:18 13:19,20 27:16 31:8,9 51:19 63:3,22 70:15 72:19,21 81:5,14	Meaning 32:14	Michael 3:1 5:12
Keith 43:14,15 76:13,14	Leslie 31:20 45:23	loud 51:5	means 32:12	minor 3:14
kind 7:21 10:19 11:1 13:17 15:7 27:18 37:16,18 49:16 51:25 59:5 69:20 70:2 71:2	lessened 69:1	luncheons 24:8,10,13	Medicaid 22:24 60:22	minute 3:6 29:24 59:20
kitchen 60:10	lesser 67:20	M	Medicare 17:15,24 18:5,14, 19,24,25 19:5,6, 12,22 21:13 22:13 23:22 37:3 38:13 49:16 51:2 52:23 53:22 54:7,11,16 60:13 61:15 67:3 69:20,24 70:3,24 71:3,8 74:15	Mishou 55:22
knew 8:1 43:17 47:12,13 60:2 74:8	letter 50:9 51:15 53:3 75:10	made 15:21 21:24 22:7, 12 32:22,23 40:25 43:15,22,24 45:10, 15,19 47:22,23 50:10,15 58:11 62:4,20 63:11,16, 20 64:15,21 65:19 66:14,20,22,25 67:11 68:10 69:14 71:10 79:5,23	modification 32:5,7	mistake 50:10,16
knowledge 21:3 32:21,24 37:17,19 54:13 73:22	level 79:9	main 4:10 37:8	moment 23:1 69:18	Moncks 15:2,8 16:9,12 17:12,19 18:9
L	life 5:20 27:22 48:3 61:17 68:24,25	major 14:2 40:6		
label 23:4	likewise 72:6 82:7	make 4:8 13:3,9 19:24 23:3,12 25:20 41:11,12 46:8 49:23 51:22 67:1		
labeled 76:2	Lingenfelter 63:1,2 81:1			
	Listen 40:20 43:24			
	lists 34:5			
	live 5:20,21			



monetary 67:21	North 3:7 5:15 6:15 7:1,9 9:4,23 12:24 15:24 16:2 17:9 19:11 20:13,14 23:11 29:10 51:1 55:13 58:24 63:5 65:5 74:23 75:14,22 76:3,10 77:13 79:4,9,16,17 81:19	one-on-one 44:7 63:22	pain 72:21	51:18,19
money 68:4,6 69:14 79:6, 22		open 13:4 15:7,11 32:23 58:13	pan 66:8	person 47:8 54:6 55:22
month 50:11 55:8 59:23 69:22		opening 14:20	paper 7:25 77:3	personally 43:12
months 38:19,21 50:11 53:23 54:10,25 57:20 58:4,6 60:3	notarized 78:11	openings 16:14,19	papers 26:23	personnel 3:19,20 25:15 30:5 31:19 39:8 59:12
motivation 69:11	notice 39:21	opportunity 62:12	paperwork 8:4,14 48:22 50:9	pertained 39:25
Mount 48:25 66:1 79:11, 15	November 6:2,4	Orangeburg 5:15	parents' 5:21	pertinent 46:23
moved 11:16	number 13:23	ordinances 29:21	parking 63:3,22	physical 74:9
moving 13:5	numbers 57:17	organizations 18:13	part 4:4 9:21 15:11 75:16	physically 63:21 68:10
municipalities 79:5,8	O	orientation 30:4,17,21,24 31:2,18,21 78:3, 12,13,23,24	part-time 9:10 10:6	piles 70:9
municipality 7:15 57:15 68:3	oath 3:12 31:3	orientations 79:3	partial 38:10	pins 62:7
Munter 66:3	Obama 60:25 61:4	original 53:3	participate 23:7,15 61:19	place 42:3 57:25
N	obtained 18:13	originally 6:14 8:15	participating 71:19	places 14:19
National 9:20	occasion 50:6	outrageous 55:5	party 73:13,15	plaintiff 73:16,18
nature 10:17 30:3 57:15 70:6	October 8:17,23,25 9:3	outstanding 43:19	pass 57:23 61:22	plan 20:6,17 21:21 23:8,16 33:23 35:8,12,16,24 36:2 37:23 38:3 39:5,15 48:20 49:2 50:2 54:11 56:15 61:20 70:5,6 74:17 77:8
necessitate 4:22	odd 10:20	overtime 79:23,24	passed 67:5	planned 36:11
needles 62:8	offer 21:12,18 22:7,12 23:3	owns 61:2	passion 69:12	Pleasant 48:25 66:2 79:11, 15
negotiable 16:6,7	offered 14:5,18,19 22:22 59:6	P	passionate 36:21	point 4:5,20 5:1 7:21 12:1 29:9 40:14 46:9 53:9,19 57:2
negotiation 16:9	offering 15:18	p.m. 82:13	pay 19:5 34:6,7 38:10 42:10 56:13,18,23 57:14 59:24 61:15 69:7,14 70:2 79:23,25	police 8:20
Newton 48:2	office 29:16 30:8,14 45:23,24 56:2 59:15 76:4 78:15, 21	package 21:13,20 59:19 69:18	paying 55:7,11 56:8,21 57:2,9 79:9,16	policies 28:6,15,24 29:9,23 30:2,3,10 32:14,15 68:24 69:1
nights 62:8 72:21	officer 11:6,7 12:18	packet 49:3 59:15 65:1	people 25:10,21 31:10 36:21 45:22 47:17, 21 55:9,14 59:17 60:25 70:15 81:9, 14	policy 28:9,12,19,20 31:24 37:18 56:22 58:23
nod 5:5	oftentimes 34:8	Padgett 81:13	percent 41:8 42:10 61:7	portion 47:19 56:21
nodded 5:3	older 6:3	pages 81:23	period 10:5 50:18,21	
Norris 81:14		paid 10:21 11:22 17:14 19:12,22 22:23 23:22 37:3 67:19, 24 68:4,6 71:20		



position 11:22,23 13:5 14:10,12,16 15:7, 10,19 17:13 18:9, 21 21:19 36:8 43:8	privilege 68:15 privileged 66:6 problem 58:3 62:24 problems 39:1 procedures 28:6 30:7,11 process 45:21 59:3 60:11, 12 program 25:1 27:23 31:4,5 42:24 43:1 45:1 49:15,17 50:4 59:9 61:5 77:11 78:9 80:20 81:15 programs 30:16,19 31:6 promise 21:24 25:1 31:11 32:21,22 36:23 47:22,23 61:11,13, 14,18 62:4,19 63:8,9,10,12,16,21 66:21 67:13,21 70:19 71:2,6,10,23 72:1,2,7,12,18,20 78:5 80:11 81:8 promised 17:4 19:16,17 20:8,21 22:4 61:12 62:3 70:22 75:4 promises 23:4,13 61:24 64:15,19,20 65:18, 20 66:19,25 67:1, 11 68:9,12 74:6,12 77:25 promoted 12:4 prone 5:4 proposed 77:8 provide 18:3,18 21:1 37:2 39:22 58:1 69:2 70:23 71:3,8 provided 17:14,20 18:11,23 23:21 38:8 67:16 provider 33:15	providing 74:22 provision 27:5 74:21 public 6:15 7:8,9 8:6 9:14 11:12 19:19 20:11, 25 21:10,17 22:11 23:2,7 purposes 3:15 26:13 put 5:5 23:5	Q qualify 27:22 qualifying 54:5 question 4:9,13 11:10 20:3, 10 21:25 23:10 28:11 35:20 36:20 55:23,24 65:17 69:12 77:24 82:7 questions 3:11,25 5:9 81:17 quickly 35:21 quit 58:23 quote 7:16	R raise 42:10 69:5,7 raises 41:24 range 70:1,2,7 rank 11:11 12:3 42:2 ranks 11:17 rate 24:20,21 56:8 rates 30:19 56:3 reach 18:5 46:9 reached 18:19 read 34:19 51:4,5,6 reading 82:14 realize 35:21 reapply 58:24 reason 4:10 13:17,18 14:2,3 56:12 recall 16:3 17:10,17 19:14,23 23:18,25 24:1,2 26:19,22,23 27:1 29:1 32:3 33:6,8 43:10 45:14 47:4 53:14 54:14, 23 56:11 67:9 70:4 receive 74:18,19 recently 53:24 61:3 recollect 15:13 recollection 12:20 25:5,6 26:16 record 5:1,5,11 36:23 recorded 78:14,23 records 6:11,21,23 12:22 refer 60:25 Reference 77:5 referred 33:23 34:8 referring 64:23 refusing 19:5 20:5 regard 20:3 23:10 28:24 67:2 71:22 72:5 regional 16:15 regions 16:16,18 related 14:15	relevant 78:2 relied 62:5 64:6,18 68:12 70:19 rely 17:4 20:22 22:3 relying 17:5 20:21 21:23 22:4 remained 34:23 remember 6:24 10:5,13 12:3, 8 13:21 15:4,15,17 16:2 24:5 26:1,6 27:11,15 28:23 33:10 41:3,4 44:16 47:18 48:3,7,24 50:20 52:18 render 80:20 repeat 34:1 56:24 76:24 rephrase 4:14 reported 81:9 reporter 4:1,25 represent 3:6 representation 40:25 43:23 45:19 representations 23:13 45:11 64:6 66:12,14 representatives 78:20 requires 74:23 research 60:21 researching 68:17 residential 5:13 Resource 45:24 resources 45:25 53:20 respect 64:21



A W R

683

stay 8:19 31:10 36:3	supplement 17:15 18:24 19:5, 13,22 21:14 22:13, 24 23:22 37:3 38:13 49:17 59:9 60:14,22 61:15 69:20 70:3,24 71:3,8 74:15	66:19,21	31:8,11 36:6 40:1, 6,11,20 44:11 45:10,14,18 51:15 62:18,21 63:14,24 68:14 71:16 81:1	ultimately 14:6
stayed 6:16 8:22 37:9 38:5,11	supplemental 59:22	tells 52:24	tomorrow 56:19	understand 3:23 4:8,12,16 9:16 10:1 20:9 22:6 36:21 37:22 40:10 43:21 47:7, 20 57:24 58:3 62:13 67:17 68:9 73:8
steer 68:17	supplementing 57:1	ten 34:22 35:1,6	top 42:1	understanding 56:13,17,20,25
step 64:11	supplements 69:24	terms 29:17 37:21 71:7	topic 41:2,3 42:12	understood 39:12,16,17 47:15, 16 62:14 80:17
stepping 64:13	survey 79:12	testified 3:2	training 9:21 24:17,22,23	upgraded 29:16
stopped 51:5	Sweet 25:23	testimony 43:22 71:25	transcribe 4:1	upsetting 73:3
Street 5:15	sworn 3:2	thing 3:22 30:1 57:11 72:22	transcript 4:6 82:15	utilizes 33:15
strong 77:19	system 31:5	things 3:14 30:2,5 31:7 32:9,12 37:8 39:22 49:9 70:6 75:17, 19,20 77:14,16	transition 7:21	
structure 12:3		thinking 13:14 80:4	transitioned 7:16	V
studied 70:17		thought 29:22 41:8 44:24 46:1 53:23 73:1 75:11 81:7,10	treated 70:18	varying 8:14
studying 60:9	T	throw 62:11	trick 4:11	verbal 63:10 64:6,8,14 66:12,14,21,25 67:1 74:11
stuff 3:19 31:23 78:15 79:22	table 60:10	time 4:23 5:1,10 7:19 8:22 9:21 10:5,10, 11,17 11:5,7,8,18, 20 12:4,5 13:14 22:9,10,13 23:12, 25 24:12 25:11,16 28:22 41:9,15 42:21,22,25 44:15, 22 50:18,21 51:6, 14,18,20 52:19 61:16 64:12 66:13 69:14 82:5	trucks 24:12	verbally 24:3,4 26:7,21 32:23 66:19
subject 32:4,7,10,15 70:12,15 78:18	talk 25:7 30:14,17 46:9,10,21 62:12	timeline 49:24	true 6:18	verify 57:22
subsequent 23:20 48:13 82:7	talked 16:25 43:11 45:22 46:16,19 58:18,22 64:14 66:1,4,5 78:22 81:12	timers 41:10	turn 20:6 39:4 61:7 72:14	versus 8:2 57:20
subsequently 8:10 26:8	talking 10:18 27:1 28:14 29:24 32:20 33:16 42:15 43:1 47:8 49:2 62:22,23 65:21 66:13	times 25:17 29:14 68:24 78:20	turned 14:6 17:23 19:13, 22 20:16 21:14,22 22:14 23:5,14 37:3,7,9 38:2,13 48:23 58:8 61:20 63:23 70:23 80:20	view 4:5
subsidized 78:6	tardiness 30:17,18 31:4	today 3:24 19:19 21:6 25:2 36:15 38:9 52:3 56:7 57:7 62:16 69:7 71:18, 22 72:2,7,11,13,17 74:14,20	turning 23:21	visits 34:7
subtitled 78:17	taught 46:20	told 22:23 23:19 30:6	turnover 24:20,21 79:17	W
sued 73:22	tax 42:18		TV 27:20	wages 15:18,22 17:7 42:6,7
suggest 70:14	taxes 61:3		type 49:13 71:7 73:10	wait 29:24 59:20 60:17
suggesting 25:6	teach 10:21,23		types 13:24	waiting 50:23
suing 74:2,4	teaching 13:11		U	waives 82:14
summarize 33:24	telling 32:17 63:15,22		Uh-huh 38:22	walk 27:14
summary 33:23 34:5,8				
Summey 23:24 25:7,9 26:7, 21 27:4,7 43:22 75:4 76:13,14,16, 21 77:8,19				



walked 80:15 wanted 11:4 24:9,24 27:21 28:9 29:3 30:9 38:7 48:19 Warren 48:2 ways 58:1 weak 70:12,15 weekends 9:13 weeks 59:14 Westvaco 13:15 14:5,12,15 wife 5:24 17:21 18:4 20:16 21:20 37:22 38:18,25 49:10 54:17 55:25 56:7 58:12,20,22 59:10 60:17,23 61:19 67:4 72:6 73:4,13, 22 74:2 wife's 53:20 56:14 57:1, 10 Willie 75:7 81:13 wives' 50:2 wonderful 17:3 72:4,9 word 43:20 44:4 words 58:25 work 7:23 8:6 9:9,13 10:1,19 11:1,12 19:9,11 20:13,15 22:10,16 23:2 31:11 37:18 39:15 49:1 63:6 worked 9:4,19 10:6,11 12:23 19:10,20 20:12,22 21:11,18 23:23 43:15 67:25 69:15 79:22,24 80:23 working 7:18,24 20:22	25:1,22 37:7 42:18,19 47:2 60:11,12 61:4 79:4 worksheet 26:25 worried 46:2 worries 12:22 write 35:19 82:5 writing 24:3 26:8 67:13 written 32:25 63:11 64:6, 7,8,19,20 65:18,20 67:10,16 74:9 75:18 77:24,25 78:4 wrong 6:12	Z Zumalt 8:19	
	Y y'all 42:22 44:24 46:1 63:4,25 year 6:9 12:8 13:19,21 15:4,14,15 19:6 23:25 24:1 25:13 26:2 34:5 38:7 47:5 65:12,13 69:4 yearly 24:10 26:24 33:2, 14,19,22 34:10 41:24,25 years 6:3,8 10:3,9,12,20 12:23 14:14 19:10, 21 20:12 21:11,18 23:23 25:24 27:1 31:11,16,17 33:21 34:22,25 35:1,6,24 36:7,9,12 37:18,19 40:15,16,17,22 41:7,15 43:14,18 44:25 45:1 46:2 50:22 53:21,25 56:3 60:3 62:7,11 67:25 68:15,22 70:17 79:13 young 48:3 younger 38:19,21		



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2011
(Corrected 09/14/2011)

City of North Charleston
 Retiree Election Form
 Health Benefit Coverage

Retiree Name: _____

Official Retirement Date: _____

Plaintiff - 026

Section 1 – Election for Retiree Health Benefit Coverage

☐ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts:

15 - 19 Years 60 %	☐ Single (Medical, Prescription, Dental) \$275.03	☐ Single & Dependent without Dental \$1,277.35	☐ Single and Dependent with Dental \$1,327.35
20 - 24 Years 33.3%	☐ Single (Medical, Prescription, Dental) \$183.17	☐ Single & Dependent without Dental \$1,185.49	☐ Single and Dependent with Dental \$1,235.49
25 - 29 Years 17%	☐ Single (Medical, Prescription, Dental) \$93.51	☐ Single & Dependent without Dental \$1,095.83	☐ Single and Dependent with Dental \$1,145.83
30 Years 0%	☐ Single (Medical, Prescription, Dental) \$0.00	☐ Single & Dependent without Dental \$1,002.32	☐ Single and Dependent with Dental \$1,052.32

I understand and agree that (Initial all):

12,027.84

Initial

These rates are subject to change.

Initial

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

Initial

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

Initial

Coverage with the City of North Charleston will end when I and/or my dependent become eligible for Medicare benefits.

Initial

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required and understand that the only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 – Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

Initial

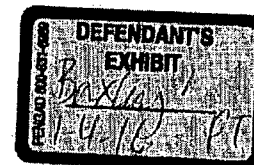
I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____ I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date _____

Retiree Signature _____

Date _____

Human Resources Department _____



City of North Charleston, SC

R. KEITH SUMMEY, MAYOR
HUMAN RESOURCES DEPARTMENT CHRISTINE E. RUTH, DIRECTOR

June 15, 2011

Mr. Alvar Rissanen
7715 Peggy Drive
North Charleston, SC 29418

Dear Mr. Rissanen:

Our records indicate that you are eligible for retiree health care coverage with the City of North Charleston as a retiree. Effective July 1, 2011, the rates for your coverage will change. Please see new attached rate schedule.

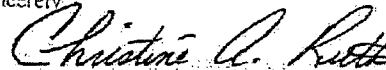
We are requesting that you complete the attached form and initial each section where indicated. This indicates you understand the City's terms and conditions for being enrolled for retiree health coverage. Even if you are not paying for your coverage, we are requiring that you complete, sign and send us the attached form. Please return the form to Kathy Ross in the enclosed self-addressed, self-stamped envelope indicating which coverage you are requesting to enroll for during this open enrollment period. Deadline to return your form is July 1, 2011. Failure to return the form is an indication that you do not wish to be covered under health benefits as a retiree and your coverage will terminate. You will receive a COBRA notice informing you of your continuation rights for coverage.

Employees that make payment directly to the City of North Charleston for health care coverage are required to make payment on a monthly basis no later than the 9th day of each month. If your health care coverage payment is deducted from your retirement check as a retiree under the PORS plan, the South Carolina Retirement System has been notified of the change based on your current choice for coverage. If there is a discrepancy in the amount owed we will contact you directly.

We are pleased to inform you that as a retiree of the City of North Charleston you are eligible to utilize the City's employee health club. If you are interested, please contact Liz Petit at 740-2494. You will be required to sign a waiver and pay \$20.00 for the badge for access to the employee health club.

If you have any questions regarding this letter, please do not hesitate to contact Kathy Ross in the Human Resources Department with your questions at 740-2596. Thank you for your cooperation.

Sincerely,



Christine A. Ruth, PHR, IPMA-CP
Director - Human Resources

cc
Attachments

Rates Expire 06/30/09

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: MICHAEL H. BAXLEY

Section 1 - Election for Retiree Health Benefit Coverage

I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$233.05	☐ Single & Family without Dental \$933.94	☐ Single and Dependent with Dental \$983.64
20 - 24 Years 33.5 %	☐ Single (Medical, Prescription, Dental) \$158.14	☐ Single & Dependent without Dental \$857.03	☐ Single and Dependent with Dental \$907.03
25 - 29 Years 17 %	☐ Single (Medical, Prescription, Dental) \$79.24	☐ Single & Dependent without Dental \$780.13	☐ Single and Dependent with Dental \$830.13
30 Years 0 %	☐ Single (Medical, Prescription, Dental) \$0.00	☒ Single & Dependent without Dental \$700.89	☐ Single and Dependent with Dental \$750.89

I understand and agree that (initial all):

initial
myB

These rates are subject to change.

initial
myB

I am responsible for making payment of the employer's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retraced.

initial
myB

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

initial
myB

Coverage with the City of North Charleston will end when I become eligible for Medicare benefits.

initial
myB

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required. The only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 - Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

initial
myB

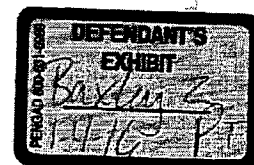
I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date 6-30-09

Michael H. Baxley
Retiree Signature

Date _____

Human Resources Department



406007

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2011

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Michael Baxley

Official Retirement Date: 6-30-05

Section 1 - Election for Retiree Health Benefit Coverage

☐ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$275.03	☐ Single & Dependent without Dental \$1,277.35	☐ Single and Dependent with Dental \$1,327.35
20 - 24 Years 33.3%	☐ Single (Medical, Prescription, Dental) \$163.17	☐ Single & Dependent without Dental \$1,195.49	☐ Single and Dependent with Dental \$1,235.49
25 - 29 Years 17%	☐ Single (Medical, Prescription, Dental) \$93.51	☐ Single & Dependent without Dental \$1,145.83	☐ Single and Dependent with Dental \$1,195.83
30 Years 0%	☐ Single (Medical, Prescription, Dental) \$0.00	☒ Single & Dependent without Dental \$1,052.32	☐ Single and Dependent with Dental \$1,102.32

I understand and agree that (Initial all):

MB

These rates are subject to change.

MB

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 5th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be restricted.

MB

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

MB

Coverage with the City of North Charleston will end when I and/or my dependent become eligible for Medicare benefits.

MB

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required and understand that the only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 - Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

MB

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____ I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date: _____

Michael Baxley
Retiree Signature

Date: _____

Human Resources Department

Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2012:

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Michael Baxley

Official Retirement Date: 6/30/05

Section 1 - Election for Retiree Health Benefit Coverage

☒ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$298.44	☐ Single & Dependent without Dental \$1,387.46	☐ Single and Dependent with Dental \$1,437.46
20 - 24 Years 33.3%	☐ Single (Medical, Prescription, Dental) \$198.76	☐ Single & Dependent without Dental \$1,287.78	☐ Single and Dependent with Dental \$1,337.78
25 - 29 Years 17%	☐ Single (Medical, Prescription, Dental) \$101.47	☐ Single & Dependent without Dental \$1,190.49	☐ Single and Dependent with Dental \$1,240.49
30 Years 0%	☐ Single (Medical, Prescription, Dental) \$0.00	☒ Single & Dependent without Dental \$1,089.02	☐ Single and Dependent with Dental \$1,139.02

I understand and agree that (initial all):

☒ These rates are subject to change.

☒ I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire.

☒ I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

☒ If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

☒ Coverage with the City of North Charleston will end when either I and/or my dependent/s become eligible for Medicare benefits. If I become eligible for Medicare benefits before my dependent/s, I understand that my dependent/s will receive a COBRA notice and are no longer eligible for dependent coverage.

☒ It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change, or if I and/or my dependent/s covered become eligible to receive Medicare. I will complete the appropriate change forms required.

Section 2 - Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

☒ I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____, I understand I will receive a COBRA notification regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future.

Date 6-6-12

Michael Baxley
Retiree Signature

Date _____

Human Resources Department

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON
4 ALVAR R. RISSANEN, MICHAEL H. BAXLEY, CLIFFORD W.
5 FORNER and WILLIE L. HOOD,
6 Plaintiffs,
7 vs. CASE NO. 2013-CP-10-3210
8 CITY OF NORTH CHARLESTON,
9 Defendant.
10 DEPOSITION OF: ALVAR R. RISSANEN, JR.
11 DATE: January 5, 2016
12 TIME: 8:55 a.m.
13 LOCATION: Foster Law Firm, LLC
14 895 Island Park Drive, Suite 202
15 Charleston, SC
16 TAKEN BY: Counsel for the Defendant
17 REPORTED BY: PATRICIA L. THOMPSON,
18 Registered Professional Reporter
19 A. WILLIAM ROBERTS, JR., & ASSOCIATES
20 Fast, Accurate & Friendly
21 Charleston, SC Hilton Head, SC Myrtle Beach, SC
22 (843) 722-8414 (843) 785-3263 (843) 839-3376
23 Columbia, SC Greenville, SC Charlotte, NC
24 (803) 731-5224 (864) 234-7030 (704) 573-3919
25



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFFS

3 ALVAR R. RISSANEN, MICHAEL H. BAXLEY,
4 CLIFFORD W. FORNER and WILLIE L. HOOD:

5 FOSTER LAW FIRM, LLC

6 BY: NANCY BLOODGOOD

7 895 Island Park Drive, Suite 202

8 Charleston, SC 29492

9 (843) 972-0313

10 nbloodgood@fosterfoster.com

11 ATTORNEYS FOR THE DEFENDANT

12 CITY OF NORTH CHARLESTON:

13 CLEVELAND & CONLEY, LLC

14 BY: BOB J. CONLEY

15 171 Church Street, Suite 310

16 Charleston, SC 29401

17 (843) 577-9626

18 bconley@clevelandlaborlaw.com

19 (INDEX AT REAR OF TRANSCRIPT)

1 ALVAR R. RISSANEN, JR.

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. CONLEY:

5 Q. Good morning, Mr. Rissanen. You and I
6 have met before. It's nice to see you today.
7 You've been deposed before, I think, in the past.

8 A. Yes, sir.

9 Q. So you sort of know the process that
10 we're going to go through today?

11 A. Yes, sir.

12 Q. A couple of things I always remind
13 people of, even folks such as yourself who have
14 been deposed before, is that she's got to make sure
15 we get an accurate record of my questions and your
16 answers.

17 A. Yes, sir.

18 Q. So if you don't understand one of my
19 questions this morning just ask me to rephrase it,
20 restate it, re-ask it. Tell me you don't
21 understand it. That's fine.

22 My questions aren't designed to confuse
23 you or trick you, so I want you to tell me if you
24 don't understand something I ask you about.

25 A. All right.



1 Q. That's important to me.

2 If from time to time I might ask you
3 "is that a yes or no," it's simply because you've
4 nodded your head or said "uh-huh" or "huh-uh," and
5 she can't make an accurate record of that. I'm not
6 trying to be rude to you when I do that. Fair
7 enough?

8 A. Yes, sir.

9 Q. Any questions about any of those before
10 we get started?

11 A. No, sir. I am hard of hearing, not
12 necessarily volume. It's more of a frequency
13 problem.

14 Q. I need to get your full name for the
15 record.

16 A. Alvar Raphael Rissanen, Jr.

17 Q. And what is your current residential
18 address?

19 A. 7715 Peggy Drive, North Charleston
20 29418.

21 Q. Who lives at that address with you?

22 A. Me and my wife.

23 Q. Your date of birth is?

24 A. 3/14/51.

25 Q. And can you give me your wife's date of



1 birth.

2 A. 6/1/59.

3 Q. So if I'm correct you will turn 65
4 March 14 of this year; right?

5 A. Yes, sir.

6 Q. Your wife will turn 65 in 2024; is that
7 right?

8 A. I haven't done the math. Yes, sir.
9 Nine years.

10 Q. Eight and a half years or so younger
11 than you; correct?

12 A. Yes, sir.

13 Q. I'm going to go way back in time for a
14 minute because I need to establish on the record
15 some dates.

16 Yesterday I deposed Mr. Hood and I
17 deposed Mr. Baxley, and one of the things I
18 discussed with them was the fact that they had --
19 their initial employment, quote, with the city --
20 and I put that in quotes -- actually began with the
21 public service district that existed prior to the
22 city.

23 Did your employment with the city begin
24 similarly?

25 A. Yes, sir.



1 Q. Were you initially employed by the --

2 A. North Charleston Public Service
3 District.

4 Q. Whatever it was called.

5 A. April 17th, 1970.

6 Q. And then subsequent to that I think
7 it's in '72 perhaps that the city came into
8 existence. Maybe '74.

9 A. They were chartered in '72, April or
10 June of '72. Is that right?

11 Q. It looks like maybe '73, February of
12 '73, you signed some personnel data sheet
13 information with the City of North Charleston
14 showing a position as a pump operator.

15 Does that sound like when you would
16 have transitioned over to the City of North
17 Charleston?

18 A. I can only -- I don't remember the
19 date. I remember the new chief then asking me
20 whether I wanted to go with the city or the
21 district, and I chose the city.

22 Q. Prior to working as a firefighter for
23 the public service district had you worked as a
24 firefighter anywhere else, or was that your first
25 job as a firefighter?



1 A. No. That was my first job with the
2 fire department.

3 Q. You may have had other jobs, but your
4 first firefighting job was with the public service
5 district?

6 A. Yes, sir.

7 Q. So you transferred over to the City of
8 North Charleston when it became a city and then you
9 stayed there until your retirement in June of 2005?
10 Do I have that right?

11 A. It would be the last day of September
12 2005.

13 Q. It's probably your letter to the city,
14 I think, is dated June 2005 where you notified them
15 you were going to retire.

16 A. Yes, sir.

17 Q. But you're right. September 30th of
18 2005 -- does that sound right -- would have been
19 your retirement date?

20 A. Yes, sir.

21 Q. That's a long expanse of time, so it's
22 a pretty broad question. But during that -- what
23 would be a 32-year period of time, approximately,
24 from '73 to 2005 when you retired did you ever work
25 for any other fire departments other than the City



1 of North Charleston fire department?

2 A. No, sir.

3 Q. And then the only reason I ask is I
4 know and you know a lot of firefighters will in
5 their off time maybe work in another public service
6 district or something like that.

7 You never did any work for another fire
8 department?

9 A. No, sir.

10 Q. During that 32-year, approximately,
11 period of time did you ever apply for positions
12 with any other fire departments?

13 A. No, sir.

14 Q. Did you ever make any informal inquiry,
15 as I'll term it -- meaning you may not have
16 actually submitted a resume or application for a
17 position, but you made an informal inquiry of
18 available positions with other fire departments
19 during that 32-year period of time.

20 A. Informal without submitting an
21 application?

22 Q. Yes. That's what I'm asking about.

23 A. Yes, sir.

24 Q. Do you remember who you made any
25 informal inquiries to during that -- and I know I'm



1 asking you to think back a long time.

2 A. Charleston Naval Shipyard Fire
3 Department, Charleston Air Force Base Fire
4 Department. I was looking at going to civil
5 service. Other than that it was -- knowing what
6 was going on, wondering if I should, but no sit
7 down and talk with people in order to put an
8 application in, no.

9 Q. Do you have any idea when those
10 inquiries you listed for me would have occurred?

11 A. It was right before '96. Actually I
12 don't recall.

13 Q. How do you remember that?

14 A. My brother-in-law was in the fire
15 department with the Charleston Air Force Base, and
16 he went out on medical and he said: You know, you
17 really need to go into civil service.

18 I went and spoke with the chief at the
19 Navy base fire department first -- I think it's
20 actually a year apart. Somewhere around there. It
21 wasn't just right away -- and he told me to go get
22 on the federal register and that I had experience,
23 and I didn't go get on the federal register. And
24 then the same way with the Air Base fire
25 department. And I didn't. I stayed.



1 Q. And you think that was in '96?

2 A. It would have been before '96, because
3 we took over -- the base closures, I think that was
4 '96. And I was considerably happy that I didn't do
5 those things at that time.

6 Q. I see what you're saying. Because that
7 would have been '96 that all the base closures took
8 place.

9 A. Yes, sir.

10 Q. Do you recall independently when you
11 first remember anyone from the City of North
12 Charleston, whether it be the mayor or anybody
13 else, telling you or representing to you that the
14 city was going to begin providing health benefits
15 to retirees in two particular forms? One, that
16 being a Medicare supplement for anybody who retired
17 after 30 years of service and, secondarily, the
18 allowance of dependents to stay on the city's
19 health insurance coverage even after the prior
20 employee had reached Medicare age.

21 What I'm asking is: Do you remember
22 when anyone first made a representation to you that
23 the city was going to provide those two things?

24 A. You know, I've been trying to remember
25 that very well, because we -- the department heads



1 and the mayor had a regularly every Tuesday
2 breakfast. I don't remember if it started back --
3 if the breakfasts were back there in '98 or not or
4 if I had heard it through Mr. Anderson first. I
5 spoke with Ray almost -- not daily, but whenever
6 you could get through to him you could.

7 Q. When you talk about Mr. Anderson, we're
8 talking about Ray Anderson?

9 A. Ray Anderson, the mayor's assistant.
10 Or it may have possibly came from Bob Cannella, the
11 city's personnel director. I spoke with him on a
12 daily basis. To the best of my recollection,
13 though, it came from a Tuesday morning meeting, I
14 think.

15 Q. Let me just -- and I'll tell you I'm
16 paraphrasing here, but this is essentially what
17 Mr. Hood and Mr. Baxley told me yesterday. I'm
18 just throwing this out.

19 Mr. Hood's recollection was that he
20 first heard about these particular benefits being
21 provided by the city from the mayor in '98 at a
22 meeting the mayor held at Station 4 at the time
23 where people from other stations were brought there
24 as well, and this is one of the topics, apparently
25 among others, that the mayor brought up at that

1 meeting.

2 Mr. Baxley similarly indicated that he
3 had heard about it first in that same time frame,
4 although it may not have been initially at that
5 meeting at Station 4. It may have been before that
6 because, as he noted, he was involved in
7 coordinating all those meetings given his position
8 at the time.

9 Does the '98 time frame --

10 A. That's another issue where my memory is
11 questionable in my own mind as far as the date.

12 Prior to Mayor Summey being in there
13 Ken McClure, Mayor Kinard -- Mayor Bourne was
14 there. We had those luncheons at every station.
15 It started with him. When he went out and Mayor
16 Kinard was there we had those luncheons with him.

17 The short term -- six months, I guess
18 it was, that Ken McClure was interim mayor we had
19 at least one luncheon with him. It would have been
20 at each station and each shift. So we tried to
21 catch -- maybe not each station. Stations were
22 combined. But we tried to get as many people as we
23 could to sit down and have lunch with the mayor and
24 talk to him and understand what was going on. We
25 found out a long time ago that it was better for



1 him to talk to them than me constantly carry the
2 information back. They enjoyed it.

3 Now, I don't recall -- the mayor was
4 mayor since '94?

5 Q. I think that's correct.

6 A. I don't recall if we started those back
7 there. It seemed to me I thought we had done it
8 around '96 and started those luncheons then and
9 went through, and it would have been perfectly
10 reasonable to understand that would have been where
11 they probably heard it. But we didn't -- basically
12 what I'm trying to say is it was a small period of
13 time that we didn't have luncheons and then we
14 started them. But that sounds reasonable.

15 Q. Mr. Hood was also able to identify a
16 memo -- and I'm going to show you what we marked as
17 Defendant's Exhibit 1 to Mr. Hood's deposition and
18 ask you if you have any recollection of having seen
19 that memo from the mayor prior --

20 A. Yes, sir.

21 Q. Do you have any recollection of whether
22 you saw this memo that is Hood Deposition Exhibit 1
23 at any time close to the proximity of first hearing
24 verbally about these retiree health care benefits
25 that are mentioned in the memorandum?

1 A. I believe that I heard about it before
2 I saw this memo.

3 Q. Sure. And that would seem logical to
4 me that you as the fire chief at the time probably
5 would have heard about it before it was put in some
6 kind of memo.

7 What I'm asking is: Do you know if it
8 was in fairly close proximity? The memo is May
9 13th of '98.

10 A. I don't recall. I really don't know.
11 I know that I didn't receive a copy of this memo
12 directly. Chief Kenneth Bray was the one that
13 showed me a copy of it, and I had already heard
14 about the plan or the plan to do it or what have
15 you. Whether it was initiated at the time or what
16 have you, I don't remember the proximity.

17 Q. Did you ever have any private
18 conversations around the time that you first heard
19 about it with the mayor about these retiree
20 benefits?

21 A. No, sir, not that I recall. Not any
22 private one-on-one conversation about it.
23 Basically it was at the luncheons, the Tuesday
24 morning breakfasts. Things of that nature.

25 Q. Subsequent to seeing this memorandum



1 that is Exhibit 1 to Mr. Hood's deposition did you
2 ever see anything else in writing about these
3 retiree health insurance benefits?

4 A. In writing? Not that I recall in
5 writing.

6 Q. What I'm asking is -- I'll ask you a
7 couple of examples.

8 Did you ever see a personnel policy or
9 a personnel manual or an employee handbook that
10 contained the specific retiree health benefits in
11 there?

12 A. No, sir, not that I can recall.

13 Q. Did you ever recall seeing any other
14 city policy that made specific reference to these
15 particular retiree health insurance benefits?

16 A. A policy, but -- I said not that I
17 recall. The same information is included on the
18 papers that we received after we retired to sign
19 off for our benefits. This policy is identified in
20 there. At least this portion of it is.

21 Q. I understand and I appreciate that.
22 And I should have framed this a little differently.

23 Prior to your retirement in September
24 of 2005 do you recall seeing anything in writing
25 regarding these retiree health insurance benefits



1 other than this memorandum that is Exhibit 1?

2 A. Not that I recall at this time. Not
3 that I recall at this time.

4 Q. And what you recall for me is seeing
5 some items that I'll ask you about in a minute
6 after your retirement that make reference to these
7 benefits; correct?

8 A. Yes, sir.

9 Q. Between, let's say, '98 and your
10 retirement in 2005 did you ever have any personal
11 conversations with Bob Cannella about these retiree
12 health insurance benefits?

13 A. Yes, sir; several.

14 Q. Can you tell me about those? I know
15 I'm asking you to go back in time, but to the
16 extent you can, if you can recall those
17 conversations for me and tell me sort of the
18 substance and the content of those conversations,
19 and maybe more particularly and importantly is any
20 representations or statements you believe or know
21 that Mr. Cannella made to you about these
22 particular retiree benefits.

23 A. Yes, sir. Bob and I are friends. I
24 haven't spoken with him in probably two years or
25 more, but we fish together. I would see Bob or

1 talk to Bob on the phone almost on a daily basis.
2 Being a large department we always had something
3 going on, and so I pretty well talked to him
4 regularly about different things.

5 It wasn't long after this program came
6 out that we went fishing one day. It was on the
7 way to the lake going cat fishing and we were
8 talking about the budget, the upcoming budget, and
9 Bob made a statement -- he said: I don't know what
10 they're going to do. I said: What is that?

11 He said: Well, insurance prices are
12 going up and up and up. I don't know how the city
13 is going to continue to be able to pay the
14 insurance prices they are, especially that
15 retirement program. He said: I've been telling
16 them that we're going to have to do something.

17 I said: What do you mean? Are you
18 telling me the retirement program is not going to
19 be any good? "No. No. That's not what I'm
20 saying."

21 I said: What will happen to the
22 retirees? He said: Well, they'll be
23 grandfathered, but those people that are there that
24 are going to be expecting it to continue, we're not
25 going to be able to afford that. They'll have a

1 choice. Those close to retirement can leave or
2 they'll have to do without."

3 And I said okay. And he said it one
4 time before, I think. Not before, but after that.

5 But Bob and I, like I said, were
6 friends. We would go and sit in his office and we
7 would talk shop. We might talk fishing and
8 hunting.

9 And then -- it's kind of a long and
10 lengthy story, but in 2005 -- I don't remember who
11 it was. I think it was somebody in the police
12 department had mentioned to me that they had gone
13 up to Kathy -- not Kathy. Debbie Blosser. She was
14 Bob's assistant.

15 Q. When you say 2005, are you talking pre-
16 or post retirement for you?

17 A. Pre-retirement.

18 Q. Go ahead.

19 A. Anyway, that Debbie had laid out what
20 that person will be making in retirement and also
21 what that person's dependent coverage would be.
22 And the person -- I wish I remember who it was.

23 But he said: Hey, you need to go up
24 and see what Debbie can give you. I said: Okay.
25 Yeah. It sounds like a plan. And I think even

1 Kenny Bray, Chief Bray -- I think he had done it
2 also.

3 Q. In other words, going up to meet with
4 HR to find out what exactly are these retiree
5 benefits actually going to be post retirement?

6 A. Yes, sir. And I went up and spoke with
7 Debbie. She gave me the layout. And I looked at
8 it and said: You know, this is better than I
9 thought. Having the insurance made it really a lot
10 better.

11 I'm a planner. Being in emergency
12 services, I don't just work for the day; I plan for
13 tomorrow. And I was concerned, very much
14 concerned, that I would retire and not have enough
15 income, not have insurance. One big illness wipe
16 us out. But anyway, she gave me some pretty good
17 information. But I had 35 years in, and my plan
18 was really to do 40 to max out my retirement the
19 best I could, because that would help me in the
20 future, certainly.

21 Anyway, I went up to Bob -- I think it
22 was a day or two after and walked in and I said:
23 Bob, I'm trying to make a decision. He said:
24 What? I said: Well, I went to Debbie and she gave
25 me the layout of my retirement. And I said: It



1 looks pretty good. A lot better than I thought it
2 would be. And I said: But I would like to stay.
3 I would probably prefer to stay. I would make more
4 money. And he said: You need to think about that.

5 Q. Bob Cannella said that?

6 A. Bob Cannella.

7 And I said: What do you mean, "need to
8 think about it?"

9 "Well, you might want to go sooner than
10 later." I said: What do you mean, Bob? And he
11 was holding back. He wasn't -- he didn't want to
12 come out and say what he wanted to say. And having
13 that relationship I said: Well, Bob, what do you
14 mean? He said: I'm just saying that insurance
15 costs are going up and up and up. The city is not
16 going to be able to continue their retirement plan
17 like they're talking about.

18 Q. Did you take that to mean their retiree
19 health benefits?

20 A. Yes, sir.

21 Q. Because your actual retirement wages,
22 if you will, comes from the retirement system.

23 A. Yes, sir. He was talking about this
24 plan right here.

25 Q. Fair enough.



1 A. And anyway, he said that the costs were
2 going to mound up. The city when they first
3 started up was a young city. Didn't have a lot of
4 retirees. Now it's going to continue to get larger
5 and have more and more retirees. And he said: I
6 told them -- he said: I've been telling them --
7 I've heard this from him before -- I have been
8 telling them that they are going to eventually have
9 to do something.

10 And so I said: Well, wait a minute.
11 Are you telling me that if I retire I'm not going
12 to have no insurance? "No. No. No. That's not
13 what I'm telling." You'll be grandfathered. Any
14 retirees will be grandfathered, but those other
15 people are going to have to make a decision to
16 retire or do without.

17 And I said: Are you sure I'm going to
18 be grandfathered? "You're locked in. You'll be
19 locked in if you retire. That's what I've been
20 trying to tell you, that you need to think about it
21 sooner than later."

22 So I went home and spoke with my wife,
23 and she said: That's a pretty good benefit to have
24 your supplemental paid for.

25 The mayor promised us free supplemental

1 for the rest of our life, and I think even
2 sometimes he would say: We've got the best
3 insurance around. Man, you're going to have free
4 supplemental for the rest of your life, and you'll
5 be able to put your dependents on it. That's a big
6 plus. That's a real big plus.

7 And my wife and I talked about it and
8 we said: Well, I'm going to go ahead and put my
9 papers in for retirement. So my next step was to
10 talk to Ray Anderson, my chain of command. And I
11 spoke with Ray and I told him I was going to go
12 ahead and retire, and I said I would like to speak
13 with the mayor. I want to thank him.

14 Q. Did you tell Ray why you had made the
15 decision to retire? Did you have any discussion
16 with him that it was because of --

17 A. Not that I recall. I probably told him
18 that I spoke with Debbie Blosser and what have you.
19 I said -- I mean, it was semi-seriously,
20 semi-jokingly. I said: Eventually they're going
21 to draw blood, meaning some of these guys -- the
22 younger people who are always pushing everything
23 that you tell them or what have you.

24 But anyway, I told him I wanted to talk
25 to the mayor and that I wanted to thank him. He

1 set up an appointment. I think it was just a
2 couple of days after that. It might have been
3 longer. And sat down with the mayor and I started
4 about thanking him. I had heard this over and over
5 and over again at every luncheon we had. I had
6 been in there with him when the firemen were
7 disgruntled about the pay they were making. They
8 knew that they were making two and three thousand
9 dollars -- in some cases \$4,000 less than other
10 departments. And the mayor would usually come up
11 and say: Hey, you've got a honey of a deal. Look
12 what we're giving you. You're not getting a raise.
13 You're not making the money they are, but nobody
14 else is doing this. Look at what you're getting.

15 Q. Did you know anybody on the fire
16 department that were doing that at the time that
17 were offering that kind of retiree health benefit
18 or health benefits available to retirees?

19 A. I don't know if I was that -- had that
20 much knowledge about those other departments or
21 what have you. It sounded like a super good deal.
22 The mayor was somebody that I could count on. He
23 was somebody that never broke a promise to me that
24 I know of until that time.

25 But anyway, I said: Mayor, I want to



1 thank you. I told him I had gone and spoke with
2 Debbie and she gave me good information and that I
3 told him -- I was very specific. I said: Mayor, I
4 want to thank you for that program, the retirement
5 program, because if it wouldn't have been for that
6 I would probably still be here. Because that's a
7 great plan.

8 I had heard him say it over and over
9 and over again. I believed it. I believed that it
10 was a great benefit. It was a good benefit. Is a
11 good benefit. And I said: If it wasn't I probably
12 wouldn't be retiring. I want to thank you, Mayor.
13 Because he was the man that did it. He was the
14 man. Being the mayor -- strong mayor like he was
15 -- he was the man that put that in place. And I
16 said: I want to thank you for it.

17 And he looked at me just like I'm
18 looking at you and he says: I got your back,
19 Buddy. Didn't tell me: Well, now, Chief you might
20 want to watch out for that. I don't know if we're
21 going to be able to continue that. He looked at me
22 and said: I got your back, Buddy. And we spent
23 the rest of the meeting where they should go for a
24 new chief.

25 Q. Fire department stuff?



1 A. Fire department stuff.

2 Q. Was anybody else at the meeting?

3 A. Ray Anderson.

4 Q. I figured. So you subsequently retired
5 after that meeting -- formally retired in September
6 of '05.

7 Have you had or can you recall for me
8 any conversations you had with the mayor subsequent
9 to 2005 about these retiree health benefits? if you
10 had any.

11 A. Mayor and council members. Since 2005?

12 Q. Yes, sir.

13 A. Probably not before 2009. Between 2005
14 and 2009 I didn't have a real reason to talk to
15 anybody about it. I was happy. Everything was
16 going ...

17 Q. Sure. And I would assume that's
18 because it was in 2009 when you received notice
19 that the city intended to make a change.

20 A. And they cut it off in 2010.

21 Q. So once you get notice of that in 2009
22 did you subsequent to that have communications
23 directly with the mayor? I'll ask about him first.

24 A. With the mayor? I've had talks with
25 the mayor. As a matter of fact, Chief Baxley and

1 Chief Judge and myself went up -- I think Chief
2 Baxley arranged it for us to go up and talk to the
3 mayor and ask for help.

4 Q. Do you remember when that was?
5 Approximately.

6 A. 2011. The last part of 2011 maybe,
7 early 2012.

8 Q. Somewhere in that time frame?

9 A. Somewhere in that time frame.

10 Q. And who was at this meeting?

11 A. Myself; Chief Judge; Chief Baxley; the
12 mayor, the mayor's assistant, Julie Elmore, and the
13 finance director, Warren Newton, and Miss Christine
14 Ruth. I believe that was who was there.

15 Q. What can you recall about that meeting?
16 Tell me about it.

17 A. We went in and explained to the mayor
18 that -- like my wife was nine years my junior,
19 Mike's was a couple of years, hief Leonard Judge's
20 wife was younger than him, and that when the
21 program stopped in 2010 that we would not have
22 coverage for them. They would be uninsured. And
23 we asked him to please see what he could do for us.

24 We always felt that the mayor would
25 look at it and help us. I just -- we always felt



1 that maybe city council would help us.

2 But anyway, the mayor looked over at
3 Julie after listening -- not Julie, but
4 Miss Ruth -- and said: Look. I hear what these
5 guys are saying. Something to that effect. That's
6 not verbatim. "I hear what these guys are saying.
7 We need to try to help them out. And she said
8 okay.

9 I think it was months after that that
10 we got a letter from Christine Ruth stating that
11 she set up an appointment for us to meet with an
12 insurance guy from one of the local agencies or
13 something, and me and Chief Judge and Chief Baxley
14 attended the meeting.

15 Q. Was anybody from the city present for
16 the meeting?

17 A. Christine Ruth was there. And the guy
18 told us what he had to offer and then he said that
19 -- he gave us also some exclusions, things that if
20 you've got this you're not insurable. And we
21 looked, and all three of us -- our wives had those
22 exclusions. And it was absolutely nothing -- what
23 got me was Christine Ruth knew what our wives had.
24 She is the personnel director. Certainly she would
25 have looked at that before putting us even through

1 that.

2 Q. And so you had that meeting subsequent
3 to the meeting with the mayor you described for me.

4 Any other meetings with city personnel
5 subsequent to 2009?

6 A. Meetings or discussions?

7 Q. Well, both, about these retiree health
8 insurance benefits.

9 A. I had discussions immediately after the
10 meeting that we had, which we received the letter
11 about the plan was going to change. I immediately
12 spoke with Warren Newton at that meeting, the head
13 department -- city employees, not department
14 employees, that were all there. And basically it
15 was Christine Ruth and Warren Newton. They were
16 basically going over the program and said: All
17 right.

18 Q. Was this after your meeting with the
19 mayor you described for me?

20 A. This would have been before that
21 meeting. This was when -- we received the letter.
22 There was a meeting after that.

23 Q. In 2009; right?

24 A. In 2009. There was a meeting stating
25 what was going to happen in the future. And I went



1 up to Warren Newton and I asked him -- I said:
2 Warren, my wife is nine years my junior. Does this
3 mean she's not going to have insurance? And he
4 said something to the effect that: Yeah. That's
5 right. He was apologetic about it. "I'm sorry,
6 Chief, but she's just going to have to get
7 insurance someplace else," or something to that
8 effect.

9 Around the time -- I think it was
10 before I met with the mayor -- we met with the
11 mayor. I saw Councilwoman Rhonda Jerome at the
12 ballpark. She runs the concession there. And she
13 was actually outside speaking with a North
14 Charleston police officer who was on crutches. I
15 think he had a motorcycle accident. And I walked
16 up to her and I asked her -- I said: Miss Rhonda,
17 why weren't we grandfathered? And she looked at me
18 she says: Well, I thought y'all were. And I said:
19 No, ma'am. Why weren't we grandfathered? Did you
20 vote it on? Is it something council voted on?

21 She said: Chief, I thought you were.
22 And I said: Well, didn't you vote on it? And she
23 said: Well, I don't recall, but I thought y'all
24 were grandfathered.

25 So I asked her -- I said: Would you

1 mind looking into it and tell me how it happened.

2 And she said: Yeah. I'll do that for you.

3 Rhonda and I had a relationship for
4 many years. Her husband worked with the
5 department, and she had my home phone number.
6 Never heard anything from her. Two weeks to the
7 day I went back and she was behind the counter at
8 the concession stand, and I went in and I stood in
9 line and bought me a Coke and I said: Miss Rhonda,
10 did you hear anything? Did you have a chance to
11 check on that?

12 And her eyes got wide and she said:
13 Well, no, I haven't had a chance to do it yet. I
14 said: You haven't? Well, would you please do it.
15 "Chief, I'll call you." I never received a phone
16 call.

17 Now, Councilman Ed Astle is a neighbor
18 of mine. He actually lives the next street over.
19 I've known Ed for a little while. Around that same
20 time I saw him on the road. I flagged him down.
21 And we first started our conversation with
22 neighborhood stuff. And I asked him -- I said:
23 Ed, why weren't we grandfathered? And he looked at
24 me and he said -- and he smirked and he smiled and
25 he said: It wasn't in writing, Chief. It wasn't

1 in writing.

2 I'm like: What wasn't in writing? The
3 plan? The program? What wasn't in writing? "It
4 wasn't in writing, Chief." And then "I've got to
5 go," and he left.

6 It was several months after that I saw
7 him in the neighborhood and he said: Can we meet
8 and have breakfast? And I said sure. He said: I
9 got something I want to talk over with you. I said
10 sure.

11 So we met at Chick-Fil-A on Dorchester
12 Road one morning around 8 o'clock. And we were in
13 there, and he wanted me to be on a board. He was
14 trying to get a particular area of -- get a
15 community built up for retired military folks, and
16 he wanted me to serve on the board. He also
17 mentioned that Bob King -- he was going to ask
18 Councilman Bob King to be on the board.

19 I said: Well, why me? And he says:
20 Well, you're a figure in the community. People
21 trust you. People like you. People know you.
22 With you and Bob King being on there I think that
23 it will get a lot more attention and what have you.
24 And we sat and talked about that for 30 minutes,
25 and I told him: Okay. And then I said -- when



1 that conversation was over I said: Well, why
2 weren't we grandfathered? "It wasn't in writing,
3 Chief. It wasn't in writing." And he got up and
4 he left.

5 So I was good -- I was real good for
6 being on the board but not good enough to get an
7 answer why weren't we grandfathered. Nobody would
8 say: Well, you weren't grandfathered.

9 Q. Any other conversations about the
10 retiree health insurance issue with other council
11 members other than Miss Jerome and Mr. --

12 A. I approached Bob King after a council
13 meeting one time and he was -- Bob was a friend of
14 mine also, but he was -- he cut it off basically.
15 I think I went up to him and I said: Mr. King, why
16 wouldn't we get grandfathered? "I got to go." And
17 that was basically it.

18 Q. Any others that you can recall since
19 '09?

20 A. There may have been, but I don't recall
21 at this time.

22 Q. Did you and Mr. Baxley have a recent
23 meeting with Miss Ruth or somebody in her office?

24 A. Recent?

25 Q. Yes.



1 A. Not with Miss Ruth. We went and spoke
2 with Kathy -- Ross, is it?

3 Q. I can't remember Kathy's last name.
4 What was that meeting about?

5 A. About seeing what Humana coverage would
6 be for a supplement.

7 Q. For a Medicare supplement?

8 A. Yes, sir.

9 Q. So the meeting wasn't about coverage
10 for your spouses; it was about the Medicare
11 supplement for you personally?

12 A. I asked Kathy if she knew if Humana had
13 any coverage, and I think Mike said: Yeah. What
14 about that? Can we get that? And we haven't heard
15 anything from her. There was several questions
16 brought up, as a matter of fact, and we never heard
17 anything back from her.

18 Q. And what was the content of the meeting
19 with Kathy about the Medicare supplement with
20 Humana? Was she just passing information to you?

21 A. I received a letter -- I want to say it
22 was three months ago. I think the letter came out
23 -- normally it was six months before someone
24 retires. I think I got registered and also in the
25 mail. I think I got two letters the same day, and

1 it basically stated that the coverage would end and
2 if we wanted to consider to look at Humana. The
3 city offered it, and I could set up an appointment
4 with Kathy.

5 And I got my letter, of course, before
6 Mike did, and I asked him one day -- I said: Mike,
7 we need to go talk and see what the city is
8 offering.

9 Q. Subsequent to finding out in 2009 that
10 the city was going to -- I will use the broad term
11 "change" the retiree health benefit plan, it
12 doesn't sound like you had any further meetings or
13 conversations with Mayor Summey about the issue.
14 Is that accurate?

15 A. Prior to 2009?

16 Q. Let me back up on that minute.

17 So you had the one meeting with him
18 where Mr. Baxley was there, Julie Elmore was there,
19 and a cast of others after you got the notice in
20 2009. I appreciate you relaying that information
21 to me.

22 Is that the only meeting you had with
23 the mayor since 2009 about these retiree health
24 benefit issues?

25 A. That's the only one I recall at this



1 time talking to the mayor directly.

2 Q. Sure. I mean, you filed the lawsuit in
3 June of '13, so I would assume you had no
4 conversations certainly since June of '13 about the
5 issue.

6 A. Not that issue.

7 Q. Right. And so between the meeting you
8 had in '09 with him and filing the lawsuit in 2013
9 do you remember having any conversations with the
10 mayor or where the mayor was present about these
11 retiree health insurance issues?

12 A. Since that meeting?

13 Q. Yes, sir.

14 A. Any conversations? Not that I can
15 recall on that issue.

16 Q. Based on the Complaint that you filed
17 in this case it appears that -- I'll sort of break
18 this into two subset questions. It appears that
19 you may have done some research into what a
20 supplemental Medicare policy is going to cost you
21 out of pocket beginning in March when you turn 65.

22 A. Yes, sir.

23 Q. And based on your testimony it sounds
24 like you've done that as well.

25 A. Yes, sir.



1 Q. Do you have any idea that you can tell
2 me today about what you found in regard to what you
3 expect to be paying for that supplemental policy?

4 I don't know. Perhaps you've already
5 put one in place that's going to come into effect
6 in March. What can you tell me about that issue?

7 A. Prices range from 140-some dollars up
8 to 199 for the F Plan.

9 Q. And have you secured a Medicare
10 supplement at this point --

11 A. No, sir.

12 Q. -- or you're still examining and
13 considering your options?

14 A. Yes, sir. I'm still trying to weigh
15 the options. I think we always have hoped that
16 knowing the mayor and the trust in the mayor that
17 we had always hoped that he would come through for
18 us. We had that kind of a trust in him.

19 He told me some things even before he
20 became mayor. I met with him at Huddle House on
21 Dorchester Road before he was elected and he sat
22 down with me. We didn't know each other that well.

23 Q. Were you the fire chief at that point?

24 A. Yes, sir. But there was plenty of
25 rumors going around that I was going to be moved



1 out and the district chief was going to be put in
2 there and all kind of things, and I thought the
3 best thing to do was to call him. I called him on
4 a Sunday morning before church, and he said: Right
5 after church let's meet.

6 That man sat down and he told me every
7 plan that he -- who he was going to put into
8 positions. And I'm thinking: Wow. He's telling
9 me some stuff that -- I don't know why he's telling
10 me this. He doesn't know me that well. No doubt
11 he must have some trust in me, and I had trust in
12 him. You know, I really trusted him because
13 everything he told me brought true, the way he was
14 going to do the city and -- and he always talked
15 about the quality of life. Even in this memo here,
16 the quality of life. And that was a big issue for
17 him, and I believed him.

18 He would say: We're family. He often
19 would say: You know, we're family. We're going to
20 take care of each other. You make a mistake; we're
21 going to correct it and we're going to move on
22 forward because we're family. And I don't know how
23 his family works, but ...

24 Q. Did anyone since 2009 have any
25 conversations with you about or that mentioned any



1 changes in federal law that necessitated changes or
2 modifications to the provision of these retiree
3 health benefits to retirees such as yourself?

4 A. First, if you're talking about the OPEP
5 or whatever --

6 Q. Yes.

7 A. -- that was the first information I got
8 that was in that letter.

9 Q. And did anybody subsequently have any
10 discussions with you about it or give you any
11 further explanation about it at all that you
12 recall?

13 A. I don't recall if Warren Newton
14 mentioned it right after that meeting with all the
15 people or not, but it didn't get in a whole lot of
16 detail. Nobody really sat down and said: Well,
17 let me tell you the reason why we had to do this.
18 It may have been briefly mentioned, but it wasn't
19 by the mayor in our meeting with him when the three
20 of us chiefs went and spoke with him and Julie
21 Elmore and what have you.

22 Q. The second subpart of my question is in
23 regard to health insurance for your wife.

24 I would assume based on your Complaint
25 and based on the work you've done it sounds like



1 investigating Medicare supplement coverage that
2 you've probably done some exploration of health
3 insurance for her beginning in March. Is that
4 accurate?

5 A. Yes, sir.

6 Q. And what have you found in that regard?
7 If you can share that with me.

8 Well, two things. I want to know what
9 you found in regard to access to coverage for her,
10 meaning the availability of coverage; and 2, what
11 you found in terms of expectations as to cost of
12 that coverage to the extent it is available.

13 Does that make sense what I'm asking
14 about?

15 A. The best way to answer that -- you also
16 want prior to Obama Care, what we did --

17 Q. Yes.

18 A. -- and after?

19 Q. Maybe just give me the picture.

20 A. When we first found out about this,
21 both the letter and what have you, of course it
22 hurt. It knocked us into a loop. My wife started
23 calling around.

24 I think she called Blue Cross/Blue
25 Shield. They told her that as long as she was with

1 North Charleston they couldn't insure her. Of
2 course, you're not going to double insure. But
3 they also -- they asked her if she had any other
4 medical issues. She's had diabetes. And she said:
5 If we can insure you, it will be expensive. And my
6 wife called some other people and basically that's
7 the first thing she got.

8 Q. Because they're preexisting?

9 A. Because they're preexisting, which
10 later on this insurance guy told us pretty well the
11 same thing.

12 Q. When you say "guy," you mean the
13 meeting you went to with Miss Ruth and this
14 gentleman?

15 A. Yes. And then, of course, when Obama
16 Care came in and what have you we looked at --
17 recently we got a quote for seven -- not a quote,
18 \$722 for the Blue Cross/Blue Shield Gold Plan. 800
19 or whatever it is. \$722 a month, \$800 deductible,
20 \$50 for specialists, co-pay -- 20 or 25 dollars
21 co-pay for the regular doctor, which is \$5 more
22 than what we pay now. A specialist is 15, where we
23 would be paying 50 on that.

24 It's expensive, which if you get sick
25 it's even more expensive.

1 Q. What are you paying a month right now? 41
2 A. \$1,100.
3 Q. And what was the quote you got for care
4 through the Affordable Care Act or Obama Care?
5 A. 722. And that's why I said that if
6 you're not sick you don't -- great. But if you get
7 any illness then it goes up.
8 It's also my concern, of course, about
9 Obama Care and the lack of -- insurance companies
10 moving out of the area. They talk of repealing the
11 program.
12 Q. Do you have that quote in writing that
13 you got?
14 A. No, sir.
15 Q. Just a verbal quote you got?
16 A. I got that through the lady that I know
17 through the Thrivent. Thrivent is an insurer --
18 whatever. It's the people who I have my life
19 insurance with. It's online, I understand.
20 Q. But Thrivent provided you with this
21 quote?
22 A. The lady from Thrivent. She told me
23 she went on Healthcare.gov. She said if you want
24 to sign up for this go to Healthcare.gov and it
25 would be on there.



1 Q. To your knowledge neither you or your
2 wife have directly gone on Healthcare.gov and
3 investigated what that cost would be?

4 A. No, sir.

5 Q. I sort of asked you this earlier, but I
6 want to circle back to it because I may have sort
7 of asked it tangentially. But at the time you
8 retired from -- let me back up.

9 In 1998 when these retiree health
10 benefits that we're talking about first came into
11 existence with the City of North Charleston can you
12 identify for me today any other municipality or
13 entity at all that was providing a similar benefit
14 to its retirees?

15 A. I've heard it since. Columbia
16 possibly. I don't know. I haven't seen it in
17 writing who has got exactly what or done any
18 comparison.

19 Q. Sitting here today do you personally
20 know for sure any other entity you can identify for
21 me that is providing a retiree health benefit
22 similar to what the city started providing in '98?

23 A. No, sir. That's why it was such a
24 great deal. I can't do it, but I'm going to tell
25 you that is a great deal. It was a great promise,



1 and we looked forward to it.

2 Q. So seven years later -- jump forward
3 seven years later in 2005 when you make the
4 decision to retire. It's really the same question.

5 Can you identify for me any entity at
6 all, public or private employer, who in 2005 when
7 you retired was providing a retiree health benefit
8 similar to what the city was providing?

9 A. At that time, no, sir. And that's
10 another reason why it was so good, so great. And
11 we depended on it. I depended on it.

12 Q. I've got a few things here to ask you
13 to identify for me, Chief Rissanen.

14 (Defendant's Exhibit 1, copy of City of
15 North Charleston Retiree Election Form - Health
16 Benefit Coverage, marked for identification.)

17 Q. (Continued) Chief Rissanen, let me ask
18 you to look at what I've marked as Defendant's
19 Exhibit 1, and these are documents from '09 and
20 '011. I understand there is probably similar ones
21 from 2010, 2012. I just don't have them with me.

22 A. Yes, sir.

23 Q. What I wanted to ask you is if you
24 could look at the two pages that comprise Exhibit
25 1 and let me know if that is your signatures and



1 initials on those pages.

2 A. (Witness complies.) Yes, sir.

3 Q. One of the things that I think you'll
4 notice just by way of example -- I understand from
5 Chief Baxley that the language in this form changed
6 over the years. Do you have any recollection of
7 that?

8 A. I remember that Chief Baxley had
9 brought it up at the meeting with the mayor that
10 there was language in -- I think it's in one of
11 these lower ones.

12 Q. It is.

13 A. It kind of surprised us, because we
14 looked at each other like: Oh, gee. We didn't see
15 that.

16 Q. I wanted to ask you about that.
17 Do you remember when that came up in
18 the context of any kind of meeting with the mayor?

19 A. Mike Baxley brought it up in that
20 meeting with Chief Judge and me and him and the
21 mayor and Julie Elmore and the rest of them.

22 Q. And that helps me put when that meeting
23 with the mayor may have occurred, because it sounds
24 like by the time that meeting that you've done a
25 really good job describing for me occurred with the



1 mayor there had already been some change in the
2 language from what it originally was in 2009.

3 A. Yeah. Exactly what had been changed --

4 Q. I'm not asking you to identify that,
5 but you just remember it came up during that
6 meeting?

7 A. Yes, sir.

8 Q. And I will tell you that's similar to
9 what Chief Baxley recalled yesterday, that there
10 had been a modification in that language.

11 A. Yes, sir. I think Chief Baxley and I
12 first were concerned particularly in 2009 that:
13 You sign and you initial. If not you're going to
14 lose your coverage. It almost felt threatening.

15 Q. I think you had to sign a similar form
16 -- or is it your recollection you had to sign a
17 similar form every year subsequent to 2009?

18 A. From the time I retired?

19 Q. Yes.

20 A. A similar form? I'm not sure just how
21 far back, whether it was 2005, 2006. I don't know.

22 Q. I think I'm asking the obvious here,
23 but I'll ask it for the record anyway.

24 Has it been your experience since you
25 retired that the cost of health insurance for your

1 wife has increasingly gone up by way of the city's
2 plan?

3 A. Yes, sir. As I mentioned, even Bob
4 Cannella had mentioned that.

5 Q. And I mentioned yesterday and I'll
6 mention again, for me personally you forget
7 sometimes the rate of inflation on health
8 insurance, but looking at the forms over the years
9 it appears there has been some fairly significant
10 increases in the cost of health insurance.

11 A. Over the last three years, I think.

12 Q. It looks like it slowed down a little
13 bit. It looks like the first two years --

14 A. It bottomed out. But isn't that like
15 washing your car?

16 Q. Well, and I'm not -- the beauty of a
17 deposition is --

18 MS. BLOODGOOD: He can't answer
19 questions.

20 Q. (Continued) I've been deposed once,
21 Chief, and I don't ever want to be deposed again.

22 A. I feel like it's like washing your car.
23 I feel like it's washing your car. You ask me to
24 wash your car and you tell me you're going to give
25 me \$5 and you're going to give me tickets to the

1 county fair two weeks later. We agreed to it. You⁴⁷
2 do a good job. I sit there and not only do a good
3 job, I detail your car. Your neighbors look at how
4 well I detailed your car, and after I finish
5 detailing your car and everything you're happy.
6 You give me my \$5. And I'm expecting the two
7 tickets to the fair in two weeks, but a week later
8 I get a letter saying: I can't afford it. You're
9 not going to get it.

10 Do you still owe me?

11 Q. We'll leave that as a rhetorical
12 question. My question for you is: In that regard
13 did the city make any verbal promises to you as to
14 what kind of health insurance coverage would be
15 provided for your spouse post retirement?

16 A. If you mean --

17 Q. Does that make sense? Meaning was
18 there anything ever told to you verbally as to the
19 extent of the benefit that was going to be
20 provided?

21 A. If you mean free health insurance for
22 the rest of your life, yes, sir.

23 Q. No. I'm talking about your spouse
24 right now.

25 A. My spouse?



1 Q. I'm talking about your spouse right
2 now.

3 Was there any representation made to
4 you in regard to the extent of the benefit that
5 your spouse would have access to until age 65.
6 Until she turned age 65.

7 A. I don't understand the extent, but I
8 can tell you how --

9 Q. It's a bad way for me to ask the
10 question. Let me preface it by saying: You know
11 from the work you've done in researching health
12 insurance availability for your wife that there is
13 a broad array of different plans you can obtain,
14 and the cost of those plans varies depending on
15 what the coverage is; correct?

16 A. I would assume so.

17 Q. So my question is: Did the city ever
18 make any verbal promises to you as to what the
19 extent of the health insurance coverage would be
20 that your wife would have access to until you
21 turned age 65?

22 A. I would have to say yes, sir.

23 Q. And so my follow-on question is: What
24 was your understanding of what they were promising
25 to provide you?



1 A. Can I tell you the story?

2 Q. Absolutely.

3 A. I asked you a question now.

4 Q. Well, I answered.

5 (Short recess taken.)

6 THE WITNESS: In one of the luncheons
7 -- you know, it usually started off that the mayor
8 would start off asking a question about how things
9 were going and the people chime in.

10 We were at Cross County Road fire
11 station having a luncheon with two or three
12 companies. The mayor was there. Ray Anderson was
13 sitting right next to him. Bob Cannella. And then
14 I want to think Warren Newton was there also.

15 But anyway, I had already finished my
16 meal. I was kind of sitting there waiting for
17 people. None of the people were asking questions
18 or anything, so I figured I would kick it off. And
19 I asked the mayor -- I said: Mr. Mayor, this
20 retirement program -- I figured I would pitch for
21 the city. I said: You know, my wife is nine years
22 younger than me, and I understand that when I
23 retire and I get to Medicare age and what have you
24 that I'll still be able to buy insurance through
25 the city.



1 And he said -- and he turned right
2 around and looked at Bob Cannella. Bob was eating
3 and he was like only halfway hearing. And so Bob
4 took it from then and he says: Yeah. That's
5 right. You retire. You turn 65. Your dependent
6 -- you'll be able to purchase dependent coverage
7 through us until she turns 65. And he said: I
8 can't tell you what the cost is right now. It
9 depends on when you retire what the cost is. Costs
10 are going up and up and up, but I can't tell you
11 what it was.

12 And the mayor then said: You got a
13 sweet deal. I'm telling you, you got a sweet deal.
14 We've got y'all's back. And that opened up the
15 conversation for everybody else to start talking,
16 and then of course he went back into the -- just
17 carried that ball from there on as far as the
18 benefit.

19 He did also say that I'll have it until
20 I die and then -- or she'll have it until I die or
21 able to do that until I die, and then the
22 relationship would end.

23 Q. In regard to the Medicare supplement,
24 were any verbal representations made to you by
25 anyone with the city about the extent of that

1 supplement? Because as you've noted there is
2 various supplements that are available on the
3 market, and those costs vary.

4 Was there any particularized
5 representation made to you by the city about what
6 the extent of any Medicare supplement they would
7 provide would entail?

8 A. Other than the mayor saying you will
9 have free health care for the rest of your life.
10 And if it wasn't a good preplan it wouldn't be
11 free, would it?

12 That's another question. I'm sorry.
13 And that was one of the things: You will have free
14 health care for the rest of your life. You got a
15 sweet deal. We got your back.

16 Q. So was your assumption that the city
17 would provide a Medicare supplement that would
18 fully cover any out-of-pocket medical costs you had
19 that exceeded what Medicare would pay?

20 A. It was my assumption that we would have
21 a plan that would cover all or most of our needs
22 similar to what the city does now. Does that
23 answer your question?

24 Q. Well, I understand that, but now -- I
25 mean, even now you're still on the city's plan;

1 correct?

2 A. Yes, sir.

3 Q. Your health care per month -- you still
4 have out-of-pockets you have to pay yourself;
5 correct?

6 A. Yes, sir.

7 Q. So I mean, in terms of free, free may
8 not be -- free is not really free. There are costs
9 to you with even the existing plan you have through
10 the city.

11 A. I understand that.

12 Q. Correct?

13 A. Yes, sir.

14 Q. So was your expectation when you
15 retired that the Medicare supplement the city
16 provided for you would still require you to
17 responsibly pay some out-of-pocket costs for health
18 care?

19 A. My expectation was that if they provide
20 me a plan it would be a plan that if I had to pay
21 anything it would be not great expense.

22 Q. This may seem like an obvious question,
23 but I'll ask it anyway.

24 While you were employed by the city
25 certainly as an assistant chief or a fire chief did



1 you have access to the city's policies?

2 A. Yes, sir.

3 Q. Did you ever or do you ever recall
4 looking at the city's policies, written policies,
5 as they relate to retiree health benefits?

6 A. If there was one I'm sure I did. But I
7 mean, I looked through the city's policies a lot,
8 but to recall what it was or if it was one or what
9 have you, I can't be specific.

10 Q. But you would certainly agree you had
11 access to them; right?

12 A. Yes. Every department head would have
13 had access to them.

14 Q. And had you wanted to look at a
15 particular policy you could have done so; correct?

16 A. Yes, sir.

17 Q. You've done a really good job of
18 describing for me the verbal promises that you
19 certainly assert in your lawsuit that the city made
20 to you about retiree health insurance benefits, and
21 for my clarity and the record can you identify any
22 written promise the city made to you about those
23 same retiree health insurance benefits.

24 A. I would say that this would be a
25 written promise, this Exhibit; that it would be a

1 written promise since they referenced the program
2 or -- maybe not -- this represents, I think, all
3 the promises, but this doesn't necessarily
4 represent the portion for my wife.

5 A. And I may be wrong. But yeah; I think
6 that this is. Wouldn't it be? This refers to that
7 promise.

8 Q. Let me confine the question a little
9 more.

10 Prior to your retirement in 2005 --

11 A. Yes, sir.

12 Q. -- can you identify anything in writing
13 where the city promised you these retiree health
14 insurance benefits?

15 A. Seeing this.

16 Q. And "this" being Defendant's Exhibit 1
17 to Mr. Hood's deposition?

18 A. Yes, sir.

19 Q. Anything else other than that
20 memorandum written?

21 A. Not that I can recall at this time.

22 Q. Prior to retiring in 2005 do you ever
23 recall looking to see if there was anything in
24 writing regarding retiree health insurance benefits
25 with the City of North Charleston?



1 A. No, sir. I would say I didn't have any
2 reason to. I trusted the city. Trusted Bob. I
3 trusted the mayor. Bob is not going to make a
4 statement -- he's a department head. He's trusted
5 to make those statements. And he told me what he
6 told me, and I believed him.

7 The mayor, his statements, repetitively
8 over and over again at different stations to
9 people. 214 employees. Did I look for it in
10 writing? No, sir.

11 Q. Since you retired in 2005 do you get
12 anything from the city or its health care
13 administrator on a yearly basis that some people
14 might refer to as a statement of benefits that sort
15 of summarizes what your benefits are for that year
16 under the health plan? You know, what co-pays are
17 going to be, how much co-pays are for
18 prescriptions, how much co-pays are for certain
19 offices.

20 A. A benefit book or something?

21 Q. Yes.

22 A. No, sir.

23 Q. You haven't gotten anything like that
24 on a yearly basis?

25 A. Not on a yearly basis, no, sir. Have I



1 ever gotten anything? Not that I recall, other
2 than sometimes these sheets might have had a little
3 -- I guess like a newsletter attached to it or
4 something like that. But no, sir.

5 Q. But you don't remember getting any kind
6 of booklet on a yearly basis or something from the
7 city --

8 A. No, sir.

9 Q. -- that sort of summarized what the
10 benefits were?

11 A. No, sir. Even when I was employed we
12 didn't get them regular.

13 Q. Have you ever asked the city for one of
14 those?

15 A. To be honest with you, since I retired
16 and this came up I think I had asked Kathy for a
17 copy of them.

18 Q. Did she give you a copy? Have you
19 gotten a copy?

20 A. I think Mike was the one that gave me a
21 copy of one of the booklets.

22 Q. You mean Mike Baxley?

23 A. Mike Baxley. Yeah. I mean yeah. It's
24 strange that I'm still a member of the program and
25 plan, but we don't get anything on that other than

1 forms like this that might have a newsletter.

2 Q. But on a yearly basis since you retired
3 in 2005 have you asked the city: Hey, I need a
4 summary for the year? I need to know how much my
5 prescriptions are going to cost this year?

6 A. No, sir.

7 Q. Could you have asked for that on a
8 yearly basis?

9 A. Yes, sir. I could have asked for the
10 promise in writing, too, I guess.

11 Q. As we sit here today your wife still
12 has access to health insurance through the city's
13 plan; correct?

14 A. Today she does.

15 Q. And likewise you're still insured by
16 way of the city's plan?

17 A. Yes, sir.

18 Q. So as we sit here today you haven't
19 expended anything out of pocket for Medicare
20 supplement for yourself; correct?

21 A. No, sir.

22 Q. Because there are four plaintiffs in
23 the case, and some situations differ depending.
24 Because two of you have spouses. Two plaintiffs
25 don't have spouses. I sort of look at each person

1 individually in the lawsuit.

2 My understanding -- but you can correct
3 me -- is that one of the things you're seeking in
4 this lawsuit is that the court order the city to
5 pay for and provide you with a Medicare supplement
6 beginning at age 65; is that correct?

7 A. I'm sorry, sir. Is that what we're
8 looking for?

9 Q. Is that one of the things you're
10 seeking in this lawsuit, is that the court require
11 the city to provide and pay for a Medicare
12 supplement for you when you turn age 65?

13 A. I guess the best way to answer is I
14 want whatever it's going to take to get me the
15 Medicaid supplement. They promised it to us.
16 Whether they give me the money to be able to
17 purchase it or whatever, but I want what we were
18 promised.

19 Q. Sitting here today we don't know how
20 much that Medicare supplement is going to cost, do
21 we?

22 A. I would have to say what I said
23 earlier. Between \$199 and 140-some dollars, is
24 what we're looking at.

25 Q. And we don't know what it would cost in



1 the future, do we?

2 A. No, sir.

3 Q. I mean, we know perhaps what it might
4 cost beginning in March, but we don't know what it
5 would cost two years from now; correct?

6 A. No, sir. That was part of the promise,
7 though, wasn't it?

8 Q. And I believe the other thing you're
9 seeking in the lawsuit is that the city continue to
10 allow your spouse to be insured by way of the
11 city's health insurance plan until she turns 65.
12 Is that accurate?

13 A. Yes, sir.

14 Q. I think this is correct, but you don't
15 contend that there is any obligation by the city to
16 provide your spouse with any type of health
17 insurance coverage or Medicare supplement once she
18 turns 65; correct?

19 A. After she turns 65, no.

20 Q. I meant to ask you this earlier. Do
21 you recall ever seeing any city council resolutions
22 that mentioned or had anything contained in them
23 about these retiree health insurance benefits?

24 A. No, sir. It's just an assumption that
25 since it has been funded that there had to be



1 something, but where it was and what form it was, I⁶⁰
2 don't know.

3 Q. Did you ever ask to look at what those
4 resolutions might say?

5 A. Never had the need to ask for that.

6 Q. Would you have known how to do that had
7 you wanted to?

8 A. Would I have known how to ask for -- to
9 see what portion of it to do --

10 Q. Sure.

11 A. I never asked myself that question
12 because I had no reason to ask.

13 Q. Right. But what I'm asking: If you
14 wanted to see a resolution of city council, do you
15 know how to go about getting that?

16 A. Oh, yes. I could have gone to Ray
17 Anderson, my chain of command, and asked him for it
18 or gone to the clerk of council.

19 MR. CONLEY: I think that's all I have.
20 Miss Bloodgood may have some questions.

21 MS. BLOODGOOD: I have a few followup.

22 EXAMINATION

23 BY MS. BLOODGOOD:

24 Q. You testified earlier that what was
25 promised to you by the mayor was a great deal, a



ALVAR R. RISSANEN, JR. - EX. BY MS. BLOODGOOD
1 good promise.

2 Did you also think that it was a
3 promise that he could keep?

4 A. Yes, ma'am, I did. The mayor --
5 dealing with a city that large -- and it seemed
6 like whatever the mayor wanted he could get. He
7 was good. He was really good as far as dealing
8 with council and what have you. That's one of the
9 reasons why I didn't think it was a situation where
10 he was asking for something that was unreachable.

11 Knowing that his concerns about quality
12 of life -- and even in this memo here it mentioned
13 the quality of life for the people. It says:
14 Thank you and hope that you are all inspired to
15 support this proposal to provide the peace of mind
16 to those who retire from at least 15 years of
17 dedication and devotion to serving the city.

18 Somebody says something like that, I
19 assume that he's got the ability and the will to do
20 and stand behind what he says.

21 Q. And does the city have the money to pay
22 the retirees?

23 A. You know what? It kind of burned me
24 down a little bit because right after this was
25 going on I saw in the paper where they're going to



1 ALVAR R. RISSANEN, JR. - EX. BY MS. BLOODGOOD
2 spend \$43,000 -- I think it's \$43,000 -- to hire an
3 artist to painted a mural on the side of a fuel
4 tank on Montague Avenue.

5 Yes, ma'am. If they don't -- I mean,
6 I'm sure that the mayor with some of the other
7 things that I've seen the mayor has done or gotten
8 and what have you -- I felt pretty sure that that
9 wouldn't be an issue.

10 Q. Did the City of North Charleston have
11 good health insurance for its employees while you
12 were working there?

13 A. It was probably among the best. I know
14 that -- you know, I've used it. I just recently
15 had thyroid cancer surgery. \$250 to the hospital,
16 \$15 to all the other groups of people and
17 professionals that did it. When I was in the
18 hospital signing the check the lady asked me:
19 Well, how much is your co-pay? And she looked and
20 she said: Oh, you've got good insurance.

21 So she was telling me something we
22 knew. We all knew. That's what helped keep the
23 older firefighters. We were losing a lot of the
24 young firefighters after this went on, but the
25 older firefighters recognized that and they stayed.

Q. And did you expect to have similar



1 ALVAR R. RISSANEN, JR. - EX. BY MS. BLOODGOOD
2 coverage when you retired as you did when you were
3 employed?

4 A. Yes, ma'am. Exactly.

5 Q. You testified that under Obama Care
6 what you've found is a policy that's \$722 a month.

7 A. Yes, ma'am.

8 Q. Have you calculated, if you count in
9 the 800 deductible, the specialty doctors, the
10 co-pays for your wife's medications, if that is
11 going to end up costing you more than the 1,100 a
12 month you're paying now?

13 A. Exactly. And that's why I had
14 mentioned: If you're well, that's fine. You're
15 paying \$722 a month. But if you're ill that adds
16 up, and some other things that --

17 Q. So is it your understanding that it's
18 going to be more costly for you to have Obama Care
19 coverage for your wife?

20 A. With less coverage. Yes, ma'am.

21 Q. And can you keep the same doctors that
22 you have?

23 A. That's one of my concerns. I've had
24 Dr. Weissblat, who is a city doctor, for 27 years.
25 He is also my wife's doctor, my daughter's doctor,
my son's doctor, and he gives us excellent service.



1 ALVAR R. RISSANEN, JR. - EX. BY MS. BLOODGOOD
Excellent care.

2 MS. BLOODGOOD: I don't have any other
3 questions.

4 MR. CONLEY: No more from me.

5 (Deposition concluded at 10:10 a.m.)

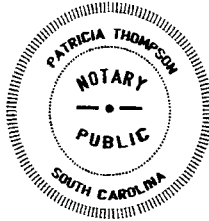
6 (The deponent waives reading and
7 signing of the transcript.)

ALVAR R. RISSANEN, JR. - EX. BY MS. BLOODGOOD
CERTIFICATE OF REPORTER

I, Patricia L. Thompson, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate
and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed by
official seal this 7th day of January 2016 at
Charleston, Charleston County, South Carolina.



Patricia L. Thompson

Patricia L. Thompson
Registered Professional Reporter
My Commission Expires
October 15, 2025

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

I N D E X

66

Page Line

EXAMINATION

By Mr. Conley

3 3

EXAMINATION

By Ms. Bloodgood

60 22

Certificate of Reporter

65 1

(NO INFORMATION REQUESTED.)

E X H I B I T S

Page Line

DEFENDANT'S

EXH. 1

Copy of North Charleston
Retiree Election Form - Health
Benefit Coverage

43 14



Rates Expire 06/30/09

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: ALVAR R. RISSANEN

Section 1 - Election for Retiree Health Benefit Coverage

I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$233.05	☐ Single & Family without Dental \$833.94	☐ Single and Dependent with Dental \$983.94
20 - 24 Years 33.5 %	☐ Single (Medical, Prescription, Dental) \$158.14	☐ Single & Dependent without Dental \$857.03	☐ Single and Dependent with Dental \$907.03
25 - 29 Years 17 %	☐ Single (Medical, Prescription, Dental) \$79.24	☐ Single & Dependent without Dental \$780.13	☐ Single and Dependent with Dental \$830.13
30 Years 0 %	☐ Single (Medical, Prescription, Dental) \$0.00	☐ Single & Dependent without Dental \$700.89	☒ Single and Dependent with Dental \$750.89

I understand and agree that (initial all):

☒ initial

These rates are subject to change.

☒ initial

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire.

☒ initial

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

☒ initial

Coverage with the City of North Charleston will end when I become eligible for Medicare benefits.

☒ initial

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required. The only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 - Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

☒ initial

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____ regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future. I understand I will receive a COBRA notification.

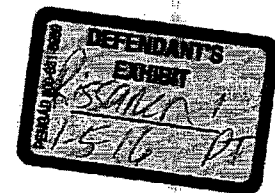
Date 6-26-09

Alvar Rissanen
Retiree Signature

Date 6-30-09

Edgar R. Riss
Human Resources Department

407006



Rates for Retiree that retired prior to July 1, 2009
Below Rates Effective July 1, 2011

City of North Charleston
Retiree Election Form
Health Benefit Coverage

Retiree Name: Alvar Rissano, Jr.

Official Retirement Date: 9-30-05

Section 1 - Election for Retiree Health Benefit Coverage

☒ I elect to continue retiree coverage under the City's group health benefit plan.

(Choose One) Rates Are Monthly Amounts

15 - 19 Years 50 %	☐ Single (Medical, Prescription, Dental) \$275.03	☐ Single & Dependent without Dental \$1,277.35	☐ Single and Dependent with Dental \$1,327.35
20 - 24 Years 33.3%	☐ Single (Medical, Prescription, Dental) \$183.17	☐ Single & Dependent without Dental \$1,185.49	☐ Single and Dependent with Dental \$1,235.49
25 - 29 Years 17%	☐ Single (Medical, Prescription, Dental) \$93.51	☐ Single & Dependent without Dental \$1,145.83	☐ Single and Dependent with Dental \$1,195.83
30 Years 0%	☐ Single (Medical, Prescription, Dental) \$0.00	☒ Single & Dependent without Dental \$1,052.32	☐ Single and Dependent with Dental \$1,102.32

I understand and agree that (initial all):

AR

These rates are subject to change.

AR

I am responsible for making payment of the employee's portion of the premium for the coverage of my choice made above. I understand that all retiree health benefit payments are due in full by the 9th day of each month for coverage. Partial payments are not acceptable. The City expects payment in full when opting in to coverage. Non-compliance on my part justifies termination of coverage by the City of North Charleston. If coverage is terminated for non-payment I will receive a COBRA notification and I understand that I cannot enroll in the City's health benefit plan after COBRA rights expire. I understand that if the City does not receive payment for a two-month period benefits will be terminated retroactive for two months and all claims paid will be retracted.

AR

If eligible dependents are not enrolled under my retiree health benefit coverage at this time, they will receive a COBRA notification informing them of their COBRA continuation options for health benefit coverage. They will not be able to enroll for the health benefit coverage after their COBRA rights expire.

AR

Coverage with the City of North Charleston will end when I and/or my dependent become eligible for Medicare benefits.

AR

It is my responsibility to notify the City of North Charleston of any changes that occur, such as adding/deleting a dependent, or of an address change. I will complete the appropriate change forms required and understand that the only time I can change health care benefit coverage is during the City's open enrollment period.

Section 2 - Waiver of Health Benefit Coverage (Initial only if waiving retiree coverage)

☐ Initial

I do not wish to continue group medical, prescription and dental benefit coverage. I waive my retiree coverage effective _____ regarding continuation options for health benefit coverage and I cannot enroll for retiree benefit coverage in the future. I understand I will receive a COBRA notification.

Date 6-25-11

Retiree Signature [Signature]

Date _____

Human Resources Department _____

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON 2013-CP-3210
3
4
5

6 ALVAR R. RISSANEN;)
7 MICHAEL H. BAXLEY;)
8 CLIFFORD W. FORNER;) TRANSCRIPT OF RECORD
9 AND WILLIE L. HOOD,)
10)
11) MARCH 28, 2018
12) CHARLESTON, SC
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

B E F O R E:

HONORABLE J.C. NICHOLSON

A P P E A R A N C E S:

NANCY BLOODGOOD, ESQUIRE
Attorney for the Plaintiffs

BOB CONLEY, ESQUIRE
Attorney for the Defendant

* * * * *

Ruth C. Weese, RDR

1 (The following proceedings were held
2 March 28, 2018, Charleston County, South Carolina,
3 @ 10:16 a.m.)

4 THE COURT: Who is here representing
5 who this morning?

6 MR. CONLEY: Bob Conley here on behalf
7 of the City of North Charleston, Judge.

8 MS. BLOODGOOD: Nancy Bloodgood here on
9 behalf of the Plaintiffs.

10 THE COURT: Okay. The Defendants in
11 the case had filed a motion to reconsider and I
12 think you submitted two affidavits, memorandums.
13 The Plaintiff has submitted a memorandum along with
14 some documentation that the Court requested
15 concerning -- I was trying to find it real quick --
16 okay, concerning the payments made by the
17 Defendants, Mr. Hood, Mr. Rissanen and Mr. Forner.
18 My understanding Mr. Forner, he hasn't paid, but
19 he's insured, right?

20 MS. BLOODGOOD: That is correct, Your
21 Honor.

22 THE COURT: He's under the age of 75.

23 MS. BLOODGOOD: Yes, he is.

24 THE COURT: Okay. I guess, Mr. Conley,
25 it's your motion. Let me find the right memo.

1 MR. CONLEY: Sure, Judge.

2 THE COURT: The first argument is the
3 statute and then your second argument is the
4 violation of the public policy. Third argument is
5 about the budget ordinance, and then -- I believe
6 third argument is about mandated payments by the
7 State. Which one do you want to address first?

8 MR. CONLEY: Judge, to be --

9 THE COURT: Let me say this before we
10 get started. I'll agree with you on your fourth
11 one. I did not enter a judgement and I did it the
12 way I did it thinking it might be easier for the
13 City and parties to sit down and resolve those
14 issues; however, I think you're right. And I'm
15 going to modify the order and enter some type of
16 monetary judgment, okay? I'm going to have to
17 receive some additional testimony to do that, but
18 as far as the other arguments, I will be glad to
19 hear you and we will talk to you about a judgement,
20 okay?

21 MR. CONLEY: Sure, Judge. So in
22 regards to the motion to alter or amend filed on
23 behalf of the City, I think what I want to talk
24 about in terms of oral argument to the City in
25 regards to items C in the memo -- well, really it

1 would be items B and C in the memo, Judge. I don't
2 have much to add in the form of oral presentation
3 to the Court other than what I have stated in the
4 memos.

5 So what I wanted to talk about for a
6 moment with the Court is really item A first off in
7 the motion to alter or amend which deals with the
8 statute of limitations issue.

9 THE COURT: Fine.

10 MR. CONLEY: The issue that I raised
11 with the Court in regard to the Court's order is in
12 regard to the fact the order fails to make a
13 finding that the statute of limitations had
14 actually expired as to each of the four Plaintiffs
15 before they filed this action.

16 The reason that is important is the
17 case law in South Carolina clearly indicates that
18 before the Court can apply the doctrine of
19 equitable estoppel to a statute of limitations
20 defense asserted by the Defendant, which clearly
21 the City has asserted that defense here, the Court
22 has to make a finding that the statute has actually
23 run as to the Defendants.

24 The case -- two of the cases I will
25 refer to, Judge, one is Hooper v. Ebenezer Senior

1 Services, 659 S.E. 2d 213.

2 And in that case, the South Carolina
3 Supreme Court or the Court of Appeals, excuse me,
4 relied upon a case out of Maine and made this
5 declaration, really this finding and holding.

6 The doctrine of equitable estoppel is
7 distinct from the doctrine of equitable tolling.
8 In cases of equitable estoppel, the statute of
9 limitations has expired and the Defendant asserts
10 the running of the statute of limitations as a
11 defense.

12 That's exactly what we have here. Our
13 position has been consistent. That the statute of
14 limitations at the time these four Defendants filed
15 their claims had expired. In response to that, the
16 Plaintiffs have been consistent in asserting that
17 that defense doesn't apply because of the doctrine
18 of equitable estoppel. The doctrine of equitable
19 estoppel doesn't negate the defense of the statute
20 of limitations. What it does is it gives the
21 Plaintiffs an out if you will, if, in fact, the
22 statute has run and if, in fact, they can then meet
23 the other requirements of equitable estoppel, which
24 is another thing, there are no findings in the
25 order about in that regard.

1 So let me proceed from there. So the
2 first thing, just to be succinct, the order does
3 not contain is a finding that each of the four
4 Plaintiffs filed their action outside of the
5 statute of limitations. Without that finding it's
6 our position --

7 THE COURT: Let me back up and ask you
8 a question. I haven't read the case. What were
9 the facts of the case where you quote to the Court
10 about the statute of limitations? Was there an
11 issue in that case as the parties raised they could
12 not sue on equitable estoppel because the statute
13 hadn't run? Was that issue before the Court? Or
14 what was the issue before the Court on the case you
15 cited to me?

16 MR. CONLEY: So the issue before the
17 Court in that case I'm citing, Judge, involves a
18 claim involving a nursing home. Let me tell you
19 specifically.

20 THE COURT: Let me --

21 MR. CONLEY: It certainly did not --

22 THE COURT: Listen to me for just a
23 second and clarify it for me. You're presenting to
24 the Court someone could not bring an equitable
25 estoppel action unless the statute has run. Does

1 that case say that?

2 MR. CONLEY: No, Judge, that's not what
3 I am saying so that's where we are confused.

4 THE COURT: That's the impression I get
5 from you, that the statute has to run before you
6 can have a cause of action of equitable estoppel.

7 MR. CONLEY: No, Judge. Let me back
8 up. If you look at the Court's order, the Court's
9 order talks about the doctrine of equitable
10 estoppel, not their promissory estoppel claim, but
11 the doctrine of equitable estoppel stopping the
12 City from asserting the statute of limitations as a
13 defense. There's a whole paragraph in the order
14 that talks about equitable estoppel in regard to
15 the City's affirmative defense asserting the
16 statute, three years statute of limitation.

17 What I am telling the Court, what I
18 will represent to the Court, is equitable estoppel
19 has no bearing on our assertion of the statute of
20 limitations. In fact, equitable estoppel as to our
21 assertion, statute of limitations according to
22 these cases doesn't even apply until the Court has
23 made a finding that the statute of limitations has
24 run. I'm not even talking about their claim of
25 promissory estoppel. I'm talking about our defense

1 that the statute of limitations has run. And they
2 have said, their position has consistently been
3 through this litigation, that we were equitably
4 estopped, the City was equitably estopped from
5 asserting the statute of limitations as a defense.

6 They have made the assertion as the
7 Court notes in its order based upon the grounds of
8 things that they allege the City did delayed them
9 from filing a lawsuit or caused them not to file it
10 sooner than they did.

11 What I am representing to the Court,
12 these cases clearly stand, is that the Court in its
13 order has leaped to applying equitable estoppel to
14 our affirmative defense of the statute of
15 limitations without first making a finding of fact
16 in the order that, in fact, they did file their
17 claims outside of the statute of limitations.
18 Because these cases stand for that proposition,
19 that equitable estoppel doesn't even apply in
20 regards to the affirmative defense of statute of
21 limitations unless there's actually been a filing
22 beyond the statute.

23 So I guess to best succinctly say that,
24 it's our position that the order lacks a
25 requirement and the requirement is you can't get to

1 addressing equitable estoppel in the order in this
2 case until there's been a finding that yes, in
3 fact, these four Plaintiffs filed their claims
4 outside of the statute of limitations. Now, I am
5 sorry --

6 THE COURT: Go ahead.

7 MR. CONLEY: In addition to that, the
8 other lacking thing about the order, if the Court
9 is then going to apply and find that equitable
10 estoppel does, in fact, bar if you will or prohibit
11 if you will the City from relying upon and
12 obtaining the obvious repercussions of the statute
13 of limitations, then the Court has to make the
14 other findings about the elements of equitable
15 estoppel at that point. The Court in its order has
16 got to find that the conduct of the City amounts to
17 a false representation or concealment of material
18 facts.

19 There's nothing in the order that finds
20 that the City made false representation to any of
21 these four Plaintiffs or that the City falsely
22 concealed material facts. The order has also got
23 to make a finding that there was an intent that
24 their conduct, their false conduct, their false
25 representation be acted upon by these Plaintiffs.

1 There is no finding of regard to that in the order.

2 There's got to be knowledge
3 constructive of the true facts. And then there has
4 got to be findings about their lack of knowledge.
5 Got to be a lack of knowledge, got to be reliance
6 upon the City. Got to be a prejudicial change in
7 position.

8 The point being, Judge, to succinctly
9 sum up, the statute of limitations argument is --
10 in order for the Court to address their claim that
11 the City of North Charleston is equitably estopped
12 from asserting the statute of limitations, the
13 Court first has to find as a matter of law and as a
14 matter of fact that these four Plaintiffs, each of
15 them individually, filed their claim outside the
16 statute of limitations.

17 If the Court doesn't make that finding,
18 then the equitable estoppel argument made as to the
19 statute of limitations doesn't apply.

20 We don't even get there. And if the
21 Court then makes that finding that they each, in
22 fact, did file a claim outside the statute of
23 limitations, then the Court can address equitable
24 estoppel and apply it to these facts and to the
25 City. But in that regard, the City -- the Court

1 then has to go through in its order and address the
2 elements of equity estoppel. It would be my
3 position that the order fails to do so.

4 Judge, the only other thing that I
5 would add to that is the other case that I point
6 the Court is to Kelly v. Logan, South Carolina
7 Court of Appeals case as well, 682 S.E. 2nd 1. I
8 am happy to e-mail your clerk a copy of each of
9 these when we are done today.

10 I would also note to the Court that
11 when the Court gets those to see, there has been
12 some pretty significant negative treatment of both
13 those cases. And they have been abrogated in some
14 regard, but I don't think those abrogations of
15 negative treatment apply to the issues addressed by
16 the Court of Appeals I'm addressing now.

17 THE COURT: Okay. Ms. Bloodgood, let
18 me hear you on the equitable estoppel on the
19 statute of limitations issue.

20 MS. BLOODGOOD: Yes, Your Honor. I
21 understand that Mr. Conley is making a distinction
22 evidently between equitable estoppel and tolling
23 may be a word that should have been used by me more
24 often in that the statute of limitations was tolled
25 through the conduct. And I think there is plenty

1 of findings in paragraph 15 and 16 that is factual
2 support for the tolling of the statute.

3 THE COURT: Let me ask you a factual
4 question because I don't remember if we heard this
5 testimony back in October. Were all four parties
6 outside the statute of limitations? I don't
7 remember factually. Yes or no?

8 MS. BLOODGOOD: Yes, I believe that
9 they all were because everything happened at the
10 same time.

11 THE COURT: Go ahead. I couldn't
12 remember specifically.

13 MS. BLOODGOOD: Right. In 2009 they
14 were repeatedly told by the City they were going to
15 be grandfathered and there was an e-mail introduced
16 into the record.

17 THE COURT: Go ahead with your
18 argument.

19 MS. BLOODGOOD: Your order says that
20 whether you say that the statute is tolled by their
21 conduct, which might be the easier thing to do, or
22 if, you know, since the case was cited that uses
23 the term equitable estoppel, it's only a matter of
24 going back in and saying they relied on the e-mails
25 that's not in the order, that's true. They relied

1 on the e-mails to their detriment because they were
2 told they were grandfathered in 2011. I think that
3 it was not until they realized that the City was
4 not going to grandfather them in after 2011 that
5 the statute would have really started to run.
6 Those are the arguments I made.

7 I understand his equitable estoppel
8 argument. But I think we are just putting the
9 labels on facts that we're going to come to the
10 same conclusion. Clearly they spent two years
11 trying to figure out does this apply to me. And
12 they were told no, it doesn't. You're
13 grandfathered. You already retired. It wasn't
14 until 2000 and I filed it in 2014, so they're
15 within the statute, that they said we got a
16 problem. And the City brought in the insurance
17 people.

18 So, you know, if Your Honor would like
19 me to suggest changes to the order to frame it in
20 equitable estoppel I could or to just say statute
21 was tolled, it was tolled while they were told
22 different things by the City that the statute
23 tolled. And I think it is a thin line, but I think
24 either way you come down, the facts support that
25 they -- when they knew that they had a problem was

1 in -- after the 2011 e-mail. I think there was
2 some testimony it was after they met with the
3 insurance adjustor in 2012.

4 THE COURT: Okay. Thank you. Mr.
5 Conley, very brief in reply.

6 MR. CONLEY: Sure, Judge. What I
7 understood Ms. Bloodgood to say was essentially
8 that their position is that essentially each of the
9 four Plaintiffs did, in fact, file their claims
10 outside the statute of limitations. Taking that on
11 its face as a concession in this case, then in
12 fact, the doctrine of equitable estoppel does apply
13 just as I talked about because the Court can now
14 make a finding based on that representation that
15 each of the four Plaintiffs filed their claims
16 outside the statute of limitations.

17 Thus, the doctrine of equitable
18 estoppel applies. So my consequential
19 corresponding assertion would be that if that is
20 now, in fact, the case, which it sounds like it is,
21 then there needs to be some specific findings in
22 the order as to how the doctrine of equitable
23 estoppel, the elements of it and the elements are
24 well discussed in the two cases I refer to, how
25 those apply in this case.

1 THE COURT: Thank you very much. Let
2 me hear you on your arguments as you want to
3 address on your motion.

4 MR. CONLEY: Judge, section B, I will
5 stand upon the arguments I've really raised in the
6 memo and that is essentially what the Court has
7 found here is that we had some binding indebtedness
8 to retirees based on an ordinance and
9 representations that were made to them.

10 Our position is that the South Carolina
11 Constitution basically prohibits that kind of
12 bonded indebtedness of a political subdivision like
13 the City other than in some very --

14 THE COURT: I think that argument was
15 made at the trial.

16 MR. CONLEY: It was and that's why I am
17 not going to belabor the issue.

18 THE COURT: Don't belabor that because
19 the ordinance was there, but they just didn't fund
20 it. That didn't nullify the order.

21 MR. CONLEY: Section C, I am not going
22 to belabor that either. That just is an argument
23 that there's no discussion about the budget
24 ordinance within the order. I think what I said in
25 my memo is really all I can say about those, Judge.

1 I won't belabor the point here.

2 We have already talked about Item 4 and
3 that you had indicated you are going to modify the
4 order to address what I have raised.

5 THE COURT: I agree with you on that.
6 I think I got to modify the order and put in there
7 terms of monetary judgments.

8 MR. CONLEY: So the final item there
9 would be item E, Judge, as contained the motion to
10 alter or amend which is in regards to the award of
11 attorney's fees. I want to address that initially.

12 THE COURT: Let me address that real
13 quickly. Okay? I read the affidavit. And I agree
14 with you that No. 1, we need a copy of the
15 contingency fee contract, okay? That's not
16 attached to the affidavit that I saw.

17 MS. BLOODGOOD: I am sorry, Your Honor.
18 A copy of what?

19 THE COURT: You said you had a party
20 contract to pay attorney fees equal to 33 percent.

21 MS. BLOODGOOD: Yes.

22 THE COURT: I need a copy of that
23 contract. That was not attached to the affidavit.
24 I think that needs to be presented to the Court and
25 Mr. Conley.

1 MS. BLOODGOOD: Okay. I will, Your
2 Honor.

3 THE COURT: No. 2, I agree with Mr.
4 Conley on the 20 years. That was not their life
5 expectancy. Although they did not get into all
6 that at trial. Let me find Mr. Conley's --
7 Defendant objects to the affidavit. Looks like on
8 page 3 at the bottom he refers to Mr. Hood's 71
9 years old, had a life expectancy of 12.66. I am
10 assuming that's correct looking at the chart. I
11 haven't verified that, okay? Have you.

12 MS. BLOODGOOD: No, but I'm sure the
13 charts that you find on line are all the same.

14 THE COURT: I think he is right about
15 the life expectancy issue, okay? And as to Forner,
16 my question to you, if I remember correctly he was
17 not 65. He was still under the plan, right?

18 MS. BLOODGOOD: Yes, Your Honor.

19 THE COURT: And when he reaches 65 his
20 life expectancy is 16.8 years assuming that that's
21 right. I have not looked at the chart. I was just
22 using Mr. Conley's figures; is that correct, Mr.
23 Conley?

24 MR. CONLEY: Yes, Judge. I looked at
25 the statute and I pulled those numbers right off

1 the statute, so unless I misread the statute they
2 comply.

3 THE COURT: Well, I am just saying if
4 that's correct then I think he is correct. We got
5 to make modifications according to the life
6 expectancy of each party, Mr. Rissanen when he
7 reaches 65.

8 Now, having said that, assuming I do
9 not change my mind on Mr. Conley's issues on the
10 equitable estoppel issue, and I continue, let me
11 make some comments and see what the attorney's
12 responses are on the comments.

13 No. 1, I reviewed what -- I didn't
14 study it, but I did review what Ms. Bloodgood sent
15 by e-mail on Blue Cross and Blue Shield on Mr.
16 Rissanen, Mr. Baxley, looks like Mr. Hood.

17 Now, I wasn't sure what that last one
18 was for Blue Cross and Blue Shield, was that on Mr.
19 Hood?

20 MS. BLOODGOOD: No, actually that came
21 from Mr. Rissanen. That was sent to him.

22 THE COURT: As to Mr. Rissanen.
23 Briefly looking at it, I saw nothing on Mr. Hood on
24 what he had paid up to present.

25 MS. BLOODGOOD: Right. And, Your

1 Honor, I have -- Mr. Hood's mother has had a
2 stroke. I have his cell phone number. And I told
3 him if we wanted that information today we could
4 call him and he can tell you because he has a chart
5 on what he paid every year for the last seven
6 years.

7 THE COURT: It wasn't in this material.
8 Now, the question that I have is as I think my
9 clerk told you in an e-mail that I would open the
10 record to obtain the information in order to
11 accurately reduce it to a monetary judgment.

12 Now, Mr. Conley, how do you want the
13 Court to do that? Do you want me to have these
14 parties submit an affidavit? Do you want me to
15 convene a hearing with direct and cross-examination
16 on that particular issue what they have paid up
17 until present?

18 MR. CONLEY: Sure.

19 THE COURT: I will be happy to do it
20 either way.

21 MR. CONLEY: Sure. If I can, I want to
22 address that really threefold. One is the City
23 would have an objection to reopening the record at
24 all.

25 THE COURT: I don't care if you have an

1 objection, I'm going to reopen it.

2 MR. CONLEY: I understand. I am
3 just --

4 THE COURT: I am reopening it based on
5 your objections, your motion to amend and alter. I
6 think I have to amend and alter to reduce to
7 monetary judgment. In order to do monetary
8 judgment I got to take some additional testimony,
9 okay?

10 MR. CONLEY: Sure.

11 THE COURT: That's at your request.

12 MR. CONLEY: I just want to put my
13 objection. I understand that's your position,
14 Judge. The second issue --

15 THE COURT: You objected to the Court
16 order and now you are objecting to the Court
17 granting your motion on the monetary judgment.
18 Which way is it?

19 MR. CONLEY: No, I am objecting to the
20 monetary judgment, Judge. I am suggesting, in
21 fact, that that testimony is already in the record
22 and let me explain. Each of the four Plaintiffs at
23 trial testified about what they had spent out of
24 pocket as of the day of trial at the conclusion of
25 trial. So that testimony --

1 THE COURT: Well, I can look at my
2 notes or I can get a transcript. I don't recall
3 exactly those figures, okay? And that's why I am
4 reopening it and you can present it either by
5 affidavit or testimony.

6 Now, if you got a transcript and we can
7 need to redact it from the transcript, that's fine.
8 I don't have a transcript.

9 MR. CONLEY: I am happy to order a
10 transcript and supply that -- that information to
11 the Court.

12 THE COURT: Which is quicker to do, by
13 affidavit or reconvene it, which is it? You get a
14 transcript you are talking about six months from
15 now.

16 MR. CONLEY: Well, Judge, and this sort
17 of dovetails into the third issue here, what I hear
18 the Court saying, although I may be
19 misunderstanding, is that you are going to take
20 testimony from them as to what their out-of-pocket
21 expenditure if you will, that's the best way I can
22 put it, is up until the day you take that
23 testimony. So for instance if you took it --

24 THE COURT: I will take it up to the
25 date of trial, okay?

1 MR. CONLEY: Okay.

2 THE COURT: I don't have any -- up to
3 date of trial, not up to present.

4 MR. CONLEY: That's fine. So now
5 understanding that, if the Court's going to reopen
6 simply to allow them to basically restate the same
7 testimony they gave at the trial, I don't object to
8 the Court reopening for that specific.

9 THE COURT: That's what I am opening it
10 for, okay?

11 MR. CONLEY: I just want to make sure
12 because when I seen the e-mails from your clerk and
13 some of the context back and forth, I got the
14 impression, although wrongly, that somehow they
15 were going to be allowed to offer their
16 out-of-pocket expenditures up until the day of
17 whatever this new testimony was.

18 THE COURT: I just don't have it in my
19 notes adequately to feel comfortable to say what it
20 is, okay? And I don't have a transcript. So my
21 problem is retrieving it.

22 Now, which way do you want it? Do you
23 want to do them by affidavit or do you want me to
24 bring them in and testify?

25 MR. CONLEY: Certainly not by

1 affidavit. If the Court is going to do in that
2 fashion then we would prefer --

3 THE COURT: If anybody has proper notes
4 from the hearing and can provide me that I will be
5 happy to receive it that way from the attorneys.

6 MR. CONLEY: Judge, I actually looked
7 back at my notes from trial and they are unclear on
8 what those numbers are.

9 THE COURT: That's my problem too. I
10 looked at my notes and they are very unclear. They
11 are there, but I got confused on which was which to
12 be honest with you.

13 MR. CONLEY: And a similar issue for me
14 when I looked at mine. I did not represent
15 specifically without seeing the actual transcript
16 of the trial what each of them said.

17 THE COURT: What I am going to do is
18 reconvene the hearing and let Ms. Bloodgood call
19 each one of the four and testify what they had
20 expended expenditures until the time of the
21 hearing, okay?

22 MR. CONLEY: Yes, Your Honor.

23 THE COURT: Ms. Bloodgood.

24 MS. BLOODGOOD: That's fine, Your
25 Honor. Just do it with the three, it really only

1 applies to the three.

2 THE COURT: Right, three, that's right.
3 Now, the second issue is the question of inflation
4 rate on these payments and the future and the
5 discount rate. Now, according to the Government
6 Bureau of Business and Statistics, today's
7 inflation rate is 1.8. Today's discount rate is
8 2.25, but I know Congress considers a lot other of
9 factors when they reduce to present day value.

10 Now, having said that, I need that
11 information to accurately compute the inflation
12 rate of these premium payments over the life
13 expectancy and then reduce that to present day
14 value. I can there again do that by affidavit from
15 an economist that you two can agree on, or I can
16 reconvene the hearing, one of the two of you can, I
17 guess Ms. Bloodgood can call an economist to
18 establish those figures.

19 I mean it is easy to look them up, what
20 is the date, next year, next month, next week.

21 MR. CONLEY: If I may --

22 THE COURT: To reduce it to present day
23 value and I think under the law I have to do it.
24 How did y'all want to proceed with that?

25 MR. CONLEY: Judge, again, the City's

1 position would be the same. In respect to
2 reopening the case as to that kind of testimony, we
3 would object to that. That's the kind of testimony
4 certainly the Plaintiffs could have offered during
5 the trial of this case. I will point out to the
6 Court that there was a time during the course of
7 litigation that Ms. Bloodgood and her clients
8 actually named an expert who apparently was going
9 to offer testimony in an opinion with exactly what
10 the Court is discussing right now. I insisted upon
11 taking that expert's deposition. And prior to
12 taking that expert's deposition Ms. Bloodgood and
13 her client for whatever reason decided to withdraw
14 that person as an expert, and if need be I can show
15 the Court the discovery responses that clearly show
16 that person was identified and withdrawn.

17 The point, Judge, is that is evidence
18 these Plaintiffs could have, should have and at
19 some point in the course of the litigation actually
20 intended to offer in the context of the trial in
21 this case in October and they chose not to.

22 Our position would be to open the case
23 for that kind of testimony at this point would be
24 completely improper, outside the rules and allow
25 them essentially a new bite at the apple here on

1 something that they just decided at trial not to
2 offer. In fact, they decided in advance of trial
3 by withdrawing that person as a witness.

4 So the point being Ms. Bloodgood and
5 her clients recognized the very issue you raise now
6 during the course of this litigation. Named
7 somebody as an expert and subsequently withdrew
8 that person and never called anybody to offer the
9 exact kind of testimony the Court discusses now.
10 We strenuously object to reopening the order to
11 allow that kind of testimony at this point.

12 THE COURT: Okay.

13 MS. BLOODGOOD: Your Honor, Bob is
14 right. We did go through a lot of numbers at one
15 point and decided because of all the objections to
16 all the numbers that we would just say keep your
17 promises, do what said you will do, pay every month
18 what they were supposed to be paying.

19 THE COURT: Well, I drafted the order
20 according to that.

21 MS. BLOODGOOD: I know.

22 THE COURT: And he raised the issue of
23 monetary judgment and I think he's correct. And I
24 don't have the information to properly do a
25 monetary judgment.

1 MS. BLOODGOOD: Yes. I am glad to do
2 whatever, either get the economist and come in and
3 do that, I will do whatever the Court wants. I
4 think probably what I am hearing is they don't want
5 affidavits. They would like testimony so --

6 THE COURT: Mr. Conley, do you want
7 testimony or affidavit?

8 MR. CONLEY: If the Court is going to
9 reopen the trial for that purpose, we definitely
10 want testimony. We would also want an opportunity
11 for that person to be deposed before that testimony
12 was offered. If the trial is going to be reopened
13 to allow --

14 THE COURT: I am not opening the trial
15 itself. I am opening it subject to your motion to
16 take additional testimony so the Court can rule on
17 your motion. That's why I am opening it. I want
18 to make the record clearly reflect that I can take
19 affidavits, memorandum and testimony pursuant to a
20 motion.

21 I am doing it pursuant to your motion.
22 Make sure the record is very clear on that. Not
23 the trial. Do you understand?

24 MR. CONLEY: I do.

25 THE COURT: Did you understand my

1 distinction?

2 MR. CONLEY: Certainly. I hear your
3 position.

4 THE COURT: Just want to make sure you
5 understand it.

6 MR. CONLEY: Our objection is the
7 same.

8 THE COURT: I understand your
9 objection.

10 MR. CONLEY: We would ask that, yes, if
11 they are going to name and identify an expert we
12 would want an opportunity to not only depose that
13 the expert, but then for that expert to have to
14 come in and actually testify on the record.

15 THE COURT: Ms. Bloodgood, if you will
16 obtain that expert, get him to calculate these
17 figures according to the life expectancy according
18 to the inflation rate on those premium payments,
19 and he also has to I guess project Mr. Forner out
20 on his life expectancy and those premium payments
21 that he would make when he reaches 65 to
22 incorporate all four and also discount that to
23 present day value.

24 MS. BLOODGOOD: Okay. I will do that,
25 Your Honor.

1 THE COURT: Make him available for a
2 deposition. Once y'all have taken that you can
3 either present the deposition or I'll reconvene
4 a -- a hearing on this motion to accept that
5 testimony. I can do it by affidavit, by deposition
6 or I can do it by live testimony. I will do it
7 whichever way y'all want to do after you have taken
8 the deposition.

9 MR. CONLEY: Certainly, Your Honor.

10 THE COURT: Okay? Now, having said
11 that, as far as that portion of the motion, I am
12 going to take it under advisement until I am
13 apprised on how you are going to present the
14 economist's testimony to the Court or information
15 from the economist to the Court, either by
16 affidavit, by deposition or by live testimony.
17 Doesn't matter to the Court.

18 MR. CONLEY: Understood.

19 THE COURT: Okay?

20 MS. BLOODGOOD: Yes.

21 THE COURT: Anything else on the
22 motions that we have not discussed this morning,
23 Mr. Conley?

24 MR. CONLEY: I think there is, Judge.

25 THE COURT: Go ahead. Let me hear you.

1 MR. CONLEY: The one thing I wanted to
2 note to the Court is that obviously the attorney's
3 fees issue has been raised and the only thing I
4 wanted to mention to the Court --

5 THE COURT: What now?

6 MR. CONLEY: The issue of their --
7 Plaintiffs and Ms. Bloodgood's attorney's fees.
8 The only thing I meant to mention a moment ago
9 before we segued into this other issue is, Judge, I
10 think and I just sort of realized --

11 THE COURT: Let me ask you this:
12 Before -- I will hear you on what you want to say.
13 I want to ask this question. On the attorney fees,
14 I know you got an argument she is not entitled to
15 them, but putting that aside right now, do you
16 think she should be entitled to attorney fees under
17 contingency contract or hourly rates?

18 MR. CONLEY: I don't know the answer to
19 that question because we haven't even seen all the
20 information as to the contingency rate.

21 THE COURT: You have got her hourly
22 rates, total hours at this point in time.

23 MR. CONLEY: Yes, I have seen her total
24 hours, but as the Court just pointed out, we
25 haven't seen the actual contingency fee agreements.

1 Without me seeing the actual --

2 THE COURT: I understand, but let's
3 assume it's a contingency fee. That's the standard
4 under the law and that she is entitled to one-third
5 of her recovery.

6 My question to you is this: That's
7 generally taken out of the proceeds from the
8 clients. In this situation it is going to -- the
9 opposition is going to have to pay it. So I'm not
10 sure the contingency fee should be applied. Do you
11 understand what I'm saying? Because it's not
12 coming out of recovery. It's coming in addition to
13 from the Defendant.

14 So that's why I asked you the question
15 about contingency versus hourly rate. Follow me?

16 MR. CONLEY: I do.

17 THE COURT: That's sort of my question
18 to you.

19 MR. CONLEY: I do sort of. I'm not
20 sure I really -- I have to be candid. I am not
21 really sure I understand the question. That's not
22 the Court's fault, that's my fault.

23 THE COURT: Let me see if I can
24 rephrase it so you understand. Contingency fee is
25 a contract between Ms. Bloodgood and her client. I

1 will take a third or 25 percent or 40 percent of
2 the recovery.

3 In this situation, statute, and I know
4 you're arguing about the statute, I understand
5 that, but assuming the statute applies, in that
6 situation the Defendant pays. I'm not sure it's
7 fair to the Defendant for the Court to impose
8 one-third or 40 percent of whatever the contract
9 says and add that on to the total amount of the
10 damages. I think it possibly should be the hourly
11 rate or at least the Court have the opportunity to
12 look at both and determine what's fair to the
13 Defendant. That's sort of my question to you.

14 MR. CONLEY: Well, first of all, Judge,
15 I would be candid with you that I have not thought
16 about the question in the context you just raised
17 it in until now. Based upon the limited amount of
18 time I am standing here thinking about it, it would
19 sound to me like what else -- sort of go back to
20 what you mentioned just in your third option. Is
21 perhaps at that point the Court look at this itself
22 and my phrase would be weigh the equities or
23 something how the statute applies in that
24 situation.

25 The one thing I wanted to mention in

1 this regard though, Judge, is I think in regards to
2 the attorney's fees issue that we have all sort of
3 put the cart before the horse on that issue because
4 I just looked at this this morning and finished
5 preparing for this hearing and realized that really
6 there is two cases in South Carolina that say we
7 shouldn't even be considering the attorney's fees
8 issue at this point.

9 And that is for this reason. And they
10 both rely upon that statute 15-77-3, the two cases
11 that I will mention are McDowell v. South Carolina
12 Department of Social Services 386 SE 2d 280, and
13 Willis Construction Company v. Sumpter Airport
14 Commission, 419 SE 2d 240.

15 In the context of that statute, those
16 cases talk about a number of things unrelated to
17 this, but in the context of the statute those two
18 cases stand for this simple proposition, we are not
19 at a point in the case where there has been a final
20 disposition and the statute talks about the
21 Plaintiffs in this case have to petition the Court
22 for their fees once there has been a final
23 disposition.

24 So first of all, we are clearly not at
25 a final disposition even at the trial court level.

1 But interestingly when you look at McDowell and you
2 look at Willis and what the Court Of Appeals said
3 in both of those cases, the petition for attorney
4 fees, in this case and frankly any other under the
5 statute, is not final until one of several things
6 might happen.

7 One, there's a final judgment issued by
8 the Court in this case, for instance the City
9 doesn't appeal it, 30 days runs and so therefore
10 the judgment becomes forever final, only then is
11 there really a final disposition.

12 In these cases the Court notes this was
13 not a final disposition in these cases. Those
14 cases had gone up an appeal, and a remittitur had
15 actually been issued back down to the clerk of
16 court in the circuit court. And it was only at
17 that moment in time when the clerk of court
18 received the remittitur from the appellate court,
19 Court of Appeals, only at that moment was there a
20 final disposition under the statute and only at
21 that time did the Plaintiff or Plaintiffs in those
22 cases, could they then under the statute file their
23 petition for attorney's fees. That makes a lot of
24 sense.

25 THE COURT: So you think you got to go

1 through the appeal process before the Court can
2 award attorney fees.

3 MR. CONLEY: Absolutely. I think
4 that's what these cases both clearly say. It's not
5 just me, I think you can read both those cases.
6 That's what they clearly stand for. And if you
7 think about it, Judge, that actually makes a lot of
8 sense because if under the statute the Plaintiffs
9 for instance in this case, if under the statute
10 they are entitled to their attorney's fees then
11 conceptually they are entitled to their attorney
12 fees for the appellate process as well.

13 THE COURT: Well, I tend to -- well,
14 maybe under this particular statute you may be
15 correct, but normally attorney's fees, that's sort
16 I think out of kilter because I haven't read the
17 case, but I will read them, okay?

18 MR. CONLEY: Sure.

19 THE COURT: And normally as far as this
20 Court is concerned it is final once I issue an
21 order. Now, if you appeal it or she appeals it,
22 this Court loses jurisdiction going to the
23 appellate court. An appellate court has the means
24 to award attorney fees. I understand what you are
25 saying. Under this statute you may be absolutely

1 correct. I don't know. I'm not sure it makes
2 sense in all the attorney fee cases because if I
3 had to wait to award attorneys until two years, I
4 will agree with you from this standpoint, the
5 attorney fees issues in my opinion should not be
6 subject to interest rate once the judgment has been
7 entered. I will agree with you on that. I don't
8 know what the law is on that, but it seems only
9 equitable.

10 MR. CONLEY: And I am not disagreeing
11 with the Court in general in regards to the
12 awarding of attorney's fees. I'm solely talking
13 about in regards to this specific statute.

14 THE COURT: I understand.

15 MR. CONLEY: In this case.

16 THE COURT: I think that would be very
17 awkward when it comes to attorney fees to -- let's
18 just deal with it in appellate court.

19 MR. CONLEY: It does seem awkward until
20 you read these two cases.

21 THE COURT: I don't think it is very
22 logical, the way they are dealing with the attorney
23 fee issue, but I will read the cases.

24 MR. CONLEY: Sure.

25 THE COURT: Anything else on attorney's

1 fees? I have read your memo and I understand you
2 don't think they apply completely, but I will
3 revisit this issue. I read your memo and I will
4 revisit that issue when I read your cases, okay?

5 MR. CONLEY: Yes, Judge.

6 THE COURT: Ms. Bloodgood, anything you
7 want to address on attorney's fees?

8 MS. BLOODGOOD: No, Your Honor.

9 THE COURT: Anything else we need to
10 bring up in this particular hearing?

11 MR. CONLEY: I don't believe so, Judge.

12 THE COURT: I'm going to adjourn this
13 hearing to take further information from an
14 economist and from the parties concerning the
15 amount paid up to the time either by affidavit,
16 deposition or live testimony pursuant to this
17 motion.

18 MS. BLOODGOOD: Thank you, Your Honor.

19 MR. CONLEY: Thank you, Judge.

20 THE COURT: Thank you.

21 (These proceedings were concluded at
22 11:00 a.m., March 28, 2018, Charleston County,
23 South Carolina.)
24
25

1 CERTIFICATE OF REPORTER
2

3 I, Ruth C. Weese, Registered Diplomat
4 Reporter, do hereby certify that the foregoing
5 transcript is a true, accurate, and complete
6 record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 14th day of March, 2019.
12

13 *Ruth C. Weese*
14

15 Ruth C. Weese
16 Registered Diplomat
17 Reporter
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2013-CP-10-3210
	)	
	)	
ALVAR R. RISSANEN, MICHAEL H.	)	
BAXLEY, CLIFFORD W. FORNER,	)	
and WILLIE L. HOOD	)	
	)	
Plaintiffs	)	
	)	
vs.	)	
	)	
CITY OF NORTH CHARLESTON	)	
	)	
Defendant	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD
		November 8, 2018
		Charleston, South Carolina

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JUDGE

A P P E A R A N C E S:

NANCY BLOODGOOD, ESQ.
Attorney for the Plaintiffs

BOB J. CONLEY, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

INDEX TO PROCEEDINGS	PAGE
PROCEEDINGS	4
MOTION TO RECONSIDER	
TYLER GIBBONS	
Direct Examination by Ms. Bloodgood	8
Cross-Examination by Mr. Conley	11
LEROY STRICKLAND	
Direct Examination by Mr. Conley	24
Cross-Examination by Ms. Bloodgood	43
CERTIFICATE OF THE COURT REPORTER	46

INDEX TO EXHIBITS

PAGE

PLAINTIFF

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>	
11	TKG	4	22
12	Resume of Tyler Gibbons	4	22

DEFENDANT

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>	
16	Summary of Calculations	4	25
17	Resume of Leroy Strickland	4	23

1 PROCEEDINGS

2 THE COURT: All right.

3 MR. CONLEY: Good morning, Judge. We're working on
4 a couple of exhibits that we were going to have her mark
5 so we can just put them in and hand them to you.

6 THE COURT: All right. Let's see, Ms. Bloodgood
7 and Mr. Conley, right?

8 MS. BLOODGOOD: Yes, Your Honor.

9 MR. CONLEY: Yes, sir.

10 THE COURT: Are you going to go ahead and get them
11 marked?

12 [Whereupon, Plaintiff's exhibit numbers 11 and 12
13 are marked by the Court Reporter]

14 [Whereupon, Defendant's exhibit numbers 16 and 17
15 are marked by the Court Reporter]

16 THE COURT: Is your economist here?

17 MS. BLOODGOOD: Yes, he is.

18 THE COURT: Okay. Ms. Bloodgood, have you gotten
19 marked what you need marked?

20 MS. BLOODGOOD: Yes, Your Honor.

21 THE COURT: All right.

22 MR. CONLEY: And Judge Roy Strickland, our expert,
23 is on his way. He wasn't expecting to be here until 9:30
24 but Ms. Bloodgood and I decided we could go ahead and
25 start ---

1 THE COURT: --- let me put on the record. We're
2 here today in the case of Rissanen, Baxley, Forner, and
3 Hood versus the City of North Charleston that I heard
4 several months ago and issued an order granting the
5 Plaintiff's cause of action. And the Defendant filed a
6 Motion to Reconsider stating that the Court needed to do
7 a lump sum monetary award as to the premiums and other
8 issues involved in the case contrary to what the Court
9 did initially. And I agreed with Mr. Conley on that.

10 And I set this hearing up to give Ms. Bloodgood and
11 Mr. Conley an opportunity to present an economist to run
12 those figures out to life expectancy and reduce them to
13 present day value and then issue attorney's fees. And
14 that's why we're here this morning.

15 Let me say I don't know how long y'all are planning
16 on taking but to me it's a very narrow issue that the
17 Court is going to hear. We're not going to revisit
18 anything else except that monetary amount of money.

19 MR. CONLEY: No, Judge. In fact Ms. Bloodgood and
20 I met earlier the end of last week to try and streamline
21 this for you this morning.

22 THE COURT: Because I'm not trying to pressure you
23 but I'm in the middle of a murder trial and the jury is
24 coming back at 10 o'clock this morning, okay. Who -- Ms.
25 Bloodgood you can call your first witness. If you want

1 to and if you would very briefly make a very brief
2 opening statement.

3 MS. BLOODGOOD: Yes, Your Honor.

4 THE COURT: And then I'll hear from Mr. Conley and
5 you can call your first witness and Mr. Conley can call
6 whatever witness he desires.

7 MS. BLOODGOOD: Your Honor, in trying to expedite
8 the process I filed this morning and you have a copy and
9 so does Mr. Conley an amended affidavit which also
10 includes my hours but the retainer agreements that you
11 had previously asked for the four Plaintiffs. I attached
12 that to that. And also there is a copy at the back of
13 the expert report so it's all in one place for you. So
14 the only witness I have today is Tyler Gibbons who is our
15 expert.

16 THE COURT: Let me just ask you one question. What
17 basis do you think you are entitled to attorney's fees in
18 this particular action?

19 MS. BLOODGOOD: Under the statute that allows
20 attorney's fees if you prevail against a political entity
21 implemented by a political subdivision of the state which
22 the City of North Charleston is. And I put the law in my
23 affidavit, Your Honor.

24 THE COURT: Okay.

25 MS. BLOODGOOD: So that's the basis. And also my

1 retainer agreement when you look at that you will see
2 that to the extent attorney's fees are owed that are more
3 than the Court would award that is the responsibility of
4 my Plaintiffs whether I ask for them or not. But
5 technically that is in the retainer agreement.

6 THE COURT: Okay. Mr. Conley?

7 MR. CONLEY: Judge, I agree with Ms. Bloodgood on
8 why we're here this morning and that is to present the
9 testimony of two expert witnesses. One who has been
10 identified as Mr. Gibbons to give you some calculations
11 in terms of respective damages reduced to present value
12 based on life expectancies in individuals.

13 And likewise the City has an expert, Roy Strickland,
14 who is going to testify as well. I don't expect to have
15 much cross-examination for Mr. Gibbons although I do have
16 some. I don't expect Ms. Bloodgood will have a
17 tremendous amount of cross-examination for Mr. Strickland
18 ---.

19 THE COURT: --- thank you Mr. Conley. Ms.
20 Bloodgood, you may proceed.

21 Thank you, Your Honor.
22
23
24
25

1 [Whereupon, Mr. Gibbons comes forward]

2 [Whereupon, the witness is duly sworn by the Clerk
3 of Court]

4 CLERK OF COURT: For the record state your name and
5 spell your last name.

6 THE WITNESS: Tyler Gibbons, G-I-B-B-O-N-S.

7 - - - - -

8 TYLER GIBBONS,

9 Having been first duly sworn,

10 Was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. GIBBONS:

13 Q. Mr. Gibbons, what is your profession?

14 A. I'm a Certified Public Accountant.

15 Q. Did I engage you to determine the cost of Medicare
16 coverage for the Plaintiffs during their lifetime?

17 A. Yes, you did.

18 Q. And did you do that?

19 A. Yes.

20 Q. Briefly, will you tell the Court in a few sentences
21 how you did that?

22 A. I reviewed health insurance premium information
23 based on schedules and I also referred to actuarial
24 tables to determine life expectancy for the clients and I
25 applied present value to get to the final total.

1 Q. And we have marked as exhibit 11, and I think you
2 have a copy of it in front of you, a document. Can you
3 identify the document?

4 THE COURT: Do you need the original? I've got the
5 original here if you need it.

6 MS. BLOODGOOD: That's okay.

7 THE COURT: All right.

8 A. This is my work paper that essentially is what I'm
9 representing is my report.

10 Q. [Ms. Bloodgood] Okay. Is that your professional --
11 does that document Plaintiff's exhibit 7 represent your
12 professional opinion as to the cost of Medicare coverage
13 for each of the four Plaintiffs?

14 A. Yes, it does.

15 Q. And could you tell the Court what your conclusion
16 was as to the cost for each Plaintiff?

17 A. My conclusion is for Mr. Rissanen the cost after
18 discount was applied was 43,556; Mr. Baxley 42,740; Mr.
19 Hood 38,633; Mr. Forner 31,255 to come to a total of
20 156,183.

21 Q. Okay. And just for the Court's information the City
22 of Charleston did have the opportunity and did take your
23 deposition, correct?

24 A. Yes.

25 Q. And we have marked as exhibit 12 your resume. And

1 is the resume that you provided to me the correct resume?

2 A. Yes.

3 Q. Okay. Thank you. If you would, answer any
4 questions that Mr. Conley has.

5 A. Yes.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CROSS-EXAMINATION

2 BY MR. CONLEY:

3 Q. Good morning Mr. Gibbons.

4 A. Good morning.

5 Q. Nice to see you again today. This is the first time
6 you've ever testified in Court as an expert, right?

7 A. That's correct.

8 Q. Your sole issue you looked at in this matter was the
9 cost of supplemental Medicare policies after age 65
10 reduced to present value for these four Plaintiffs?

11 A. That's correct.

12 Q. And that is the sole issue you were asked to look at
13 and it's the sole issue you did look at, correct?

14 A. Yes, sir.

15 Q. Meaning that encompasses the totality of your work
16 on this matter.

17 A. That's correct.

18 Q. And your sole role was to value the cost of Medicare
19 supplements and reduce it to present value and only
20 perform those calculations meaning you weren't asked to
21 do any other calculations, correct?

22 A. Correct.

23 Q. And in fact you did no other calculations, right?

24 A. That's correct.

25 Q. And in the process of doing your work on this case

1 you did not perform any review of rules and/or
2 regulations that apply to Medicare supplements, did you?

3 A. That's correct.

4 Q. And in doing your work in this matter you did not
5 perform any review of any statutes pertaining to Medicare
6 supplements for Medicare at all, correct?

7 A. That's correct.

8 Q. And in doing your work in this matter you did not
9 review any online information in regard to Medicare
10 supplements including even going to Medicare's website,
11 correct?

12 A. That's correct.

13 Q. You made no inquiry of any insurance carrier who
14 provides Medicare supplements about current rates,
15 correct?

16 A. That's correct.

17 Q. And likewise you made no inquiry of any insurance
18 carrier who provides Medicare supplements about future
19 rates did you?

20 A. That's correct.

21 Q. In doing your work in this matter you did no
22 independent research as to expected inflation rates
23 pertaining to Medicare supplements?

24 A. That's correct.

25 Q. Prior to being retained as an expert in this case

1 you had no prior formal knowledge or experience with
2 Medicare supplements?

3 A. Correct.

4 Q. In spite of that lack of knowledge about Medicare
5 supplements again you did no independent research or
6 reading whether it was statutes, regulations, etcetera
7 about Medicare supplements, correct?

8 A. That's correct.

9 Q. And in doing your work other than the records that
10 were provided directly to you by the Plaintiff's counsel
11 you didn't ask for any other records, correct?

12 A. That's correct.

13 Q. Meaning you didn't ask for any other records from
14 the Plaintiff's counsel, correct?

15 A. That's correct.

16 Q. And you didn't ask for any other records from the
17 Plaintiffs themselves, correct?

18 A. That's correct.

19 Q. Your opinions in this case are limited to
20 calculations alone, right?

21 A. Yes.

22 Q. You do not know what Blue Cross and Blue Shield
23 Medicare supplement Mr. Baxley currently has, do you?

24 A. I do not.

25 Q. Similarly you do not know which Medicare supplement

1 Plan Mr. Hood has through AARP, correct?
2 A. I do not.
3 Q. Sitting here today and I think likewise at your
4 deposition you don't know the difference in Medicare Plan
5 N and Medicare Plan F.
6 A. Other than possible premium differences I do not
7 have the specific differences.
8 Q. And similarly you wouldn't know and don't know the
9 difference in Medicare Plan A and Medicare Plan C.
10 A. Correct.
11 Q. In line with that lack of knowledge you do not know
12 if Plan N Medicare supplement and Plan F Medicare
13 supplement provide the same benefits do you?
14 A. I do not.
15 Q. Similarly you do agree or you would agree that there
16 is a premium difference, and I think you just mentioned
17 this, between these various Medicare Plans, correct?
18 A. That's correct.
19 Q. You would also agree there is a premium difference
20 being paid by Mr. Baxley and Mr. Hood and Mr. Rissanen
21 currently, correct?
22 A. That's correct.
23 Q. Based on what you were provided that's accurate
24 right?
25 A. Yes, yes.

1 Q. You would also agree that Mr. Forner does not turn
2 65 until 2024 and therefore he does not currently have a
3 Medicare supplement right?

4 A. Yes, that's correct.

5 Q. And in doing your calculations because of that
6 situation you used Mr. Rissanen's Blue Cross and Blue
7 Shield rate sheet right?

8 A. We used a rate sheet based on a specific Plan,
9 that's correct.

10 Q. And that was Mr. Rissanen's Plan, correct?

11 A. I believe so, yes.

12 Q. And so the assumption built into your calculation in
13 regard to Mr. Forner is that when Mr. Forner turns 65 in
14 2024 he will in fact purchase a Medicare supplement Plan
15 F, correct?

16 A. That's correct.

17 Q. Sitting here today, which I believe was the case at
18 your deposition, you have no knowledge as to whether
19 Medicare Plan F will or will not be available in the year
20 2024, correct?

21 A. That's correct.

22 Q. In doing your calculations that you've given to the
23 Court you used 2015 Blue Cross Blue Shield tables for
24 both Mr. Rissanen and Mr. Forner correct?

25 A. That's correct.

1 Q. You did not consult Blue Cross Blue Shield tables
2 for 2018.

3 A. That's correct.

4 Q. In fact you didn't even try to obtain those tables
5 correct?

6 A. That's correct.

7 Q. You don't hold yourself out as an expert in the
8 field of Medicare supplements correct?

9 A. I do not. That's correct.

10 Q. And prior to you becoming involved in this case you
11 had no formal training or courses or anything like that
12 in Medicare supplements is that accurate?

13 A. That's accurate.

14 Q. In making your calculations in this case and any of
15 the assumptions you had to make you relied upon the
16 Court's prior order that had been issued, correct?

17 A. Yes, that's correct.

18 Q. That order that you were given to review did not
19 tell you what type of Medicare supplement the City had
20 promised these plaintiffs correct?

21 A. I believe that's correct, yes.

22 Q. It simply said they had been promised a Medicare
23 supplement right?

24 A. Yes.

25 Q. That order didn't say whether they had been promised

1 Plan A or Plan F or Plan N, correct?

2 A. It did not specify a Plan to my knowledge.

3 Q. And you didn't make any inquiry beyond what you saw
4 in the order as to which Plan it was these individuals
5 had been promised?

6 A. I did not.

7 Q. Consequently what you did was you made an assumption
8 about the Medicare Plan that was promised to each of
9 them, right?

10 A. Yes.

11 Q. When you performed your various calculations here
12 you made no effort to determine the difference in these
13 various Plans, correct?

14 A. I reviewed the documents that were provided to me
15 and the differences were the premiums but I did not
16 inquire as to the details of the Plan.

17 Q. Sure. And a better way for me to have asked that
18 question was by way of example. You made no inquiry as
19 to the coverage differences if you will for example
20 between a Medicare supplement under Plan A verses a
21 Medicare supplement under Plan F.

22 A. That's correct.

23 Q. You didn't do any research in that regard either
24 correct?

25 A. That's correct.

1 Q. Sitting here today like your deposition and like I
2 earlier asked you in regard to Mr. Hood you do not know
3 which Plan, which Medicare supplement Plan let me be more
4 specific Mr. Baxley currently has do you?

5 A. I do not.

6 Q. Meaning when I ask that question you don't know
7 whether he has a Medicare supplement under Plan A, Plan,
8 F, Plan B correct?

9 A. That's correct.

10 Q. And going back sort of to a question I asked earlier
11 in a general fashion but I'll ask it more specifically
12 you didn't make any inquiry in the performance of your
13 work as to which Medicare Plan Mr. Baxley has did you?

14 A. No, I did not.

15 Q. You simply made an assumption that Mr. Baxley had
16 Plan F correct?

17 A. Yes.

18 Q. And you made an assumption that his future premiums
19 would be based on a continuation of what you assumed was
20 his current Medicare supplement under Plan F right?

21 A. Yes.

22 Q. In regard to Mr. Hood when you did the calculations
23 that you submitted to the Court on Mr. Hood you applied
24 and presumed nine percent increased premiums going
25 forward as to Mr. Hood correct?

1 A. That's correct.

2 Q. Yet you made no inquiry of AARP or anybody else what
3 the projected rate increases would be into the future
4 correct?

5 A. That's correct.

6 Q. And in coming to that rate of inflation if you will
7 you didn't do any research to come up with that rate
8 correct?

9 A. That's correct.

10 Q. And similarly you did no research, made no inquiry
11 about current inflation rates on Medicare supplements at
12 all in the course of doing your calculations that you've
13 submitted to the Court.

14 A. The basis of this report is based on the documents
15 provided and that were reviewed.

16 Q. But again you didn't do any independent research did
17 you?

18 A. No, sir.

19 Q. In regard to Mr. Forner in regard to him you assumed
20 as I mentioned earlier that when he turns 65 he will
21 purchase Plan F Medicare supplement Plan F correct?

22 A. Correct.

23 Q. And in performing your calculations and making that
24 assumption I'm also correct that you made no inquiry of
25 Mr. Forner directly ---

1 A. --- that's ---

2 Q. --- about of the current available Medicare
3 supplements which one he might desire to purchase in 2024
4 right?

5 A. That's correct.

6 Q. You didn't make that inquiry of him directly did
7 you?

8 A. No, sir.

9 Q. All of that again as you've said in respect to other
10 items was done solely based on documents given to you by
11 the Plaintiffs themselves right?

12 A. Yes, sir.

13 Q. At the time of your deposition you had not but I'll
14 ask you sitting here today given there has been some span
15 of time between then and now am I correct in assuming
16 that you have still done no research to determine future
17 costs for Medicare supplements?

18 A. That's correct.

19 Q. Is it also correct for me to assume or is my
20 assumption correct I should say that sitting here today
21 you still made no inquiry about Blue Cross Blue Shield
22 current rates for Medicare supplements?

23 A. That's correct.

24 Q. And similarly sitting here today you have still made
25 no inquiry about current or expected rate of inflation as

1 to Medicare supplements.

2 A. That's correct.

3 Q. And sitting here today you have made no inquiry by
4 way of example of Mr. Forner as to what type of Medicare
5 supplement he might decide or plan to purchase six years
6 from now in 2024?

7 A. I have not made any inquiry, that's correct.

8 Q. Sitting here today its likewise accurate you do not
9 even know whether Plan F, Medicare supplement Plan F,
10 will be available in 2024 for Mr. Forner to even purchase
11 correct?

12 A. Correct.

13 Q. You made no inquiry sitting here today still with
14 AARP regarding their current rates correct?

15 A. That's correct.

16 Q. And that's even though Mr. Hood ---

17 THE COURT: --- Mr. Conley, he has probably said 25
18 times he made no inquiry other than what was given to
19 him. Where are we heading?

20 MR. CONLEY: I've got like two more questions.

21 THE COURT: I mean you've asked the same question
22 in different ways at least three or four times.

23 MR. CONLEY: Well Your Honor I think -- I've got
24 like three questions left.

25 THE COURT: Okay. All right.

1 MR. CONLEY: Thank you.

2 Q. [Mr. Conley] In regard to health care in general
3 you don't have any knowledge and you haven't done any
4 inquiry about health care and rates of inflation as they
5 pertain to health care services or health care insurance
6 in general correct?

7 A. That's correct.

8 MR. CONLEY: I believe that's all I have Judge.
9 Thank you.

10 THE COURT: All right. Any redirect?

11 MS. BLOODGOOD: No, Your Honor.

12 THE COURT: You may step down. Thank you very
13 much.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

16 THE COURT: And before I go any further Mr. Conley
17 you don't have any objection to Plaintiff's number 11 and
18 12 is that correct?

19 MR. CONLEY: I do not, Judge and likewise ---

20 THE COURT: --- and Plaintiff has no objection to
21 Defendant's number 17 is that correct?

22 MS. BLOODGOOD: No, Your Honor.

23 THE COURT: All right. Thank you very much.

24 [Whereupon, Plaintiff's exhibit numbers 11 and 12
25 are entered into evidence by the Court]

1 [Whereupon, Defendant's exhibit number 17 is entered
2 into evidence by the Court]

3 THE COURT: Do you have any further witnesses Ms.
4 Bloodgood?

5 MS. BLOODGOOD: No, Your Honor.

6 THE COURT: Mr. Conley, do you have a witness?

7 MR. CONLEY: I do.

8 THE COURT: Is he here yet?

9 MR. CONLEY: He is.

10 THE COURT: Okay, you want to call him?

11 MR. CONLEY: I do.

12 THE COURT: Okay.

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. CONLEY: The Defendant calls Roy Strickland.
2 [Whereupon, Mr. Strickland comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: For the record please state your
6 name and spell your last name.
7 THE WITNESS: My name is Roy -- Leroy Eugene
8 Strickland, II, S-T-R-I-C-K-L-A-N-D.
9 MR. CONLEY: Judge, I want to make sure you have a
10 copy of this which I believe is Defendant's exhibit
11 number 16 ---
12 THE COURT: --- I've got a copy.
13 MR. CONLEY: Do you have the calculations?
14 THE COURT: I'm sorry, what?
15 MR. CONLEY: Do you have Defendant's exhibit 16
16 which is the calculations?
17 THE COURT: I don't have 16.
18 MR. CONLEY: It's the thick exhibit.
19 THE COURT: I've got your 17.
20 [Whereupon, Mr. Conley provides documents to the
21 Court]
22 THE COURT: This is the calculations?
23 MR. CONLEY: That's Defendant's exhibit 16, Your
24 Honor.
25 THE COURT: Okay. Any objection to 16?

1 MS. BLOODGOOD: No, Your Honor.
2 THE COURT: Okay. Thank you very much.
3 [Whereupon, Defendant's exhibit number 16 is entered
4 into evidence by the Court]
5 - - - - -
6 LEROY STRICKLAND,
7 Having been first duly sworn,
8 Was examined and testified as follows:
9 DIRECT EXAMINATION
10 BY MR. CONLEY:
11 Q. Good morning Mr. Strickland.
12 A. Good morning.
13 Q. Can you tell the Court where you are currently
14 employed?
15 A. I'm employed with Dixon Hughes Goodman. I'm the
16 managing partner of the Fraud and Forensic Group?
17 Q. And can you tell the Court in general what you were
18 asked to do in this particular case?
19 A. Yes. I was asked to look at the Court order and
20 determine the Medicare supplement amount that would be
21 calculated now for future Medicare benefits for these
22 four Plaintiffs.
23 MR. CONLEY: Judge, I'm going to hand Mr.
24 Strickland what we've marked as Defendant's exhibit 16.
25 THE COURT: Okay.

1 Q. [Mr. Conley] This is actually Defendant's exhibit 16
2 Mr. Strickland.

3 [Whereupon, the witness is shown exhibit]

4 Q. Mr. Strickland if you can look at the first page of
5 Defendant's exhibit 16. Well, let me start here first.
6 Can you just in general tell the Court exactly what work
7 you performed in coming to what is encompassed within
8 Defendant's exhibit 16 and then we'll talk about it in
9 more specificity.

10 A. Yes. I started out actually by reviewing Mr.
11 Gibbons report and reviewing his deposition. Then I
12 reviewed the various documents provided in this matter
13 through discovery related to the individual Plaintiffs
14 and reviewed the Court order.

15 And then I went in because we were dealing with
16 Medicare I went in and did research on basically exactly
17 how Medicare works because there was I think some
18 confusion -- there is confusion generally I think in the
19 public when you use the term Medicare.

20 But you basically have -- I wanted to get a sound
21 understanding of the different parts of Medicare and then
22 what we call the Plans for Medicare which is the
23 supplemental coverage. So I did research through the
24 Internet. I obtained information from non-profit like
25 the Keiser Report and other types of reports that study

1 this area of insurance and coverage, government coverage.
2 And then I also once we got through everything and we did
3 our calculations we have one of the top 20 healthcare
4 consulting firms in the United States size wise.

5 And we met with two of those partners to go through
6 these calculations just to make sure that we weren't
7 missing anything.

8 Q. Mr. Strickland when you indicated a moment ago you
9 did some work yourself as I'll put it to educate yourself
10 more about Medicare supplements you indicated one of the
11 things you looked at was information available on the
12 Internet.

13 When you say Internet are you specifically talking
14 about the website run by the Federal Government in regard
15 to Medicare?

16 A. Yes. This is one area where when you go in and
17 search Medicare or supplemental policies it's just a
18 tremendous amount of information.

19 And what's interesting about it is basically the
20 government has their own site for everyone to where you
21 can go in and kind of step by step understand the
22 process; not just the supplemental coverage but the
23 parts. Part A which is your hospital coverage, Part B is
24 your medical coverage, Part C which is a -- well, Part D
25 is the prescription drug coverage. And Part C is an

1 advantage care. It's like you might call it Cadillac
2 insurance under the part and then you have the
3 supplements. So there is a tremendous amount of
4 information from the government standpoint.

5 Then there is individual insurance companies and
6 that's who provides the coverage under the supplemental
7 coverage. And they all have websites. States have
8 websites because this varies by state as far as what
9 insurance policies are allowed to be sold for these
10 supplements.

11 And then lastly there are healthcare non-profit
12 groups that study these sort of costs. Now healthcare I
13 think is the largest industry in the United States so
14 there is a lot of information on the Internet related to
15 that.

16 And then lastly from my standpoint is I know we have
17 a healthcare consulting group so I am required internally
18 to make sure I'm running that by them so.

19 Q. And in doing that work that you just described to
20 the Court I want you to look at page 1 if you will of
21 what is Defendant's exhibit 16.

22 [Whereupon, the witness reviews document]

23 Q. And can you please as best you can and in the most
24 concise manner you can sort of explain to the Court what
25 that first page of Defendant's exhibit 16 is because I

1 don't think I'm mislabeling it as somewhat of a summary
2 of all the work you did.

3 A. Yes. This is the summary and if you look down on
4 the left hand side I have the three Defendants -- I mean
5 the four Defendants listed. And then you'll see I have
6 two insurance companies.

7 It's important to note I just took the two larger
8 companies with coverage in South Carolina. There are
9 other insurance companies that sell this coverage in
10 South Carolina.

11 And then within each one of those on the left hand
12 side you can purchase this insurance different ways. You
13 can just flat out pay it monthly. You can get a discount
14 if you do an auto draft. You get a household discount if
15 you've got more than one person.

16 The two insurance companies that I went to is
17 everybody is familiar with Blue Cross Blue Shield and
18 then AARP. So that's down the left hand side. Across
19 the top starting with Plan A and it runs all the way
20 across to Plan N those are the Plans that are available
21 across this population.

22 There are 18 different Plans. Those are not
23 available by every insurance company but you've got Plan
24 A all the way through Plan N. And then within a Plan like
25 a Plan B they have Plan B select; or Blue Cross Blue

1 Shield does. They've got Plan C select. What that does
2 is it is a Plan to where if you agree to use their
3 providers it can reduce your premium.

4 And I think it's also important to note the actual
5 calculation of the premium between the insurance
6 companies can be different. Blue Cross Blue Shield is an
7 age weighted premium calculation which basically means as
8 you get older and risk gets higher so your premium goes
9 up.

10 AARP which you would anticipate their organization
11 is a community based so your premium you are rated on the
12 overall community of insurers and it doesn't go up each
13 year. However, it will be lower -- or higher probably in
14 the first year than somebody on a Blue Cross Blue Shield
15 that is age weighted.

16 So this is the total population that I calculated.
17 It's important to note that this spreadsheet could
18 probably double or triple if you added other insurance
19 companies that offer this insurance in the state of South
20 Carolina.

21 Q. In other words your sampling here is just of Blue
22 Cross Blue Shield and AARP. If you were to have done
23 this work in regard to every provider of Medicare
24 supplements in South Carolina this spreadsheet would
25 include many more carriers.

1 A. Many more carriers potentially; I haven't looked at
2 all these. Maybe many more kind of quasi programs like
3 your Plan B Select, etcetera. So it could be a lot of
4 different options there. And the cost is different with
5 each one of those providers. It can be different because
6 of the way they rate the insurance.

7 It could be different because of the experience.
8 These insurance companies naturally are in the -- they
9 make money on doing this so depending on their base and
10 how large their base is those premiums can differ.

11 Q. If you can for a moment we're going to go back to
12 this first page in a minute but I want you next to turn
13 to the second page of Defendant's exhibit 16 which is
14 even what I'll describe as a more concise summary ---

15 A. --- yes ---

16 Q. --- of the work you did in this matter. And if you
17 would initially explain what the content of that second
18 page is to the Court.

19 A. Yes. I pulled this together for me and for the
20 Judge basically or everybody to be able to -- there is a
21 lot of numbers on this first page.

22 But this is by Plaintiff. And what I have is the
23 pertinent census information related to the Plaintiff;
24 Mr. Rissanen's date of birth, when he turned age 65,
25 which 65 is the date that you would qualify for Medicare,

1 his current Plan based on our review of the records that
2 he is enrolled in Plan F through Blue Cross Blue Shield.
3 And then I calculated for Mr. Rissanen there are 75
4 different options and those costs -- and let me make sure
5 I made this clear, this total dollar amount here
6 [indicates] is similar to Mr. Gibbons calculation.

7 I'm pushing it forward using an inflation rate that
8 I've researched and I can go through that and then I am
9 present valuing it back at Treasury Strip rates which is
10 a risk free rate of return where the Plaintiff doesn't
11 have to take any risks on those future returns.

12 But you can see from this that Mr. Rissanen the
13 lowest calculation is a Plan K through AARB -- AARP,
14 which is 16,021 dollars. And then the highest is a Plan
15 F through AARP with no discount and that's 40,923
16 dollars.

17 But you go to Mr. Baxley I have the same pertinent
18 census information. He is currently on Plan B with Blue
19 Cross Blue Shield. And I think this is important to
20 note; all four Plaintiffs are on different Plans. There
21 is no ---

22 Q. --- I hate to interrupt you. I think you mean three
23 Plaintiffs because one is not eligible.

24 A. Excuse me. There are three that are on different
25 Plans. Mr. Forner is not eligible at this time. So he

1 is on Plan B Blue Cross Blue Shield. The lowest cost
2 with him is likewise Plan K with AARP is 15,249 dollars.
3 And the highest cost is with Plan F and that's 40,151
4 dollars. Mr. Hood turned 65 in 2011. He's on Plan N
5 with AARP. The lowest cost for him is 17,406 with Plan
6 K.

7 And you'll see here it switches over. The highest
8 cost is Plan F for 41,000 under Blue Cross Blue Shield
9 with no discounts. So there is a lot of variation here.
10 And then with Mr. Forner we took it out to when he would
11 qualify and calculated it at the rates at that time what
12 we would anticipate based on inflation. His lowest cost
13 Plan would be Plan K which is 10,760 dollars.

14 And the reason just to where you'll understand Your
15 Honor on the -- the reason he's lower is because of the
16 present value. His money is coming way out; you know
17 it's out in the future. And then the highest is 37,913
18 dollars which is a Plan C through AARP.

19 So this summarizes the first page. I also have
20 included in the package some of the information from the
21 government site and then all of the stuff in the back all
22 the numbers those are all the detail calculations for
23 each Plan.

24 Q. And I'm not going to go through; I want to go
25 through a few more pages here ---

1 A. --- yes sir ---

2 Q. --- but first let me ask you a couple of specific
3 questions. One, is it accurate based on I think what you
4 told Judge Nicholson a moment ago that none of the three
5 Plaintiffs who currently have a Medicare supplement have
6 the same supplement.

7 A. Based on the records that I reviewed they all have
8 different supplements.

9 Q. In regards to Mr. Forner the -- you make a note on
10 page 2 no Plan F. Can you explain to the court number
11 one why you wrote no Plan F but can you also explain to
12 the Court why on page 1 of Defendant's exhibit 16 when
13 you look at Plan F as to Mr. Forner it all says not
14 applicable.

15 A. In 2020 Plan F will no longer be available to be
16 sold so it goes away. He will not have a Plan F option
17 in 2024. I think it's important and maybe I'll throw
18 this in here but all of this is Legislative. Even the
19 individual supplemental policies it's not like an
20 insurance company can go out and invent their own Plan A
21 or Plan F.

22 The Federal government determines the
23 characteristics and they as I understand it they do this
24 to in a sense protect the consumer. So they can this is
25 what you can sell. And what these supplements do is they

1 pay, one thing they can pay is your deductible under a
2 Part A or Part B. Another thing is you have these co-
3 pays 20 dollars here, 80 dollars here. It pays that
4 depending on the Plan.

5 There are a lot of different options. And it's laid
6 out; I have that in the package. But Mr. Forner will not
7 be able to purchase Plan F; it won't be available in 2024
8 and these can change legislatively over time.

9 Q. Going back to page 1 of Defendant's exhibit 16 for a
10 moment can you explain to the Court why you chose to run
11 these calculations for each of the group -- for all four
12 Plans under every available Plan as opposed to only
13 running these calculations as to the Plan they currently
14 have? Does that question make sense?

15 A. Because I didn't have any -- there was no definition
16 of which Plan we're talking about. There was no -- in
17 the things that I read on the information that I read it
18 mentioned supplemental Plan but there is no
19 distinguishing what Plan are we talking about; which
20 variable.

21 Are we talking about Plan A, are we talking about
22 Plan N or are we talking about a high deductible Plan or
23 a select Plan? That was not specified anywhere in the
24 documents that I reviewed or the order. So I calculated
25 a subset of the potential calculations. It's a lot

1 larger than if you went out and checked every insurance
2 company.

3 Q. In other words I think what you just said is you
4 chose to do the calculation as to every Plan as to each
5 Plan because you did not know which particular Plan you
6 would run the calculations in regard to, correct?

7 A. Correct. In the documentation that I reviewed all
8 the -- this book here [indicates] has a lot of it. There
9 was no definition of what Plan we're talking about and
10 that's why I ran it.

11 Q. And as you previously noted a moment ago currently
12 the three Plaintiffs who do have Medicare supplement
13 Plans all have a different Plan.

14 A. All have three separate Plans with I think two
15 different insurers.

16 Q. If you can go to page 3 and 4 for just a short
17 moment in regard to Defendant's exhibit 16 and just
18 explain to the Court why this is included in the
19 material.

20 I think you've already sort of mentioned this to the
21 Court but maybe you can tell us specifically why you
22 included this in there and why those two pages were
23 important to what you did in reviewing and doing your
24 calculations.

25 A. This is what I was mentioning earlier Your Honor is

1 basically this is step by step goes through the different
2 -- this is a government website, an official website
3 USGOV and it's how do you compare the Medigap policies.
4 And as I mentioned this is Legislative. You can't -- an
5 insurance company can't just go up and make their own
6 Plan up.

7 So this has all of the various categories and what's
8 covered and what's not covered for Plan A, B, C, D all
9 the way through N; there are a few letters missing there.
10 But even with this depending on the state and that's why
11 we have Blue Cross Blue Shield, we have select and high
12 deductible.

13 You can actually -- the insured company -- insurance
14 company as long as it is complying as I understand it
15 with these Plan categories as far as coverage they can
16 put other options in such as that's why you have the high
17 deductible Plan.

18 That's why -- what the insurance company can do on
19 the Select is they can say if you use my providers Plan B
20 Select or Plan C Select or any of the others that are
21 Select they go and contractually deal with these
22 providers to get set rates so they can flow some of those
23 savings through to the consumer. So theoretically, not
24 theoretically it's the facts, your Plan your Select Plan
25 should be less than your normal Plan because you're

1 taking and going to their provider.

2 Q. And the information that is contained in those two
3 pages regarding Medicare supplements that's information
4 you rely upon in your opinions and doing calculations.

5 A. Yes, it's the base, it's the base. The first thing
6 when I go through this and think it through, I've got it
7 in this [indicates] book, there is a website that
8 basically says it's really easy to read because it's for
9 everybody, and it says what is Medicare and then it
10 explains it.

11 People get it confused you've got Part A, Part B,
12 Part C, Part D; that's the basics over here which
13 includes prescriptions. And then it just walks you
14 through question by question and tells you the facts
15 about each thing and do you need gap coverage do you want
16 to get C which is kind of like the Cadillac coverage.

17 It walks you through and then you go over to this
18 and it tells you, it actually will have a click and you
19 click it and you go over and it will say this is the
20 difference between the Medigap policies or the
21 supplemental policies.

22 So this is foundational in looking at what's covered
23 and what's not covered through these supplemental Plans
24 for the reader of this if you want to use it you can then
25 tie it back to why are these premiums different.

1 Q. If you can turn to what would be if you look down at
2 the bottom left hand corner it's got the Bates number
3 4015006.

4 [Whereupon, the witness complies]

5 A. Yes, sir.

6 Q. Which is sort of another summary regarding Mr.
7 Rissanen? And just for the benefit of the Court perhaps
8 looking at these documents later, and we're not going to
9 do this as to each Plan, but just as to Rissanen just as
10 an example can you explain that particular document as to
11 Mr. Rissanen which likewise would explain it as to all
12 the other three Plans too I think.

13 A. Yes. This is the input page and you'll have that
14 for each Plaintiff. But I have all the census
15 information, their date of birth, their retirement date,
16 the date they turn 65. And these calculations Your Honor
17 are as of September 11th when we were originally going to
18 have the hearing.

19 I have an update on that it would be minimal
20 difference. We have the assumed life expectancy and I've
21 utilized the South Carolina tables which we're required
22 to use.

23 We're not as I understand it in state Court in South
24 Carolina we're supposed to use those Legislative tables
25 and I have used that. We mentioned their current

1 Medicare supplement. I have the discount rate and the
2 discount rate is for each year going forward I go in and
3 I pull up a Treasury Strip. What can I buy a Treasury
4 security for that matures on that date to make sure that
5 -- I think it's the best way to handle the interest
6 fluxuations?

7 I can actually monetize that amount or this
8 liability, potential liability right now. Then I have
9 the Blue Cross Blue Shield I have assumed an annual
10 increase for Blue Cross Blue Shield of 5.5 percent. That
11 is based on Blue Cross Blue Shield's own individual
12 records from 2015 to 2018. And I bifurcated it between
13 inflation and the cost of the policy.

14 So what happens is when you look at Blue Cross Blue
15 Shield and the amount of the premium increases each year
16 all of that increase is not related to cost. A piece of
17 it is related to because it is an age weighted Plan when
18 you get a year older they charge you more.

19 So when you're looking at that increase from year to
20 year you can't just take it was 100 dollars this year and
21 its 10 dollars more next year you have to determine out
22 of that 10 dollars what is a true cost increase and what
23 is related to the way the Plan is aged or rated. So
24 that's 5.5 percent. There is a discount that Blue Cross
25 Blue Shield gives you if you do a monthly auto-draft and

1 it's six percent on that cost. And then if you have two
2 or more household members it's five percent. And then if
3 you look at AARP it's a different increase rate of seven
4 percent. That's based on their rate increases from their
5 tables.

6 And it kind of makes sense because that is a policy
7 that is community rated so I pay the same when I'm 66 as
8 I pay when I'm 74 so their increase is a little more;
9 it's related.

10 So that's the increase that I've used going forward.
11 They give you a little discount for a monthly auto-draft
12 of two percent and then five percent for two or more
13 households.

14 And I have this in for every Plaintiff to where you
15 kind of know if you get into the detail how I'm doing the
16 calculations.

17 Q. And that would apply, what you've just gone through
18 with Judge Nicholson and the Court would apply to all
19 three of the other Plaintiffs and they are similar
20 summary sheets?

21 A. Yes, sir.

22 Q. The records you reviewed and relied on from Medicare
23 in particular those were records and documents that
24 somebody in your field would typically rely on in doing
25 the kind of work you did in this case, is that correct?

1 A. Yes. I mean if you're not familiar with this you
2 have to do the research to get from -- I mean it's just
3 complicated.

4 MR. CONLEY: Judge, to the extent I need to I'd
5 like to tender Mr. Strickland as an expert in this case
6 and ask the Court ---

7 THE COURT: --- well, I assume y'all had agreed
8 they are both CPA experts.

9 MR. CONLEY: We have.

10 THE COURT: I didn't put that on the record but I
11 assumed that was correct.

12 MS. BLOODGOOD: That's right, Your Honor. We
13 agree.

14 MR. CONLEY: I don't have any ---

15 THE COURT: --- in looking at their resumes they
16 are both qualified.

17 MR. CONLEY: Agreed. I don't have any ---

18 THE COURT: --- and the Court will so find, okay.

19 MR. CONLEY: I don't have any further questions for
20 Mr. Strickland.

21 THE COURT: Okay. Thank you. Cross-Examination?

22 MS. BLOODGOOD: Yes, sir.
23
24
25

1 CROSS-EXAMINATION

2 BY MS. BLOODGOOD:

3 Q. Hi Mr. Strickland.

4 A. Hi. How are you, ma'am?

5 Q. Good. And I appreciate you explaining the process
6 that you went through which is different than Mr. Gibbons
7 and it appears very thorough. And did you review his
8 numbers?

9 A. Yes, ma'am.

10 Q. Okay. So you understand that your highest numbers
11 if you total them up they exceed Mr. Gibbons' projection.

12 A. Yes, ma'am. Yes, ma'am.

13 Q. So with all the work that you did you're coming out
14 with higher numbers on your highest numbers of Mr.
15 Gibbons.

16 A. On the highest number depending ---

17 Q. --- right ---

18 A. --- but that's -- I want to make sure this is clear.
19 That is correct and it is because that particular Plan is
20 higher.

21 Q. Okay. And in terms of your average number there
22 really is no Plan that has that average number. You're
23 taking the lowest ones and the highest ones and it's just
24 an average number. It doesn't coordinate with any Plan,
25 correct?

1 A. Yes, ma'am.

2 Q. Okay. And do you have -- did you have any basis to
3 believe that the Plaintiffs in the future are going to
4 choose the lowest Plan versus the Plans they have now?

5 A. I didn't really -- to answer your question is no
6 ma'am I don't. I don't think it's clear from what I've
7 reviewed what Plan we're dealing with at all.

8 I don't think it's clear from what I've reviewed
9 whether the Plaintiff is going to choose that Plan. All
10 of that is not clear to me so but to answer your question
11 no.

12 Q. Okay. Thank you. I don't have any other
13 questions.

14 THE COURT: You may step down. Thank you so -- I'm
15 sorry, any redirect?

16 MR. CONLEY: No Judge. Thank you.

17 THE COURT: You may step down. Thank you so very
18 much Mr. Strickland.

19 [Whereupon, the witness is excused and exits the
20 witness stand]

21

22

23

24

25

Alvar R. Rissanen, et al v City of North Charleston
Motion to Reconsider
November 8, 2018

1 THE COURT: Is there anything else from either
2 party?

3 MS. BLOODGOOD: No, Your Honor.

4 THE COURT: I appreciate you all streamlining the
5 hearing for me this morning. Give me an opportunity to
6 sort of review this and take a look at it and I will
7 issue an order shortly, okay.

8 MS. BLOODGOOD: Thank you.

9 THE COURT: Thank y'all very much.

10 MR. CONLEY: Thank you, Your Honor.

11 *****END OF TRANSCRIPT OF RECORD*****
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 8th day of November, 2018.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

March 16, 2019

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Alvar R. Rissanen; Michael H. Baxley;	)	Case No.: 2013-CP-10-3210
Clifford W. Forner; and Willie L. Hood,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<u>AMENDED AFFIDAVIT OF NANCY</u>
	)	BLOODGOOD
	)	IN SUPPPORT OF ATTORNEY FEES
City of North Charleston,	)	
	)	
Defendant.	)	

FILED
2018 NOV -8 AM 8:46
JULIE L. ARMSTRONG
CLERK OF COURT

I am over the age of eighteen and state under oath as follows:

1. I submit this Affidavit in support of Attorney fees pursuant to S.C. Code §15-77-300. Attached as Exhibit B are the four (4) retainer agreements with each Plaintiff that provide for a contingency fee (Par. 2) or an hourly rate, whichever is higher (Par. 4), with a set off for any court award of attorney fees. (Par. 4)
2. The attorney fees are divided between the plaintiffs so each Plaintiff pays ¼ of the total attorney fees and costs.
3. I represented the four (4) Plaintiffs in this case who were the prevailing parties against a state entity. A verdict was obtained in their favor by Order dated February 6, 2018 and filed February 9, 2018.
4. The relevant attorney fees statute is S.C. Code §15-77-300 which states:
 - (B) Attorney's fees allowed pursuant to subsection (A) must be limited to a reasonable time expended at a reasonable rate. Factors to be applied in determining a reasonable rate include:
 - (1) the nature, extent, and difficulty of the case;
 - (2) the time devoted;
 - (3) the professional standing of counsel;

- (4) the beneficial results obtained; and
- (5) the customary legal fees for similar services.

The judge must make specific written findings regarding each factor listed above in making the award of attorney's fees.

5. I would like to address each of the five (5) factors separately:

a. Nature, Extent and Difficulty of the Case

A suit against a municipality is not an easy suit to win the City of North Charleston enjoys a good reputation in the community and is generally well respected as an employer. The case was difficult to prepare for and win as it was vigorously contested by the City over the course of four (4) years and involved municipal law issues as well as employment issues. There was extensive discovery, mediation and several attempts to settle this matter before trial. Plaintiffs survived summary judgment, six (6) depositions were taken and post-trial supplemental briefs were submitted after the conclusion of a day and a half bench trial.

b. Time Devoted

The nature of employment cases requires long and intense hours, great risk of no payment, or, at best late payment. Priority work that delays the lawyers other legal work is entitled to some premium.

Although hours claimed or spent on a case should not be the sole basis for determining a fee, *Electronics Capital Corp. v. Sheperd*, 439 F.2d 692 (5th Cir. 1971), they are a necessary ingredient to be considered. A trial judge should weigh the hours claimed against his or her own knowledge, experience, and expertise of the time required to complete similar activities. *Johnson v. Georgia Hwy. Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974); *see also Riverside v. Rivera*, 477 U.S. 5561 (1986). In this case, the Complaint was filed in May of 2013 and tried more than

four (4) years later. Undersigned counsel respectfully submits that her hourly billing statement (attached as Exhibit A to Affidavit in Support of Attorney Fees) reflects reasonable amounts of time spent on each task over the course of the last four and a half years as depositions were scheduled and rescheduled and the case was on the trial roster several times but had to be moved to accommodate the City's witnesses. Plaintiff is not requesting reimbursement for any costs.

c. Professional Standing of Counsel:

The *Johnson* Court advised that:

The trial judge should closely observe the attorney's work product, his preparation, and general ability before the court. The trial judge's expertise gained from past experience as a lawyer and his observation from the bench of lawyers at work become highly important in this consideration.

Johnson, 488 F.2d at 718. This factor appears to be one for the Court's sole determination based on its review of counsel's work product and performance at trial. Undersigned counsel respectfully asserts she has met the Court's expectation as after surviving summary judgment, the Court denied directed verdict and judgment notwithstanding the verdict.

d. Beneficial Results Obtained:

The result obtained by Plaintiff is significant as there are similar cases pending against the City of Columbia and St. Paul's Fire District. Though Plaintiffs' monetary damages are not huge, the value of the award over the course of their lives is significant.

e. Customary Legal Fees for Similar Services:

The determination of a market rate is an important factor in finding a reasonable hourly rate. *Westmoreland Coal Co. v. Cox*, 602 F.2d 276, 289 (4th Cir. 2010) (citing and quoting *Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990)). Undersigned counsel regularly charges \$350.00 per hour for her hourly clients, as does her law partner. "The fact Plaintiff seeks actual billing rates used for all clients strongly favors a finding the rates *per se* reasonable." *Miller v.*

HSBC Fin. Corp., 3:08-cv-01942-MJP, 2010 WL2722689*2 (D.S.C. July 9, 2010) (citing *Liberty Mutual Insurance Company v. Employee Resource Management, Inc.*, 176 F. Supp. 2d 510 (D.S.C. 2011)). Undersigned counsel was awarded \$350 in this court three (3) years ago in a case against a Charter School in Charleston County.

6. Over the course of the last 4 years, undersigned counsel and her law partner spent 71.30 hours on this case while working for the Foster Law Firm and 86.8 hours while working for Bloodgood & Sanders, LLC (Time sheets, Ex. A), or a total of 158.1 hours. At a rate of \$350 per hour, this equals \$55,335 ($\$350 \times 158.1$ hours). This amount would be divided by four (4) so each Plaintiff's share is \$13,833.75. Additionally, Plaintiffs incurred additional costs recently of \$218.15 for the expert's deposition transcript (Ex. A) and two thousand (\$2,500.00) dollars for the services of an expert witness. (*Id.*)

7. The provision in S.C. Code § 15-77-300 which limits the attorney fees to what the parties contracted to pay the attorney does not apply here. The parties contracted to pay attorney fees equal to 33% of any recovery. The present value of the total monetary recovery per the expert witness hired but Plaintiffs, Tyler Gibbons, is \$156,183. (Last documents in Exhibit C.) One third of that amount is \$52,061.00. To the extent this amount is less than my hourly rate or more than the statutory limitation, per the retainer agreements, the Plaintiffs are responsible for the difference.

8. For the foregoing reasons, Plaintiff respectfully requests that this make findings of fact regarding the requirements of S.C. Code §15-77-300 and award undersigned counsel \$55,335 for attorney fees and costs of \$2,718.15.

FURTHER, YOUR DEPONENT SAYETH NOT.

Nancy Bloodgood
Nancy Bloodgood

Charleston, S.C.

Date: November 6, 2018

Sworn to and subscribed before me
this 6th day of NOVEMBER, 2018.

Ruby C. Sand
Notary Public for the State of South Carolina

My Commission Expires: 12/7/2026

EXHIBIT A

Client	Trans Date	H Tcode/ Tmkr P Task Cod	Rate	Hours to Bill	Amount	Ref #
Client ID 11019.0000 City of North Charleston Retirees						
						3
11019.0000	05/20/2013	2 P 1		0.60	0.00 Research standing.	2
11019.0000	05/23/2013	2 P 1		3.40	0.00 Meeting with clients and revise and edit complaint.	1
11019.0000	05/28/2013	2 P 1		0.60	0.00 Revise Complaint; email to clients to review.	5
11019.0000	05/29/2013	2 P 1		0.80	0.00 Receive and review emails from clients and revise complaint; email to them.	6
11019.0000	05/30/2013	2 P 1		2.10	0.00 Telephone conference with Chief Rissanen re: Complaint; revise same.	7
11019.0000	06/11/2013	2 P 1		0.30	0.00 Telephone conference with AI; Receive and review emails from opposing counsel and AI.	8
11019.0000	06/25/2013	2 P 1		1.40	0.00 Meeting with new client; amend complaint.	10
11019.0000	06/26/2013	2 P 1		1.30	0.00 Amend complaint.	9
11019.0000	04/24/2015	2 P 1		2.10	0.00 Prepare draft discovery; Email opposing counsel re stay; Prepare for meeting with clients	11
11019.0000	05/07/2015	2 P 1		0.20	0.00 Receive and review consent order lifting stay	12
11019.0000	05/11/2015	2 P 1		0.80	0.00 Meet with clients	13
11019.0000	05/15/2015	2 P 1		0.30	0.00 Receive and review Answer	14
11019.0000	05/21/2015	2 P 1		0.60	0.00 Meeting with Bob conley re case	15
11019.0000	07/02/2015	2 P 1		0.60	0.00 Meeting with Bob re settlement; Emails to clients	16
11019.0000	07/08/2015	2 P 1		0.60	0.00 Telephone conferences and messages with all of the clients	17
11019.0000	07/21/2015	2 P 1		0.30	0.00 Meeting with Bob conley re settlement	18
						19
11019.0000	08/04/2015	2 P 1		1.60	0.00 Prepare list of witnesses and statements and complete deposition summaries	20
11019.0000	10/08/2015	2 P 1		0.10	0.00 Telephone conference with Bob Conley re settlement	21
11019.0000	10/15/2015	2 P 1		1.90	0.00 Work on discovery responses	22
11019.0000	10/16/2015	2 P 1		1.80	0.00 Work on discovery responses	23
11019.0000	10/29/2015	2 P 1		0.80	0.00 Finalize discovery responses; Telephone conference with Cliff	24
11019.0000	12/15/2015	2 P 1		0.90	0.00 Receive and review correspondence from opposing counsel re discovery responses; Start analyzing 2000+ pages of discovery	26
11019.0000	12/28/2015	2 P 1		1.30	0.00 Prepare for meeting; Receive and review personal files	27
11019.0000	12/29/2015	2 P 1		1.40	0.00 Meet with clients; Supplement discovery	28
11019.0000	12/30/2015	2 P 1		1.40	0.00 Start to prepare questions for Keith Summey deposition	29
11019.0000	12/31/2015	2 P 1		0.60	0.00 Continue working on Summey questions	30
11019.0000	01/04/2016	2 P 1		4.80	0.00 Meet with clients and attend two depositions	31
11019.0000	01/05/2016	2 P 1		4.20	0.00 Meet with clients and attend two depositions	32
11019.0000	02/02/2016	2 P 1		0.90	0.00 Review Keith Summey deposition and take notes	35

Client	Trans Date	Tmkr	H Tcode/ P Task Cod	Rate	Hours to Bill	Amount	Ref #
Client ID 11019.0000 City of North Charleston Retirees							
11019.0000	02/20/2016	2	P 1		0.30	0.00 Receive and review motion for SJ and forward to clients	36
11019.0000	02/29/2016	2	P 1		1.30	0.00 Prepare for Newton deposition	37
11019.0000	03/02/2016	2	P 1		1.20	0.00 Prepare for and take deposition of Warren Newton; Meeting with opposing counsel re same	38
11019.0000	04/20/2016	2	P 1		0.60	0.00 Edit and supplement memo in opposition to summary judgment	42
11019.0000	04/27/2016	2	P 1		1.90	0.00 Prepare for SJ hearing	43
11019.0000	04/28/2016	2	P 1		2.60	0.00 Prepare for and attend motion hearing in Charleston	44

Total for Client ID 11019.0000	Billable	52.30	0.00	City of North Charleston Retirees

GRAND TOTALS				

Billable	52.30	0.00

-6.70

45.60

Client	Trans Date	Tmkr	H Tcode/ P Task Cod	Rate	Hours to Bill	Amount	Ref #
Client ID 11019.0000 City of North Charleston Retirees							
11019.0000	05/30/2013	6 P	1		0.50	0.00 Draft summons, coversheet, and letter and send complaint to COC for filing.	4
11019.0000	12/01/2015	6 P	1		0.30	0.00 Research jury trial re estoppel	25
11019.0000	01/08/2016	6 P	1		1.60	0.00 Prepare for Summey deposition	33
11019.0000	01/14/2016	6 P	1		2.40	0.00 Summey deposition (take depo and review newly produced documents)	34
11019.0000	03/28/2016	6 P	1		0.60	0.00 REview draft motion for class certification	39
11019.0000	04/18/2016	6 P	1		2.40	0.00 Review law and depositions for summary joint response	40
11019.0000	04/18/2016	6 P	1		2.40	0.00 Review law and depots for summary judgment response	45
11019.0000	04/18/2016	6 P	1		3.90	0.00 Continue drafting response to summary judgment	46
11019.0000	04/19/2016	6 P	1		3.90	0.00 Continue drafting response to summary judgment	41
11019.0000	04/24/2016	6 P	1		3.60	0.00 Review defendant's memorandum in support of summary judgment and continue drafting response; Research defenses and cases	47
11019.0000	04/24/2016	6 P	1		4.10	0.00 Add cites and exhibits to memo; Finalize memo and file	48

Total for Client ID 11019.0000	Billable	25.70	0.00 City of North Charleston Retirees

GRAND TOTALS

Billable	25.70	0.00

45.60

71.30 total

Bloodgood & Sanders, LLC

INVOICE

242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464
United States

Invoice # Final
Due On: 03/21/2018

City of North Charleston

2016-00031

City of North Charleston Retirees - Employment

Date	Notes	Quantity	Rate	Total
05/05/2016	Start preparing for trial	1.40	\$0.00	\$0.00
05/09/2016	Prepare questions for Newton	0.90	\$0.00	\$0.00
05/16/2016	Prepare for and meet with three Plaintiffs in preparation of trial	4.80	\$0.00	\$0.00
05/19/2016	Meeting with Willie regarding trial preparation	1.10	\$0.00	\$0.00
05/23/2016	Produce additional documents to Opposing Counsel	0.30	\$0.00	\$0.00
06/07/2016	receive and analyze motion to alter judgment	0.30	\$0.00	\$0.00
06/15/2016	revise trial questions; meet with Mike re Affidavit; revise response to Motion to Alter	1.20	\$0.00	\$0.00
06/16/2016	revise trial questions; assemble exhibits	0.80	\$0.00	\$0.00
06/21/2016	meeting with opposing counsel re scheduling hearing and contacting court	0.30	\$0.00	\$0.00
10/25/2016	start to prepare for hearing	1.70	\$0.00	\$0.00
11/01/2016	prepare pre-trial brief	2.10	\$0.00	\$0.00
11/03/2016	prepare for trial; meetings with clients	3.40	\$0.00	\$0.00
11/05/2016	prepare for trial; assemble exhibits; telephone conference with opposing counsel and clients; prepare damages charts	6.80	\$0.00	\$0.00
11/06/2016	continue preparing for trial; telephone conference with opposing counsel re settlement; emails to clients re same; emails to court	3.80	\$0.00	\$0.00
12/20/2016	attend mediation	2.60	\$0.00	\$0.00
12/30/2016	revise Al's questions and review his transcript	2.30	\$0.00	\$0.00
01/10/2017	receive and review email from opposing counsel; 4 telephone conferences with clients re damages	0.80	\$0.00	\$0.00

01/11/2017	meeting with Mike Baxley re additional documents; receive and review additional forms re promise from City	0.60	\$0.00	\$0.00
06/20/2017	review exhibits; revise trial documents and questions	4.60	\$0.00	\$0.00
10/16/2017	prepare for trial and meet with clients	4.60	\$0.00	\$0.00
10/17/2017	prepare for trial	7.70	\$0.00	\$0.00
10/18/2017	prepare for and attend trial before Judge Nicholson	11.40	\$0.00	\$0.00
10/19/2017	prepare for and attend trial	5.50	\$0.00	\$0.00
11/10/2017	work on draft order per judge's instructions	4.80	\$0.00	\$0.00
12/01/2017	Review, edit, and supplement proposed order	0.90	\$0.00	\$0.00

Total = 74.7 hours

Bloodgood & Sanders, LLC

INVOICE

242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464
United States

Invoice # Aug2018
Due On: 10/17/2018

City of North Charleston

2016-00031

City of North Charleston Retirees - Employment

Date	Notes	Quantity	Rate	Total
03/09/2018	prepare draft response to motion to alter or amend judgment	2.20	\$0.00	\$0.00
03/15/2018	continue supplementing and revising response to Defendant's Motion to Alter or Amend	1.40	\$0.00	\$0.00
03/22/2018	receive and review email from judge's law clerk; research and prepare email with law re legal issue with attachments; email to law clerk with monthly payment information; receive and review email from opposing counsel re same	2.30	\$0.00	\$0.00
03/28/2018	prepare for and attend hearing on post trial motions before Judge Nicholson	3.60	\$0.00	\$0.00
07/06/2018	receive and review transcript; print same and email clients bill with note	0.40	\$0.00	\$0.00
07/11/2018	attend the deposition of our witness; receive and review emails re hearing	2.20	\$0.00	\$0.00

Subtotal \$0.00

Total \$0.00

12.1 hours
74.7
86.8

EXHIBIT B

Legal Services and Fee Agreement

Alvar Rissanen, hereafter called "Client", does hereby employ and retain Nancy Bloodgood, Esquire and Lucy Sanders, Esquire of the Foster Law Firm, LLC, hereafter called "Attorneys," to represent Client as legal counsel related to his/her employment and/or to advise and/or prosecute his or her claim against his or her employer, insurance company, plan or other entity necessary to the action, as the case may be, for benefits or damages arising out of adverse employment action.

1. Power to Settle:

Attorneys will devote their full professional abilities to the case and Client agrees to fully cooperate with the Attorneys handling Client's case. Neither party will settle the case without the other's approval. The Attorneys may, in their absolute and sole discretion, withdraw at any time from the Client's case if, after investigation, the claim does not appear to permit a recovery to the Client, or if the Client has not complied with the terms of this Agreement. Notice of withdrawal shall be sent to the Client by mail.

2. Fee Agreement:

The Attorney's fee shall be a contingent fee.

The Attorney's contingency fee is outlined as follows: one-third percent (33.3%) of the gross amount recovered before trial, 40% after trial begins and 50% if there is an appeal. The decision as to whether or not to pursue an appeal will be made in conjunction with the Client. Attorneys do not guarantee they will agree to an appeal. Attorney's fees will be paid from any settlement, verdict or recovery that is obtained plus the costs and expenses referred to in paragraph 3 below. Should Client terminate this agreement prior to final conclusion, then the Attorneys shall have the right to be reimbursed for all costs and the reasonable value of the services rendered up to the date of termination. The usual hourly rates for Attorneys are \$350 for partners, \$250 for associates and \$75 for paralegals.

3. Costs:

A "cost" related to a law case is any money expended, paid, or charged or payable to a third person for something related to the law case. Costs do not include Attorney's fees and are separate from and in addition to Attorney's fees. Client is responsible for all the costs associated with your claim. In some instances, costs may be advanced by the Attorneys and then sent to Client for reimbursement. **Clients will be billed and are expected to begin paying the costs as they are incurred.** Any costs advanced by Attorneys and not reimbursed when the case is ended shall be paid upon distribution of any monies received by any settlement, judgment or

otherwise and costs are in addition to any fees payable. Costs are reimbursed from Client's portion of the monies disbursed.

Costs may include, but are not limited to, the following: a.) postage, b.) photocopy expenses, c.) photography expenses, d.) facsimile expenses, e.) telephone and long distance expenses, f.) expenses associated with mediation, g.) overnight express charges, h.) deposition charges, i.) expert witness charges, j.) filing and other fees paid to courts, k.) process server and other service related charges, l.) medical records procurement fees, m.) doctor(s) charges for opinions and any other monies paid to third persons as a part of your case, and n.) mileage, lodging and travel costs including hotel, airfare, meals, etc. The foregoing is not an exhaustive list of costs. Client will be provided, periodically upon request and at the end of the case, an itemized list of all costs incurred and charged to the file and advanced by Attorneys.

4. **Court Award:**

Should the Court award attorney fees to the Client in an amount greater than or equal to the amount provided for in Paragraph 2 above, the full awarded statutory fee shall be paid to the Attorneys in lieu of the fee provided for by Paragraph 2. Should the Court award Attorney fees in an amount less than the amount set forth in Paragraph 2, the Court awarded fees shall be applied to the contingent fee then due from the Client, with the remainder of the fee to be paid by the Client. It should be anticipated that the Defendant or opposing party may insist on a total or partial waiver of statutory fees and costs in order to settle this case. Client agrees not to waive fees, or if fees are waived, Client agrees to be personally responsible for the fees at the regular hourly rate of the Attorney(s) handling the matter, or the fee established by percentages set forth in Paragraph 2 hereto, whichever is higher.

5. **No Recovery Obtained:**

A firm offer of settlement shall be considered a recovery, and the Attorneys shall be entitled to a fee based upon the total amount of any firm offer of settlement. Additionally, if the settlement is rejected by the client against Attorneys' advice and client dismisses the law firm as counsel contemporaneously or thereafter, the Attorneys shall be entitled to a fee based upon the total amount of any firm offer of settlement.

6. **Settlement:**

Attorneys are authorized to prosecute and pursue such claims on Client's behalf, to affect a compromise, subject to Client's approval, and to institute such legal action as may be advisable in the Attorneys judgment to enforce Client's rights.

7. **Settlement Disbursements:**

Court rules require that all settlements be consummated within sixty (60) days of the date the settlement is entered into by the parties. In other words, the defendant in any lawsuit has up to sixty (60) days to send the settlement agreement and the settlement check. Usually, the defendant will not take the full sixty (60) days and usually there is about a one (1) month turn-around time from the date the settlement is entered into. However, very infrequently, due to special circumstances, it may take more than sixty (60) days to consummate a settlement. Pursuant to state law, any settlement check written by an insurance company over the amount of \$50,000.00 is required to remain in the firm's trust account for ten (10) business days, and thereafter on the eleventh (11th) business day the funds may be released to the client. A settlement check written by any third party (other than an insurance company) for any amount of money is to remain in the firm's trust account for ten (10) business days, and thereafter on the eleventh (11th) business day the funds may be released to the client.

8. **Tax Advice:**

Attorneys and Attorneys' staff are not competent to provide tax advice to you regarding taxation issues on any settlement or judgment proceeds or any other monies you may receive. If you have any questions at all regarding whether or not the monies you seek and may receive will be taxable or to what extent they will be taxable, you should consult an appropriate tax professional for such advice.

9. **Associate Counsel:**

Client agrees that other counsel may be employed at the discretion and expense of Attorneys and that any attorney so employed may be designated to appear on Client's behalf to undertake Client's representation in this matter. Ordinarily, such attorney is the attorney who actually referred you to the Foster Law Firm. In no event will the existence of any Associate Counsel, including your referring attorney, affect the amount of fees you pay under this contract. The amount of fees you pay is limited to the above. Any agreement between Associate Counsel, including your referring attorney, and the Foster Law Firm will be based upon the specific fee set forth above and will be decided between the Foster Law Firm and Associate Counsel.

10. **Lien on Proceeds:**

Attorneys shall have a lien on the benefits or monies procured and recovery for Attorney's fees and costs, and any and all persons to whom this fee agreement may be presented are hereby placed on notice that Attorneys have a lien on any recovery they shall make as a result of their actions with regard to the above referenced subject matter. Further, any and all insurance companies, benefit plans, or other individuals to whom this fee agreement is presented are hereby put on notice that the Client has irrevocably assigned to the law firm a share of the amount of benefits recovered under, against or from any defendant, insurance plan, benefits plan,

or self-funded plan which Attorney has procured through her efforts. Such lien and assignment attach and are intended to cover any proceeds obtained as a result of settlement, received as a result of the Attorneys' efforts to recover said benefits, settlement or judgment or execution upon a judgment.

11. **Authorization to Recognize Assignments:**

Client also authorizes Attorneys to recognize and honor any valid written assignments which may be in the file, but payment of assignments is always subordinate to the Attorneys' lien created by this agreement.

12. **Attorneys Right to Withdraw:**

The Attorneys handling your case may, consistent with rules promulgated by the South Carolina Supreme Court and with any order of a court or tribunal, withdraw at any time by giving a reasonable written notice. If the Attorneys withdraw, no fee shall be payable to the Foster Law Firm; however, the Foster Law Firm shall be reimbursed for any and all costs advanced. Client agrees to provide and maintain current address and telephone information with the Foster Law Firm, to promptly return letters and or telephone calls requesting contact, to promptly provide documents and information to Attorneys, and to meet with Attorneys as requested. Client agrees to consider all facts, advice, and recommendations of the Attorneys handling his or her case in making decisions regarding the case or any related matter. Any failure of the Client to abide by these provisions shall be deemed consent to withdrawal of representation by the Attorneys and the Foster Law Firm.

13. **Client's Right to Withdraw:**

As a Client, you have a right at any time, you become dissatisfied with the Foster Law Firm's services, to inform the Foster Law Firm that its services are no longer needed and that you wish to terminate this Agreement. In the event that you wish to terminate the relationship with the Foster Law Firm, you will be required to sign a written acknowledgement that the Foster Law Firm will not serve as your Attorneys of record any longer and release the Foster Law Firm from further obligations. You will be required to sign a consent order for submission to an appropriate court relieving Foster Law Firm as counsel before your file will be released to you. Should you terminate the Attorney/Client relationship then you shall be responsible for paying all costs advanced on the file to the point of the termination before the Foster Law Firm shall be required to release your file. Additionally, should you terminate the relationship after there has been a firm offer of settlement made on the case or a judgment decision, then upon termination, the Foster Law Firm shall have a lien on any potential recovery to the extent of costs plus an Attorney's fee based upon the firm offer of settlement only, but not upon any monies that may later be procured on top of the firm offer of settlement that was last made before termination of the relationship between the parties.

14. **File Storage Policy:**

Your file will be maintained by Attorneys for a period of no less than six (6) years or as provided by the South Carolina Rules of Professional Responsibility. Any time after six (6) years, it is subject to destruction without notice to you. At some point after expiration of the six (6) year period, your file will be destroyed. You have a right to request a copy of your file or certain of the original documents at any point during the pendency of your case or subsequent to the conclusion of your case until your file is destroyed.

15. **Duty to Communicate:**

In order to best represent you, your lawyer must have the ability to meaningfully communicate with you when necessary. Therefore, one of the duties and responsibilities you have in connection with this agreement is to keep the lawyer handling your case or matter informed of your mailing address and other contact information. If at any time during the course of representation, your current address becomes unknown or your lawyer is otherwise unable to contact you, the Foster Law Firm shall be permitted to withdraw from this representation by sending you notice by overnight express mail or U.S. Mail to your last known address and by depositing with the Clerk of Court in the county of your last known residence any property owned by you in the Foster Law Firm's possession, including but not limited to items of personal property or funds (excluding the file, which will be maintained by the Foster Law Firm).

16. **Assignment:**

By your signature below, Client hereby irrevocably grants and assigns to Attorneys any and all rights Client has to either 33.3%, 40%, or 50% of any benefits or monies that may be paid to Client or on Client's behalf by or from any insurance company, employer or other defendant(s) or entity(s) who may be a party or potential party to any lawsuit brought on my behalf by Attorneys under this Agreement. This assignment shall supersede and be superior to any and all assignments previously executed by Client to any individual or entity relating to the same benefits or monies. This assignment cannot be revoked by Client after Client's case has been settled, tried or at such point as monies or benefits have been procured for Client or on Client's behalf.

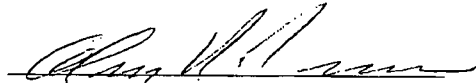
This Agreement is binding on the parties hereto, their heirs, personal representatives, successors and assigns. Client confirms that as of date of this signed agreement, he/she has no other attorney representing him/her in this matter and gives Attorneys the exclusive authority to take all steps necessary to enforce Client's rights.

Client agrees that the Attorneys have made no promises or guarantees regarding the outcome of Client's claim(s).

I have read this contract and agree to its terms and conditions. There are no other agreements, oral or otherwise, between client and the Attorneys. Any modification to this agreement shall be made in writing and signed by both the client and the Attorneys.

I have read and understand this Agreement.

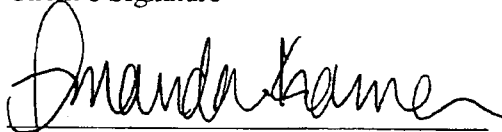
Signed this 23 day of May, 2013.
Charleston, South Carolina



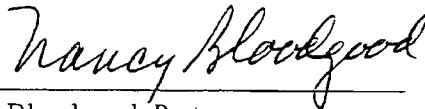
Client's Signature

ALAN R. RISSAW

Client's Name (Printed)



Witness



Nancy Bloodgood, Partner
Lucy Sanders, Associate
Foster Law Firm
Charleston Office

Legal Services and Fee Agreement

Michael Baxley, hereafter called "Client", does hereby employ and retain Nancy Bloodgood, Esquire and Lucy Sanders, Esquire of the Foster Law Firm, LLC, hereafter called "Attorneys," to represent Client as legal counsel related to his/her employment and/or to advise and/or prosecute his or her claim against his or her employer, insurance company, plan or other entity necessary to the action, as the case may be, for benefits or damages arising out of adverse employment action.

1. **Power to Settle:**

Attorneys will devote their full professional abilities to the case and Client agrees to fully cooperate with the Attorneys handling Client's case. Neither party will settle the case without the other's approval. The Attorneys may, in their absolute and sole discretion, withdraw at any time from the Client's case if, after investigation, the claim does not appear to permit a recovery to the Client, or if the Client has not complied with the terms of this Agreement. Notice of withdrawal shall be sent to the Client by mail.

2. **Fee Agreement:**

The Attorney's fee shall be a contingent fee.

The Attorney's contingency fee is outlined as follows: one-third percent (33.3%) of the gross amount recovered before trial, 40% after trial begins and 50% if there is an appeal. The decision as to whether or not to pursue an appeal will be made in conjunction with the Client. Attorneys do not guarantee they will agree to an appeal. Attorney's fees will be paid from any settlement, verdict or recovery that is obtained plus the costs and expenses referred to in paragraph 3 below. Should Client terminate this agreement prior to final conclusion, then the Attorneys shall have the right to be reimbursed for all costs and the reasonable value of the services rendered up to the date of termination. The usual hourly rates for Attorneys are \$350 for partners, \$250 for associates and \$75 for paralegals.

3. **Costs:**

A "cost" related to a law case is any money expended, paid, or charged or payable to a third person for something related to the law case. Costs do not include Attorney's fees and are separate from and in addition to Attorney's fees. Client is responsible for all the costs associated with your claim. In some instances, costs may be advanced by the Attorneys and then sent to Client for reimbursement. **Clients will be billed and are expected to begin paying the costs as they are incurred.** Any costs advanced by Attorneys and not reimbursed when the case is ended shall be paid upon distribution of any monies received by any settlement, judgment or

otherwise and costs are in addition to any fees payable. Costs are reimbursed from Client's portion of the monies disbursed.

Costs may include, but are not limited to, the following: a.) postage, b.) photocopy expenses, c.) photography expenses, d.) facsimile expenses, e.) telephone and long distance expenses, f.) expenses associated with mediation, g.) overnight express charges, h.) deposition charges, i.) expert witness charges, j.) filing and other fees paid to courts, k.) process server and other service related charges, l.) medical records procurement fees, m.) doctor(s) charges for opinions and any other monies paid to third persons as a part of your case, and n.) mileage, lodging and travel costs including hotel, airfare, meals, etc. The foregoing is not an exhaustive list of costs. Client will be provided, periodically upon request and at the end of the case, an itemized list of all costs incurred and charged to the file and advanced by Attorneys.

4. **Court Award:**

Should the Court award attorney fees to the Client in an amount greater than or equal to the amount provided for in Paragraph 2 above, the full awarded statutory fee shall be paid to the Attorneys in lieu of the fee provided for by Paragraph 2. Should the Court award Attorney fees in an amount less than the amount set forth in Paragraph 2, the Court awarded fees shall be applied to the contingent fee then due from the Client, with the remainder of the fee to be paid by the Client. It should be anticipated that the Defendant or opposing party may insist on a total or partial waiver of statutory fees and costs in order to settle this case. Client agrees not to waive fees, or if fees are waived, Client agrees to be personally responsible for the fees at the regular hourly rate of the Attorney(s) handling the matter, or the fee established by percentages set forth in Paragraph 2 hereto, whichever is higher.

5. **No Recovery Obtained:**

A firm offer of settlement shall be considered a recovery, and the Attorneys shall be entitled to a fee based upon the total amount of any firm offer of settlement. Additionally, if the settlement is rejected by the client against Attorneys' advice and client dismisses the law firm as counsel contemporaneously or thereafter, the Attorneys shall be entitled to a fee based upon the total amount of any firm offer of settlement.

6. **Settlement:**

Attorneys are authorized to prosecute and pursue such claims on Client's behalf, to affect a compromise, subject to Client's approval, and to institute such legal action as may be advisable in the Attorneys judgment to enforce Client's rights.

7. **Settlement Disbursements:**

Court rules require that all settlements be consummated within sixty (60) days of the date the settlement is entered into by the parties. In other words, the defendant in any lawsuit has up to sixty (60) days to send the settlement agreement and the settlement check. Usually, the defendant will not take the full sixty (60) days and usually there is about a one (1) month turn-around time from the date the settlement is entered into. However, very infrequently, due to special circumstances, it may take more than sixty (60) days to consummate a settlement. Pursuant to state law, any settlement check written by an insurance company over the amount of \$50,000.00 is required to remain in the firm's trust account for ten (10) business days, and thereafter on the eleventh (11th) business day the funds may be released to the client. A settlement check written by any third party (other than an insurance company) for any amount of money is to remain in the firm's trust account for ten (10) business days, and thereafter on the eleventh (11th) business day the funds may be released to the client.

8. **Tax Advice:**

Attorneys and Attorneys' staff are not competent to provide tax advice to you regarding taxation issues on any settlement or judgment proceeds or any other monies you may receive. If you have any questions at all regarding whether or not the monies you seek and may receive will be taxable or to what extent they will be taxable, you should consult an appropriate tax professional for such advice.

9. **Associate Counsel:**

Client agrees that other counsel may be employed at the discretion and expense of Attorneys and that any attorney so employed may be designated to appear on Client's behalf to undertake Client's representation in this matter. Ordinarily, such attorney is the attorney who actually referred you to the Foster Law Firm. In no event will the existence of any Associate Counsel, including your referring attorney, affect the amount of fees you pay under this contract. The amount of fees you pay is limited to the above. Any agreement between Associate Counsel, including your referring attorney, and the Foster Law Firm will be based upon the specific fee set forth above and will be decided between the Foster Law Firm and Associate Counsel.

10. **Lien on Proceeds:**

Attorneys shall have a lien on the benefits or monies procured and recovery for Attorney's fees and costs, and any and all persons to whom this fee agreement may be presented are hereby placed on notice that Attorneys have a lien on any recovery they shall make as a result of their actions with regard to the above referenced subject matter. Further, any and all insurance companies, benefit plans, or other individuals to whom this fee agreement is presented are hereby put on notice that the Client has irrevocably assigned to the law firm a share of the amount of benefits recovered under, against or from any defendant, insurance plan, benefits plan,

or self-funded plan which Attorney has procured through her efforts. Such lien and assignment attach and are intended to cover any proceeds obtained as a result of settlement, received as a result of the Attorneys' efforts to recover said benefits, settlement or judgment or execution upon a judgment.

11. **Authorization to Recognize Assignments:**

Client also authorizes Attorneys to recognize and honor any valid written assignments which may be in the file, but payment of assignments is always subordinate to the Attorneys' lien created by this agreement.

12. **Attorneys Right to Withdraw:**

The Attorneys handling your case may, consistent with rules promulgated by the South Carolina Supreme Court and with any order of a court or tribunal, withdraw at any time by giving a reasonable written notice. If the Attorneys withdraw, no fee shall be payable to the Foster Law Firm; however, the Foster Law Firm shall be reimbursed for any and all costs advanced. Client agrees to provide and maintain current address and telephone information with the Foster Law Firm, to promptly return letters and or telephone calls requesting contact, to promptly provide documents and information to Attorneys, and to meet with Attorneys as requested. Client agrees to consider all facts, advice, and recommendations of the Attorneys handling his or her case in making decisions regarding the case or any related matter. Any failure of the Client to abide by these provisions shall be deemed consent to withdrawal of representation by the Attorneys and the Foster Law Firm.

13. **Client's Right to Withdraw:**

As a Client, you have a right at any time, you become dissatisfied with the Foster Law Firm's services, to inform the Foster Law Firm that its services are no longer needed and that you wish to terminate this Agreement. In the event that you wish to terminate the relationship with the Foster Law Firm, you will be required to sign a written acknowledgement that the Foster Law Firm will not serve as your Attorneys of record any longer and release the Foster Law Firm from further obligations. You will be required to sign a consent order for submission to an appropriate court relieving Foster Law Firm as counsel before your file will be released to you. Should you terminate the Attorney/Client relationship then you shall be responsible for paying all costs advanced on the file to the point of the termination before the Foster Law Firm shall be required to release your file. Additionally, should you terminate the relationship after there has been a firm offer of settlement made on the case or a judgment decision, then upon termination, the Foster Law Firm shall have a lien on any potential recovery to the extent of costs plus an Attorney's fee based upon the firm offer of settlement only, but not upon any monies that may later be procured on top of the firm offer of settlement that was last made before termination of the relationship between the parties.

14. **File Storage Policy:**

Your file will be maintained by Attorneys for a period of no less than six (6) years or as provided by the South Carolina Rules of Professional Responsibility. Any time after six (6) years, it is subject to destruction without notice to you. At some point after expiration of the six (6) year period, your file will be destroyed. You have a right to request a copy of your file or certain of the original documents at any point during the pendency of your case or subsequent to the conclusion of your case until your file is destroyed.

15. **Duty to Communicate:**

In order to best represent you, your lawyer must have the ability to meaningfully communicate with you when necessary. Therefore, one of the duties and responsibilities you have in connection with this agreement is to keep the lawyer handling your case or matter informed of your mailing address and other contact information. If at any time during the course of representation, your current address becomes unknown or your lawyer is otherwise unable to contact you, the Foster Law Firm shall be permitted to withdraw from this representation by sending you notice by overnight express mail or U.S. Mail to your last known address and by depositing with the Clerk of Court in the county of your last known residence any property owned by you in the Foster Law Firm's possession, including but not limited to items of personal property or funds (excluding the file, which will be maintained by the Foster Law Firm).

16. **Assignment:**

By your signature below, Client hereby irrevocably grants and assigns to Attorneys any and all rights Client has to either 33.3%, 40%, or 50% of any benefits or monies that may be paid to Client or on Client's behalf by or from any insurance company, employer or other defendant(s) or entity(s) who may be a party or potential party to any lawsuit brought on my behalf by Attorneys under this Agreement. This assignment shall supersede and be superior to any and all assignments previously executed by Client to any individual or entity relating to the same benefits or monies. This assignment cannot be revoked by Client after Client's case has been settled, tried or at such point as monies or benefits have been procured for Client or on Client's behalf.

This Agreement is binding on the parties hereto, their heirs, personal representatives, successors and assigns. Client confirms that as of date of this signed agreement, he/she has no other attorney representing him/her in this matter and gives Attorneys the exclusive authority to take all steps necessary to enforce Client's rights.

Client agrees that the Attorneys have made no promises or guarantees regarding the outcome of Client's claim(s).

I have read this contract and agree to its terms and conditions. There are no other agreements, oral or otherwise, between client and the Attorneys. Any modification to this agreement shall be made in writing and signed by both the client and the Attorneys.

I have read and understand this Agreement.

Signed this 23 day of May, 2013
Charleston, South Carolina

Michael H. Baxley

Client's Signature

MICHAEL H. BAXLEY

Client's Name (Printed)

Amanda Kame

Witness

Nancy Bloodgood

Nancy Bloodgood, Partner
Lucy Sanders, Associate
Foster Law Firm
Charleston Office

Legal Services and Fee Agreement

Willie Lee Hood, hereafter called "Client", does hereby employ and retain Nancy Bloodgood, Esquire and Lucy Sanders, Esquire of the Foster Law Firm, LLC, hereafter called "Attorneys," to represent Client as legal counsel related to his/her employment and/or to advise and/or prosecute his or her claim against her employer, insurance company, plan or other entity necessary to the action, as the case may be, for benefits or damages arising out of adverse employment action.

1. Power to Settle:

Attorneys will devote their full professional abilities to the case and Client agrees to fully cooperate with the Attorneys handling Client's case. Neither party will settle the case without the other's approval. The Attorneys may, in their absolute and sole discretion, withdraw at any time from the Client's case if, after investigation, the claim does not appear to permit a recovery to the Client, or if the Client has not complied with the terms of this Agreement. Notice of withdrawal shall be sent to the Client by mail.

2. Fee Agreement:

Client will pay a non-refundable retainer of \$0.00. The Attorney's fee shall be a contingency fee once litigation is commenced. The Attorney's fee is outlined as follows: one-third percent (33.3%) of the gross amount recovered before trial, 40% after trial begins and 50% if there is an appeal. However, in the event this matter can be resolved without litigation and Client obtains a monetary settlement prior to litigation is commenced by the filing of a complaint, Client agrees to pay Attorneys per hour for the number of hours worked at a rate of \$350.00 per hour for partners and \$250.00 an hour for associates. If litigation is commenced, the decision as to whether or not to pursue an appeal will be made in conjunction with the Client. Attorneys do not guarantee they will agree to an appeal. Attorney's fees will be paid from any settlement, verdict or recovery that is obtained plus the costs and expenses referred to in paragraph 3 below. Should Client terminate this agreement prior to final conclusion, then the Attorneys shall have the right to be reimbursed for all costs and the reasonable value of the services rendered up to the date of termination at the agreed upon hourly rate.

3. Costs:

A "cost" related to a law case is any money expended, paid, or charged or payable to a third person for something related to the law case. Costs do not include Attorney's fees and are separate from and in addition to Attorney's fees. Client is responsible for all the costs associated with your claim. In some instances, costs may be advanced by the Attorneys and then sent to Client for reimbursement. **Once any costs paid in advance by Attorneys exceed \$500.00, client will be billed and expected to begin paying the costs.** Any costs advanced by

Attorneys and not reimbursed when the case is ended shall be paid upon distribution of any monies received by any settlement, judgment or otherwise and costs are in addition to any fees payable. Costs are reimbursed from Client's portion of the monies disbursed.

Costs include, but are not limited to, the following: a.) postage, b.) photocopy expenses, c.) photography expenses, d.) facsimile expenses, e.) telephone and long distance expenses, f.) expenses associated with mediation, g.) overnight express charges, h.) deposition charges, i.) expert witness charges, j.) filing and other fees paid to courts, k.) process server and other service related charges, l.) medical records procurement fees, m.) doctor(s) charges for opinions and any other monies paid to third persons as a part of your case, and n.) mileage, lodging and travel costs including hotel, airfare, meals, etc. The foregoing is not an exhaustive list of costs. Client will be provided, periodically upon request and at the end of the case, an itemized list of all costs incurred and charged to the file and advanced by Attorneys.

4. **Court Award:**

Should the Court award attorney fees to the Client in an amount greater than or equal to the amount provided for in Paragraph 2 above, the full awarded statutory fee shall be paid to the Attorneys in lieu of the fee provided for by Paragraph 2. Should the Court award Attorney fees in an amount less than the amount set forth in Paragraph 2, the Court awarded fees shall be applied to the fee then due from the Client, with the remainder to be paid by the Client. It should be anticipated that the Defendant or opposing party may insist on a total or partial waiver of statutory fees and costs in order to settle this case. Client agrees not to waive fees, or if fees are waived, Client agrees to be personally responsible for the fees at the regular hourly rate of the Attorney(s) handling the matter, or the fee established by percentages set forth in Paragraph 2 hereto, whichever is higher.

5. **No Recovery Obtained:**

A firm offer of settlement shall be considered a recovery, and the Attorneys shall be entitled to a fee based upon the total amount of any firm offer of settlement. Additionally, if the settlement is rejected by the client against Attorneys' advice and client dismisses the law firm as counsel contemporaneously or thereafter, the Attorneys shall be entitled to a fee based upon the total amount of any firm offer of settlement.

6. **Settlement:**

Attorneys are authorized to prosecute and pursue such claims on Client's behalf, to affect a compromise, subject to Client's approval, and to institute such legal action as may be advisable in the Attorneys judgment to enforce Client's rights. The Attorneys will not settle Client's case without Client's approval.

7. **Settlement Disbursements:**

Court rules require that all settlements be consummated within sixty (60) days of the date the settlement is entered into by the parties. In other words, the defendant in any lawsuit has up to sixty (60) days to send the settlement agreement and the settlement check. Usually, the defendant will not take the full sixty (60) days and usually there is about a one (1) month turn-around time from the date the settlement is entered into. However, very infrequently, due to special circumstances, it may take more than sixty (60) days to consummate a settlement. Pursuant to state law, any settlement check written by an insurance company over the amount of \$50,000.00 is required to remain in the firm's trust account for ten (10) business days, and thereafter on the eleventh (11th) business day the funds may be released to the client. A settlement check written by any third party (other than an insurance company) for any amount of money is to remain in the firm's trust account for ten (10) business days, and thereafter on the eleventh (11th) business day the funds may be released to the client.

8. **Tax Advice:**

Attorneys and Attorneys' staff are not competent to provide tax advice to you regarding taxation issues on any settlement or judgment proceeds or any other monies you may receive. If you have any questions at all regarding whether or not the monies you seek and may receive will be taxable or to what extent they will be taxable, you should consult an appropriate tax professional for such advice.

9. **Associate Counsel:**

Client agrees that other counsel may be employed at the discretion and expense of Attorneys and that any attorney so employed may be designated to appear on Client's behalf to undertake Client's representation in this matter. Ordinarily, such attorney is the attorney who actually referred you to the Foster Law Firm. In no event will the existence of any Associate Counsel, including your referring attorney, affect the amount of fees you pay under this contract. The amount of fees you pay is limited to the above. Any agreement between Associate Counsel, including your referring attorney, and the Foster Law Firm will be based upon the specific fee set forth above and will be decided between the Foster Law Firm and Associate Counsel.

10. **Lien on Proceeds:**

Attorneys shall have a lien on the benefits or monies procured and recovery for Attorney's fees and costs, and any and all persons to whom this fee agreement may be presented are hereby placed on notice that Attorneys have a lien on any recovery they shall make as a result of their actions with regard to the above referenced subject matter. Further, any and all insurance companies, benefit plans, or other individuals to whom this fee agreement is presented are hereby put on notice that the Client has irrevocably assigned to the law firm a share of the amount of benefits recovered under, against or from any defendant, insurance plan, benefits plan,

or self-funded plan which Attorney has procured through her efforts. Such lien and assignment attach and are intended to cover any proceeds obtained as a result of settlement, received as a result of the Attorneys' efforts to recover said benefits, settlement or judgment or execution upon a judgment.

11. **Authorization to Recognize Assignments:**

Client also authorizes Attorneys to recognize and honor any valid written assignments which may be in the file, but payment of assignments is always subordinate to the Attorneys' lien created by this agreement.

12. **Attorneys Right to Withdraw:**

The Attorneys handling your case may, consistent with rules promulgated by the South Carolina Supreme Court and with any order of a court or tribunal, withdraw at any time by giving a reasonable written notice. If the Attorneys withdraw, no fee shall be payable to the Foster Law Firm; however, the Foster Law Firm shall be reimbursed for any and all costs advanced. Client agrees to provide and maintain current address and telephone information with the Foster Law Firm, to promptly return letters and or telephone calls requesting contact and to meet with Attorneys as requested. Client agrees to consider all facts, advice, and recommendations of the Attorneys handling his or her case in making decisions regarding the case or any related matter. Any failure of the Client to abide by these provisions shall be deemed consent to withdrawal of representation by the Attorneys and the Foster Law Firm.

13. **Client's Right to Withdraw:**

As a Client, you have a right at any time, you become dissatisfied with the Foster Law Firm's services, to inform the Foster Law Firm that its services are no longer needed and that you wish to terminate this Agreement. In the event that you wish to terminate the relationship with the Foster Law Firm, you will be required to sign a written acknowledgement that the Foster Law Firm will not serve as your Attorneys of record any longer and release the Foster Law Firm from further obligations. You will be required to sign a consent order for submission to an appropriate court relieving Foster Law Firm as counsel before your file will be released to you. Should you terminate the Attorney/Client relationship then you shall be responsible for paying any costs advanced on the file to the point of the termination before the Foster Law Firm shall be required to release your file. Additionally, should you terminate the relationship after there has been a firm offer of settlement made on the case or a judgment decision, then upon termination, the Foster Law Firm shall have a lien on any potential recovery to the extent of costs plus an Attorney's fee based upon the firm offer of settlement only, but not upon any monies that may later be procured on top of the firm offer of settlement that was last made before termination of the relationship between the parties.

14. **File Storage Policy:**

Your file will be maintained by Attorneys for a period of no less than six (6) years or as provided by the South Carolina Rules of Professional Responsibility. Any time after six (6) years, it is subject to destruction without notice to you. At some point after expiration of the six (6) year period, your file will be destroyed. You have a right to request a copy of your file or certain of the original documents at any point during the pendency of your case or subsequent to the conclusion of your case until your file is destroyed.

15. **Duty to Communicate:**

In order to best represent you, your lawyer must have the ability to meaningfully communicate with you when necessary. Therefore, one of the duties and responsibilities you have in connection with this agreement is to keep the lawyer handling your case or matter informed of your mailing address and other contact information. If at any time during the course of representation, your current address becomes unknown or your lawyer is otherwise unable to contact you, the Foster Law Firm shall be permitted to withdraw from this representation by sending you notice by overnight express mail or U.S. Mail to your last known address and by depositing with the Clerk of Court in the county of your last known residence any property owned by you in the Foster Law Firm's possession, including but not limited to items of personal property or funds (excluding the file which will be maintained by the Foster Law Firm).

16. **Assignment:**

By your signature below, Client hereby irrevocably grants and assigns to Attorneys any and all rights Client has to either 33.3%, 40%, or 50% of any benefits or monies that may be paid to Client or on Client's behalf by or from any insurance company, HMO plan, employee benefit plan, employer or other defendant(s) or entity(s) who may be a party or potential party to any lawsuit brought on my behalf by Attorneys under this Agreement. This assignment shall supersede and be superior to any and all assignments previously executed by Client to any individual or entity relating to the same benefits or monies. This assignment cannot be revoked by Client after Client's case has been settled, tried or at such point as monies or benefits have been procured for Client or on Client's behalf.

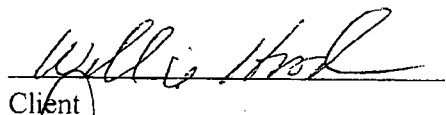
This Agreement is binding on the parties hereto, their heirs, personal representatives, successors and assigns. Client confirms that as of date of this signed agreement, he/she has no other attorney representing him/her in this matter and gives Attorneys the exclusive authority to take all steps necessary to enforce Client's rights.

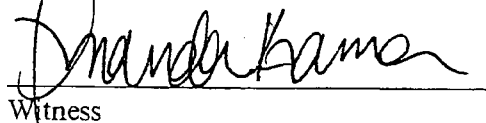
Client agrees that the Attorneys have made no promises or guarantees regarding the outcome of Client's claim(s).

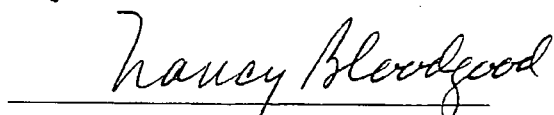
I have read this contract and agree to its terms and conditions. There are no other agreements, oral or otherwise, between client and the Attorneys. Any modification to this agreement shall be made in writing and signed by both the client and the Attorneys.

I have read and understand this Agreement.

Signed this 5 day of 23, 2012.
Charleston, South Carolina


Client


Witness


Nancy Bloodgood, Partner
Lucy Sanders, Associate
Foster Law Firm
Charleston Office

Legal Services and Fee Agreement

Clifford Forner, hereafter called "Client", does hereby employ and retain Nancy Bloodgood, Esquire and Lucy Sanders, Esquire of the Foster Law Firm, LLC, hereafter called "Attorneys," to represent Client as legal counsel related to his/her employment and/or to advise and/or prosecute his or her claim against her employer, insurance company, plan or other entity necessary to the action, as the case may be, for benefits or damages arising out of adverse employment action.

1. **Power to Settle:**

Attorneys will devote their full professional abilities to the case and Client agrees to fully cooperate with the Attorneys handling Client's case. Neither party will settle the case without the other's approval. The Attorneys may, in their absolute and sole discretion, withdraw at any time from the Client's case if, after investigation, the claim does not appear to permit a recovery to the Client, or if the Client has not complied with the terms of this Agreement. Notice of withdrawal shall be sent to the Client by mail.

2. **Fee Agreement:**

Client will pay a non-refundable retainer of \$0.00. The Attorney's fee shall be a contingency fee once litigation is commenced. The Attorney's fee is outlined as follows: one-third percent (33.3%) of the gross amount recovered before trial, 40% after trial begins and 50% if there is an appeal. However, in the event this matter can be resolved without litigation and Client obtains a monetary settlement prior to litigation is commenced by the filing of a complaint, Client agrees to pay Attorneys per hour for the number of hours worked at a rate of \$350.00 per hour for partners and \$250.00 an hour for associates. If litigation is commenced, the decision as to whether or not to pursue an appeal will be made in conjunction with the Client. Attorneys do not guarantee they will agree to an appeal. Attorney's fees will be paid from any settlement, verdict or recovery that is obtained plus the costs and expenses referred to in paragraph 3 below. Should Client terminate this agreement prior to final conclusion, then the Attorneys shall have the right to be reimbursed for all costs and the reasonable value of the services rendered up to the date of termination at the agreed upon hourly rate.

3. **Costs:**

A "cost" related to a law case is any money expended, paid, or charged or payable to a third person for something related to the law case. Costs do not include Attorney's fees and are separate from and in addition to Attorney's fees. Client is responsible for all the costs associated with your claim. In some instances, costs may be advanced by the Attorneys and then sent to Client for reimbursement. **Once any costs paid in advance by Attorneys exceed \$500.00, client will be billed and expected to begin paying the costs.** Any costs advanced by

Attorneys and not reimbursed when the case is ended shall be paid upon distribution of any monies received by any settlement, judgment or otherwise and costs are in addition to any fees payable. Costs are reimbursed from Client's portion of the monies disbursed.

Costs include, but are not limited to, the following: a.) postage, b.) photocopy expenses, c.) photography expenses, d.) facsimile expenses, e.) telephone and long distance expenses, f.) expenses associated with mediation, g.) overnight express charges, h.) deposition charges, i.) expert witness charges, j.) filing and other fees paid to courts, k.) process server and other service related charges, l.) medical records procurement fees, m.) doctor(s) charges for opinions and any other monies paid to third persons as a part of your case, and n.) mileage, lodging and travel costs including hotel, airfare, meals, etc. The foregoing is not an exhaustive list of costs. Client will be provided, periodically upon request and at the end of the case, an itemized list of all costs incurred and charged to the file and advanced by Attorneys.

4. **Court Award:**

Should the Court award attorney fees to the Client in an amount greater than or equal to the amount provided for in Paragraph 2 above, the full awarded statutory fee shall be paid to the Attorneys in lieu of the fee provided for by Paragraph 2. Should the Court award Attorney fees in an amount less than the amount set forth in Paragraph 2, the Court awarded fees shall be applied to the fee then due from the Client, with the remainder to be paid by the Client. It should be anticipated that the Defendant or opposing party may insist on a total or partial waiver of statutory fees and costs in order to settle this case. Client agrees not to waive fees, or if fees are waived, Client agrees to be personally responsible for the fees at the regular hourly rate of the Attorney(s) handling the matter, or the fee established by percentages set forth in Paragraph 2 hereto, whichever is higher.

5. **No Recovery Obtained:**

A firm offer of settlement shall be considered a recovery, and the Attorneys shall be entitled to a fee based upon the total amount of any firm offer of settlement. Additionally, if the settlement is rejected by the client against Attorneys' advice and client dismisses the law firm as counsel contemporaneously or thereafter, the Attorneys shall be entitled to a fee based upon the total amount of any firm offer of settlement.

6. **Settlement:**

Attorneys are authorized to prosecute and pursue such claims on Client's behalf, to affect a compromise, subject to Client's approval, and to institute such legal action as may be advisable in the Attorneys judgment to enforce Client's rights. The Attorneys will not settle Client's case without Client's approval.

7. **Settlement Disbursements:**

Court rules require that all settlements be consummated within sixty (60) days of the date the settlement is entered into by the parties. In other words, the defendant in any lawsuit has up to sixty (60) days to send the settlement agreement and the settlement check. Usually, the defendant will not take the full sixty (60) days and usually there is about a one (1) month turn-around time from the date the settlement is entered into. However, very infrequently, due to special circumstances, it may take more than sixty (60) days to consummate a settlement. Pursuant to state law, any settlement check written by an insurance company over the amount of \$50,000.00 is required to remain in the firm's trust account for ten (10) business days, and thereafter on the eleventh (11th) business day the funds may be released to the client. A settlement check written by any third party (other than an insurance company) for any amount of money is to remain in the firm's trust account for ten (10) business days, and thereafter on the eleventh (11th) business day the funds may be released to the client.

8. **Tax Advice:**

Attorneys and Attorneys' staff are not competent to provide tax advice to you regarding taxation issues on any settlement or judgment proceeds or any other monies you may receive. If you have any questions at all regarding whether or not the monies you seek and may receive will be taxable or to what extent they will be taxable, you should consult an appropriate tax professional for such advice.

9. **Associate Counsel:**

Client agrees that other counsel may be employed at the discretion and expense of Attorneys and that any attorney so employed may be designated to appear on Client's behalf to undertake Client's representation in this matter. Ordinarily, such attorney is the attorney who actually referred you to the Foster Law Firm. In no event will the existence of any Associate Counsel, including your referring attorney, affect the amount of fees you pay under this contract. The amount of fees you pay is limited to the above. Any agreement between Associate Counsel, including your referring attorney, and the Foster Law Firm will be based upon the specific fee set forth above and will be decided between the Foster Law Firm and Associate Counsel.

10. **Lien on Proceeds:**

Attorneys shall have a lien on the benefits or monies procured and recovery for Attorney's fees and costs, and any and all persons to whom this fee agreement may be presented are hereby placed on notice that Attorneys have a lien on any recovery they shall make as a result of their actions with regard to the above referenced subject matter. Further, any and all insurance companies, benefit plans, or other individuals to whom this fee agreement is presented are hereby put on notice that the Client has irrevocably assigned to the law firm a share of the amount of benefits recovered under, against or from any defendant, insurance plan, benefits plan,

or self-funded plan which Attorney has procured through her efforts. Such lien and assignment attach and are intended to cover any proceeds obtained as a result of settlement, received as a result of the Attorneys' efforts to recover said benefits, settlement or judgment or execution upon a judgment.

11. **Authorization to Recognize Assignments:**

Client also authorizes Attorneys to recognize and honor any valid written assignments which may be in the file, but payment of assignments is always subordinate to the Attorneys' lien created by this agreement.

12. **Attorneys Right to Withdraw:**

The Attorneys handling your case may, consistent with rules promulgated by the South Carolina Supreme Court and with any order of a court or tribunal, withdraw at any time by giving a reasonable written notice. If the Attorneys withdraw, no fee shall be payable to the Foster Law Firm; however, the Foster Law Firm shall be reimbursed for any and all costs advanced. Client agrees to provide and maintain current address and telephone information with the Foster Law Firm, to promptly return letters and or telephone calls requesting contact and to meet with Attorneys as requested. Client agrees to consider all facts, advice, and recommendations of the Attorneys handling his or her case in making decisions regarding the case or any related matter. Any failure of the Client to abide by these provisions shall be deemed consent to withdrawal of representation by the Attorneys and the Foster Law Firm.

13. **Client's Right to Withdraw:**

As a Client, you have a right at any time, you become dissatisfied with the Foster Law Firm's services, to inform the Foster Law Firm that its services are no longer needed and that you wish to terminate this Agreement. In the event that you wish to terminate the relationship with the Foster Law Firm, you will be required to sign a written acknowledgement that the Foster Law Firm will not serve as your Attorneys of record any longer and release the Foster Law Firm from further obligations. You will be required to sign a consent order for submission to an appropriate court relieving Foster Law Firm as counsel before your file will be released to you. Should you terminate the Attorney/Client relationship then you shall be responsible for paying any costs advanced on the file to the point of the termination before the Foster Law Firm shall be required to release your file. Additionally, should you terminate the relationship after there has been a firm offer of settlement made on the case or a judgment decision, then upon termination, the Foster Law Firm shall have a lien on any potential recovery to the extent of costs plus an Attorney's fee based upon the firm offer of settlement only, but not upon any monies that may later be procured on top of the firm offer of settlement that was last made before termination of the relationship between the parties.

14. **File Storage Policy:**

Your file will be maintained by Attorneys for a period of no less than six (6) years or as provided by the South Carolina Rules of Professional Responsibility. Any time after six (6) years, it is subject to destruction without notice to you. At some point after expiration of the six (6) year period, your file will be destroyed. You have a right to request a copy of your file or certain of the original documents at any point during the pendency of your case or subsequent to the conclusion of your case until your file is destroyed.

15. **Duty to Communicate:**

In order to best represent you, your lawyer must have the ability to meaningfully communicate with you when necessary. Therefore, one of the duties and responsibilities you have in connection with this agreement is to keep the lawyer handling your case or matter informed of your mailing address and other contact information. If at any time during the course of representation, your current address becomes unknown or your lawyer is otherwise unable to contact you, the Foster Law Firm shall be permitted to withdraw from this representation by sending you notice by overnight express mail or U.S. Mail to your last known address and by depositing with the Clerk of Court in the county of your last known residence any property owned by you in the Foster Law Firm's possession, including but not limited to items of personal property or funds (excluding the file which will be maintained by the Foster Law Firm).

16. **Assignment:**

By your signature below, Client hereby irrevocably grants and assigns to Attorneys any and all rights Client has to either 33.3%, 40%, or 50% of any benefits or monies that may be paid to Client or on Client's behalf by or from any insurance company, HMO plan, employee benefit plan, employer or other defendant(s) or entity(s) who may be a party or potential party to any lawsuit brought on my behalf by Attorneys under this Agreement. This assignment shall supersede and be superior to any and all assignments previously executed by Client to any individual or entity relating to the same benefits or monies. This assignment cannot be revoked by Client after Client's case has been settled, tried or at such point as monies or benefits have been procured for Client or on Client's behalf.

This Agreement is binding on the parties hereto, their heirs, personal representatives, successors and assigns. Client confirms that as of date of this signed agreement, he/she has no other attorney representing him/her in this matter and gives Attorneys the exclusive authority to take all steps necessary to enforce Client's rights.

Client agrees that the Attorneys have made no promises or guarantees regarding the outcome of Client's claim(s).

I have read this contract and agree to its terms and conditions. There are no other agreements, oral or otherwise, between client and the Attorneys. Any modification to this agreement shall be made in writing and signed by both the client and the Attorneys.

I have read and understand this Agreement.

Signed this 25 day of June, 2013.
Charleston, South Carolina

Caffod W. Foner
Client

Amanda Krame
Witness

Nancy Bloodgood
Nancy Bloodgood, Partner
Lucy Sanders, Associate
Foster Law Firm
Charleston Office

EXHIBIT C

Rev: tkg 8/13/2018

<u>Name</u>	<u>DOB</u>	<u>2015</u>	<u>2018</u>	<u>SS Life Exp.</u>	<u>Retirement Date</u>	<u>Total</u>	<u>PV @ 2.5% DR</u>
RISSANEN	3/14/1951	64	67	83	9/30/2005 \$	53,289	\$ 43,556
BAXLEY	6/12/1951	64	67	83	6/30/2005 \$	52,418	\$ 42,740
HOOD	1/9/1946	69	72	84	*12/31/2005 \$	46,854	\$ 38,633
FORNER	2/10/1959	56	59	81	5/1/2009 \$	45,321	\$ 31,255
					\$	197,883	\$ 156,183

*Reimbursed for Med
 *City not responsible

**2015 Social Security
<https://www.ssa.gov/>

Rissanen

<u>Age</u>	<u>Year</u>	<u>BCBS Supp Plan F</u>	<u>Plan Prem. Total</u>	<u>PV</u>	<u>PV Total</u>	<u>YRS</u>
65	2016	\$ 1,465		\$ 1,465		-2
66	2017	\$ 1,849		\$ 1,849		-1
67	2018	\$ 1,945		\$ 1,945		0
68	2019	\$ 2,046		\$ 1,996		1
69	2020	\$ 2,153		\$ 2,049		2
70	2021	\$ 2,265		\$ 2,103		3
71	2022	\$ 2,383		\$ 2,159		4
72	2023	\$ 2,508		\$ 2,217		5
73	2024	\$ 2,638		\$ 2,275		6
74	2025	\$ 2,776		\$ 2,335		7
75	2026	\$ 2,920		\$ 2,397		8
76	2027	\$ 3,072		\$ 2,460		9
77	2028	\$ 3,232		\$ 2,525		10
78	2029	\$ 3,401		\$ 2,592		11
79	2030	\$ 3,578		\$ 2,660		12
80*	2031	\$ 3,764		\$ 2,730		13
81*	2032	\$ 3,764		\$ 2,664		14
82*	2033	\$ 3,764		\$ 2,599		15
<i>SS Life Exp</i>	83*	2034	\$ 3,764	\$ 53,288.90	\$ 2,536	\$ 43,556

*Premiums lock age 80+ based on BCBS Premium Schedule for Plan F

*Rates sourced from 2015 BCBS Rate summary

Baxley

<u>Age</u>	<u>Year</u>	<u>BCBS</u>	<u>Plan Prem. Total</u>	<u>PV</u>	<u>PV Total</u>	<u>YRS</u>
65	2016 \$	964		964		-2
66	2017 \$	1,652		1652		-1
67	2018 \$	1,773		1773		0
68	2019 \$	2,046		1996		1
69	2020 \$	2,153		2049		2
70	2021 \$	2,265		2103		3
71	2022 \$	2,383		2213		4
72	2023 \$	2,508		2217		5
73	2024 \$	2,638		2275		6
74	2025 \$	2,776		2335		7
75	2026 \$	2,920		2397		8
76	2027 \$	3,072		2460		9
77	2028 \$	3,232		2525		10
78	2029 \$	3,401		2592		11
79	2030 \$	3,578		2660		12
80	2031 \$	3,764		2730		13
81	2032 \$	3,764		2664		14
82	2033 \$	3,764		2599		15
SS Life Exp	83 2034 \$	3,764 \$	52,418.42	2536 \$	42,740	16

*Rates sourced from 2015 BCBS Rate summary

Hood

<u>Age</u>	<u>Year</u>	<u>AARP Plan N</u>	<u>Totals</u>	<u>PV</u>	<u>PV Total</u>	<u>YRS</u>
65	2011	\$ 1,009		\$ 1,009		-7
66	2012	\$ 1,093		\$ 1,093		-6
67	2013	\$ 1,217		\$ 1,217		-5
68	2014	\$ 1,305		\$ 1,305		-4
69	2015	\$ 1,402		\$ 1,402		-3
70	2016	\$ 1,512		\$ 1,512		-2
71	2017	\$ 1,581		\$ 1,581		-1
72	2018	\$ 1,644		\$ 1,644		0
73	2019	\$ 1,792		\$ 1,748		1
74	2020	\$ 1,953		\$ 1,859		2
75	2021	\$ 2,129		\$ 1,977		3
76	2022	\$ 2,321		\$ 2,103		4
77	2023	\$ 2,529		\$ 2,235		5
78	2024	\$ 2,757		\$ 2,377		6
79	2025	\$ 3,005		\$ 2,528		7
80	2026	\$ 3,276		\$ 2,689		8
81	2027	\$ 3,571		\$ 2,859		9
82	2028	\$ 3,892		\$ 3,040		10
83	2029	\$ 4,242		\$ 3,233		11
<u>SS Life Exp</u>	<u>84</u>	<u>\$ 4,624</u>	<u>\$ 46,854</u>	<u>\$ 1,222</u>	<u>\$ 38,633</u>	<u>12</u>

*Corrected premium amounts for years 2023 - 2030 to reflect life expectancy based on SS Tables

Assumptions:

*9% increase year over year - estimated age 73-84

*Based on AARP Plan N documents

*Corrected Age 77 -84 data input on 7/17/2018 - TKG

Forner

<u>Age</u>	<u>Year</u>	<u>Based on BCBS Plan F</u>	<u>Totals</u>	<u>PV</u>	<u>PV Total</u>	<u>YRS</u>
65	2024	\$ 1,025		884		6
66	2025	\$ 1,849		1555		7
67	2026	\$ 1,945		1596		8
68	2027	\$ 2,046		1641		9
69	2028	\$ 2,153		1682		10
70	2029	\$ 2,265		1726		11
71	2030	\$ 2,383		1772		12
72	2031	\$ 2,508		1819		13
73	2032	\$ 2,638		1867		14
74	2033	\$ 2,776		1917		15
75	2034	\$ 2,920		1967		16
76	2035	\$ 3,072		2019		17
77	2036	\$ 3,232		2072		18
78	2037	\$ 3,401		2127		19
79	2038	\$ 3,578		2184		20
80	2039	\$ 3,764		2241		21
<u>SS Life Exp</u>	81	2040 \$ 3,764	\$ 45,321	2186	\$ 31,255	22

Assumptions:

*Rates sourced from 2015 BCBS Rate Plan F summary

*Mr. Forner not currently on Medicare Policy due to age. Schedule assumes he will enroll in medicare in yea

Hood

<u>Age</u>	<u>Year</u>	<u>AARP Plan N</u>	<u>Totals</u>	<u>PV</u>	<u>PV Total</u>	<u>YRS</u>
65	2011	\$ 1,009		\$ 1,009		-7
66	2012	\$ 1,093		\$ 1,093		-6
67	2013	\$ 1,217		\$ 1,217		-5
68	2014	\$ 1,305		\$ 1,305		-4
69	2015	\$ 1,402		\$ 1,402		-3
70	2016	\$ 1,512		\$ 1,512		-2
71	2017	\$ 1,581		\$ 1,581		-1
72	2018	\$ 1,644		\$ 1,644		0
73	2019	\$ 1,792		\$ 1,748		1
74	2020	\$ 1,953		\$ 1,859		2
75	2021	\$ 2,129		\$ 1,977		3
76	2022	\$ 2,321		\$ 2,103		4
77	2023	\$ 2,529		\$ 2,235		5
78	2024	\$ 2,757		\$ 2,377		6
79	2025	\$ 3,005		\$ 2,528		7
80	2026	\$ 3,276		\$ 2,689		8
81	2027	\$ 3,571		\$ 2,859		9
82	2028	\$ 3,892		\$ 3,040		10
83	2029	\$ 4,242		\$ 3,233		11
<i>SS Life Exp</i>	84	\$ 4,624	\$ 46,854	\$ 1,222	\$ 38,633	12

*Corrected premium amounts for years 2023 - 2030 to reflect life expectance based on SS Ta

Assumptions:

*9% increase year over year - estimated age 73-84

*Based on AARP Plan N documents

*Corrected Age 77 -84 data input on 7/17/2018 - TKG

RBF CH vs. City of N.C.S

8/13/2018
2:24 PM

RISER, McLAURIN & GIBBONS, L.L.P.
Pre-bill Worksheet

Page 1

Nickname Bloodgood&Sanders-1490 | 7-1490-Bloodgoo
Full Name Bloodgood & Sanders, LLC
Address Nancy Bloodgood
242 Mathis Ferry Road
Mt. Pleasant, SC 29464

Work Home Fax
In Ref To Other

Last bill
Last charge 7/31/2018
Last payment 6/6/2018 Amount \$2,000.00

Date ID	Professional Task	Rate Markup %	Hours DNB Time	Amount DNB Amt	Total
7/31/2018 80056	70-Tyler TX1040FS - 500 TX1040FS	200.00	1.00	200.00	Billable
7/31/2018 80059	70-Tyler A/S MONTH - 200 A/SMONTH	200.00	1.50	300.00	Billable
7/31/2018 80064	70-Tyler TX1040FS - 500 TX1040FS	200.00	3.00	600.00	Billable
7/31/2018 80053	70-Tyler MISCELLANEOUS MISCELLANEOUS	200.00	7.00	1,400.00	Billable
TOTAL Billable Fees			12.50	\$2,500.00	

Total of billable expense slips \$0.00

	Amount	Total
Total of Fees (Time Charges)		\$2,500.00
Total of Costs (Expense Charges)		\$0.00
Total new charges		\$2,500.00

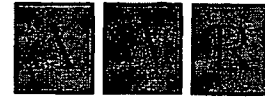
Accounts Receivables

Date	ID	Type	Description	
6/6/2018	PAY		Payment - thank you. Check No. 40	(\$2,000.00)
	54146			
Total Accounts Receivable				(\$2,000.00)

Total New Balance \$500.00

A. William Roberts, Jr., & Associates

234 Seven Farms Drive, Suite 210
Charleston, SC 29492
Phone: 843-722-8414
Fax: 866-390-3376



A. William Roberts, Jr. & Associates
Court Reporting & Litigation Solutions
www.scheduledepo.com | 866-743-DEPO

Nancy Bloodgood
Bloodgood & Sanders, LLC
242 Mathis Ferry Road
Suite 201
Mt. Pleasant, SC 29464

Invoice #13159

Date:	Terms:
07/23/2018	Net 30 days - finance @ 1.5 %

Job #18970 on 07/11/2018

Action: Alvar R. Rissane, et al vs. City of North
Charleston

Shipped On: 07/23/2018
Shipped Via: Electronic Shipment

Description:	Amount
Copy Transcript of Tyler K Gibbons CPA	
(1) Electronic Copy of Transcript/Index	\$ 237.65
Electronic Exhibits	\$ 24.30
	\$ 261.95

Amount Due: \$ 261.95
Paid: \$ 0.00

Balance Due:	\$ 261.95
Payment Due:	08/22/2018

Interest at 1.50% after 08/22/2018: \$ 265.88

Claim #:
Client Case #:

Tax. I.D. 57-0762990

PAYMENT WITH CREDIT CARD: (Amex, Visa, MasterCard)

Cardholder's Name: _____
Card Number: _____
Expiration Date: _____ Phone #: _____
Billing Address: _____
Zip: _____ Card Security Code: _____
Amount to Charge: _____
Signature: _____

REMIT TO: billing@scheduledepo.com

STATE OF SOUTH CAROLINA)
)
- COUNTY OF CHARLESTON)
)
Alvar R. Rissanen, Michael H.)
Baxley, Clifford W. Forner, and)
Willie L. Hood,)
)
Plaintiffs,)
)
v.)
)
City of North Charleston,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-3210

**DEFENDANT'S MOTION TO
ALTER OR AMEND**

FILED
2018 NOV 26 AM 11:31
CLERK OF COURT
NINTH JUDICIAL CIRCUIT

Defendant City of North Charleston ("City"), pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, moves for an order amending and/or altering the Court's Order dated November 9, 2018, and entered by the Clerk of Court on November 13, 2018 (the "Second Order"). The City received written notice of entry of the Second Order on Friday, November 16, 2018.

STATEMENT OF THE CASE

This is a promissory estoppel case. Plaintiffs Alvar R. Rissanen ("Rissanen"), Michael H. Baxley ("Baxley"), Willie L. Hood ("Hood") and Clifford W. Forner ("Forner") (collectively, the "Plaintiffs"), assert a single cause of action against the City for promissory estoppel. In general, Plaintiffs seek to force the City to provide each of them, and their eligible dependents, post-retirement healthcare benefits. Forner also requests other monetary damages.

The case was tried before the Court on October 18 and 19, 2017. On February 6, 2018, the Court issued an Order (the "First Order") containing findings and conclusions regarding the October 2017 trial. On February 13, 2018, the City received written notice of the First Order.

Thereafter, on February 23, 2018, the City filed a Motion to Alter or Amend the First Order (the “First Motion”), pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure.

On March 28, 2018, the Court held a hearing regarding the First Motion. Consequently, the Court reopened the trial, allowing Plaintiffs to retain an expert witness; designate the expert witness and present opinions from the expert witness as to, generally, the cost for each Plaintiff to purchase a Medicare supplement for the remainder of their expected lives.¹ Correspondingly, and consequently, the Court allowed the City to identify an expert who could offer testimony on the same issue and present the expert’s opinions.

Thereafter, on November 8, 2018, the Court reopened the trial and accepted testimony from Plaintiffs’ and the City’s respective expert witnesses. Correspondingly, the Court accepted additional documentary evidence from Plaintiffs’ and the City’s respective experts.

Subsequently, on November 9, 2018, the Court issued the Second Order containing new findings and new conclusions regarding the October 2017/November 2018 trial. On November 16, 2018, the City received written notice of the Second Order. The City now files this Motion to Alter or Amend the Second Order (the “Second Motion”), pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure.

LEGAL STANDARD

South Carolina Rule of Civil Procedure 52(b) allows a party “not later than 10 days after receipt of written notice of entry of judgment” to request that the court “amend its findings or make additional findings and may amend the judgment accordingly” Rule 52(b), SCRPC, further requires that “[a] party filing a written motion under this rule shall provide a copy of the motion

¹ The Court never ruled on the First Motion. Instead, as noted, the Court elected to reopen the trial and allow additional evidence, including expert testimony.

to the judge within ten (10) days after filing the motion.” Correspondingly, and similarly, South Carolina Rule of Civil Procedure 59(e) allows a party to request a court alter or amend a judgment within ten days of receiving the written notice of entry of an order.

LEGAL ARGUMENTS

A. The Second Order Fails to Find Whether Plaintiffs’ Claims Were Filed Beyond the Applicable Statute of Limitations

In the Second Order, the Court concludes the doctrine of equitable estoppel precludes the City from asserting, or otherwise claiming, the statute of limitations as an affirmative defense. However, absent from the Second Order is a finding by the Court that Plaintiffs did file their respective claims beyond the time allowed by the applicable statute of limitations. In short, the Second Order leaps to the doctrine of equitable estoppel without, correspondingly and necessarily, stating/finding Plaintiffs did file their respective claims beyond the applicable statute of limitations.²

The Court should alter or amend the Order to add three, necessary findings: 1) applicable statute of limitations; 2) date the applicable statute of limitations expired *as to each Plaintiff*; and, 3) each Plaintiff filed his respective claim beyond the applicable statute of limitations.

B. The Second Order Makes No Finding as to the Type of Medicare Supplement the City Promised Each Plaintiff

The Second Order contains no mention of or specific finding as to what type of Medicare supplement Plaintiffs were allegedly promised by the City. The Court makes no findings, including findings of fact, about this issue in the Second Order.

² At the March 28, 2018, hearing, Plaintiffs’ conceded each filed their claims beyond the applicable statute of limitations. Plaintiffs’ counsel made the concession in response to a direct inquiry by the Court.

However, the uncontradicted evidence presented at trial, by way of the City's expert, combined with the clear statutory mandates, shows Medicare supplement plans are of many types and consist of varying benefit levels. *See* 42 U.S.C. § 1395ss. Indeed, the record is also uncontradicted and clear that of the three Plaintiffs (Rissanen, Baxley and Hood) who purchased a Medicare supplement, each purchased a *different* Medicare supplement, each plan consisting of varying and different coverages and cost.^{3 4} If left unaltered, the Second Order concludes each Plaintiff was promised a different Medicare supplement by the City. Moreover, if left unaltered, the Second Order concludes Forner was promised a Medicare supplement that, as a function of federal law, will not be available in 2024, the year Forner is eligible for Medicare.⁵

The Second Order contains no mention of or specific finding pertaining to the level and/or scope of Medicare supplement coverage the City allegedly promised each Plaintiff. The Court should alter and/or amend the Second Order to provide specificity as to the *type* of Medicare supplement (i.e. Medicare supplement A, B, C, D, etc.) the City allegedly promised each Plaintiff.⁶

³ The award to Forner in the Second Order is based upon him, looking prospectively into the year 2024, purchasing Medicare supplement – Plan F. However, it is uncontradicted Medicare supplement – Plan F will not be available in 2024. *See* Public Law 114-10-Apr. 16, 2015; 129 Stat. 87. Congressional Record. Vol. 161 (2015) (providing for the elimination of Plan F for those purchasing a Medicare supplement in 2020 and beyond).

⁴ Although all Plaintiffs testified the City promised to provide them a Medicare supplement beginning at age 65, each correspondingly testified the City's alleged promise was not specific as to the type of Medicare plan.

⁵ Even if the City did promise to pay for Forner to obtain Medicare supplement – Plan F beginning in 2024, as the Second Order concludes, Congress, not the City, modified federal law and eliminated Medicare supplement – Plan F beginning in 2020. *See Craft v. S.C. Commission for Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App.2009) (promissory estoppel claim fails where source or cause of failure to comply with promise is independent of promisor).

⁶ The law in regard to promissory estoppel in South Carolina is well-established in one, particular respect: the alleged promise must be "unambiguous." *See Barnes v. Johnson*, 402 S.C. 458, 471, 742 S.E.2d 6, 12 (Ct. App.2013) ("promise must be unambiguous in its terms" and collecting cases holding likewise).

C. **The Second Order Contains Inconsistent and Undefined Directives as to the Award/Relief Granted to Each Plaintiff**

Initially, in the Second Order, the Court orders: “Plaintiffs Rissanen, Forner, Baxley, and Hood shall be **reimbursed** the cost for any and all Medicare Supplement Policies they *have purchased and will continue to purchase*.” However, the Court then orders: “After considering the expert testimony, I conclude the Plaintiffs are entitled to \$214,236.15 as a judgment against the City. This includes actual damages, attorney’s fees, and costs. The breakdown is shown on Exhibit A of this Order and attached and made part hereof.” (emphasis in original.)

The noted directives in the Second Order are inconsistent and undefined. First, the Second Order appears to order the City to “reimburse” Plaintiffs for Medicare supplement premiums each already paid and may pay in the future. However, the Second Order contains no specific amount of reimbursement, if any, the City is required to pay each Plaintiff, whether now or in the future. Moreover, the apparent directive to “reimburse” is inconsistent with the following statement in the Second Order: “the Plaintiffs are entitled to \$214,236.15 as judgment against the City. This includes actual damages, attorney’s fees, and costs.”

Additionally, the Second Order references Exhibit A to it for a “breakdown” (i.e. itemization) of the \$214,236.15 apparently awarded to Plaintiffs. However, the itemized amounts shown in Exhibit A to the Second Order do not equal \$214, 236.15.⁷

Further, in the Second Order, the Court states the following regarding Plaintiffs’ requests for costs and attorneys’ fees: “After consideration of the factors used for evaluating reasonable attorney’s fees, this Court finds Plaintiff’s attorney fees and costs in the amount of \$51,100.00 reasonable and must be paid by the City pursuant to S.C. Code 15-77-300.” However, in Exhibit

⁷ The itemized amounts listed in Exhibit A appear to equal only \$214,232.15.

A to the Second Order, the Court, apparently, awards Plaintiffs \$55,335.00 in attorneys' fees. Consequently, it is unclear whether the Court awarded Plaintiffs \$51,100.00 or \$55,335.00 in attorneys' fees.

The vagueness, and seeming contradictions, in the Second Order should be remediated by the Court, so the City is clear as to the award/remedy each Plaintiff is entitled to from it, and the amount the Court is awarding Plaintiffs for attorneys' fees. For each of these reasons, the Court must alter or amend the Second Order.

D. Award of Fees and Costs in Second Order Does Not Comply with S.C. Code Ann. § 15-77-300 et seq.

The award of fees and costs in the Second Order does not comply with S.C. Code Ann. § 15-77-300 et seq. First, Plaintiffs did not petition the Court for fees and costs in accordance with S.C. Code Ann. § 15-77-310. Second, the Second Order does not contain the requisite *findings* to award fees and costs. See S.C. Code Ann. § 15-77-300(B) (requiring Court make specific written findings as required by S.C. Code Ann. § 15-77-300(B)(1-5)). Third, as discussed previously, the Second Order is unclear and inconsistent as to the award of attorneys' fees to Plaintiffs. Fourth, the City, a municipality, is not subject to Plaintiffs' claim for attorneys' fees and costs because it is neither the "state" nor an "agency," pursuant to S.C. Code Ann. § 15-77-300 et seq. See *South Carolina Public Information Foundation v. Courson*, 420 S.C. 120, 124, 801 S.E.2d 185, 187 (Ct. App. 2017) (noting "agency" is undefined in S.C. Code Ann. § 15-77-300 et seq.).^{8 9} Fifth, the Second Order cites, and apparently relies upon, an improper consideration as to whether an award

⁸ The Second Order, in contradiction to *Courson*, concludes the City is an "agency," without citing any supporting legal authority.

⁹ The Second Order cites no authority for concluding the City is "the state," as referenced in S.C. Code Ann. § 15-77-300.

of attorneys' fees is appropriate: "The cost to the City to keep its promise to these four (4) Plaintiffs was very minimal."¹⁰

Moreover, neither the State of South Carolina nor the City filed the lawsuit, and Plaintiffs' lawsuit does not contest "state action." See S.C. Code Ann. § 15-77-300 (recognizing fees and costs are only recoverable in three circumstances: 1) "civil action *brought by the State*;" 2) civil action *brought by "any political subdivision of the state*;" and, 3) civil action brought by any party who is contesting *state action*." (emphasis added). For each of these reasons, the Court should alter or amend the Second Order, and remove the award of attorneys' fees and costs.

E. The Second Order Fails to Address Whether a Promise for Future Benefits is an Unenforceable Violation of Public Policy

S.C. Const., art. X, § 14, entitled "Bonded Indebtedness of Political Subdivisions" controls the City incurring debt. For instance, section 2 of the article states the following:

[s]uch political subdivisions shall have the power to incur indebtedness in the following categories *and no other*: (a) General obligation of debt; and (b) Indebtedness payable only from a revenue-producing project or from a special source as provided in subsection (10) of this section [i.e., revenue bonds and tax increment financing bonds]. (emphasis added.)

The City can only obtain general obligation debt "upon such terms and conditions as the General Assembly shall prescribe by law" and must involve the delivery of "a schedule showing the date and the principal and interest payments to become due" See, art. X, § 14 (2) and (5). Consequently, the City is expressly prohibited by the South Carolina Constitution from incurring

¹⁰ There is no support for the Second Order, or otherwise in South Carolina jurisprudence, concluding the cost to the City to comply with the alleged promise for Medicare supplement is a factor the Court can consider in applying S.C. Code Ann. § 15-77-300 *et seq.*, in respect to awarding attorneys' fees.

an undefined obligation for future payments on behalf of former employees, including to Plaintiffs for a Medicare supplement or otherwise.

The Second Order fails to address this issue as previously raised by the City.

F. The Second Order Fails to Mention or Address the City's Budget Ordinance

The City operates under a mayor-council form of government. Under the City's mayor-council form of government, Mayor Summey has certain administrative responsibilities and powers. S.C. Code Ann. § 5-9-30. However, City legislative powers, including the adoption of an annual budget, by way of a budget *ordinance*, and associated committal and expenditure of City funds, are vested with City Council. S.C. Code Ann. § 5-9-40 ("The council shall adopt an annual budget for the operation of the municipality and capital improvements.").

"One council may not by an ordinance bind itself or its successors so as to prevent *free legislation* in matters of municipal government." *Wright v. City of Florence*, 229 S.C. 419, 424-25, 93 S.E.2d 215, 218 (1956) (emphasis added). Second, "a council may not by contract bind its successors to forego or to exercise their legislative functions." *Newman v. McCullough*, 212 S.C. 17, 25, 46 S.E.2d 252, 256 (1948) (quotations and citations omitted).

The funds the City utilizes to provide healthcare benefits to employees and retirees come from the *yearly* budget appropriations approved by City Council. City Council's yearly appropriation of funds for healthcare benefits, by way of a budget ordinance, is a legislative function. *Gilstrap v. S.C. Budget and Control Bd.*, 310 S.C. 210, 216, 423 S.E.2d 101, 105 (1992); S.C. Code Ann § 5-9-40. *See also Piedmont Public Service Dist. v. Cowart*, 319 S.C. 124, 13, 459 S.E.2d 876, 880 (Ct. App. 1995) ("If the contract involves the legislative functions or governmental powers of the municipal corporation, the contract is not binding on successor boards or councils."); *Cunningham v. Anderson County*, 402 S.C. 434, 441-450, 741 S.E.2d 545, 549-553 (Ct. App.

2013) *aff'd* 414 S.C. 298, 299, 778 S.E.2d 884, 885 (2015) (County council cannot enter into a contract binding successor councils).

The City's adoption of an ordinance or resolution, including the yearly budget ordinance, "is a legislative enactment and presumed to be constitutional." *Sandlands C & D, LLC v. County of Horry*, 394 S.C. 451, 460, 716 S.E.2d 280, 284 (2011) (quoting *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010)). In considering whether a City ordinance is constitutional, the City's "powers . . . should be liberally construed." *Id.* (citing S.C. Const. art. VIII, § 17.) See also *Hampton v. Haley*, 403 S.C. 395, 403, 743 S.E.2d 258, 262 (2013) (separation of powers doctrine expressed in S.C. Const. art. I, § 8 prohibits judicial interference in legislative functions); *Segars-Andrews v. Judicial Merit Selection Commission*, 387 S.C. 109, 121-122, 691 S.E.2d 453, 460-461 (2010) (challenge to the "wisdom, policy or expediency of an [legislative] act" presents a "nonjusticiable political question"); *Smith v. Tiffany*, S. C. Op. No. 27715 (April 26, 2017) at p. 8 ("a court may not reject the legislature's policy determinations merely because the court may prefer what it believes is a more equitable result.").

"The primary purpose in interpreting statutes [ordinances] is to ascertain and effectuate the intent of the legislature [City Council]." *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010) (citing *Cain v. Nationwide Prop. and Cas. Ins. Co.*, 378 S.C. 25, 29, 661 S.E.2d 349, 351 (2008)). "Under the plain meaning rule, it is not the Court's place to change the meaning of a clear and unambiguous statute." *Id.* (citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "It is well settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result." *Id.* (quoting *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) (internal quotations omitted)).

The City's *legislative* actions, including the passage of yearly budget ordinances, are "harmonious." In short, the City, by approval of its lawful, mandated, budget ordinances (i.e. by legislative action), chose to either fund or not fund retiree access to the City's self-funded healthcare plan. By legislative action, including the passage of the 2009-2010 budget ordinance, the City lawfully changed retiree access to the City's healthcare plan, including the costs to City retirees.

The City's legislative actions are consistent with the history of the City ordinance 1984-23 and the subsequent City budget ordinances. Moreover, the City's actions neither provide a basis for Plaintiffs' allegation of a "promise" by the City nor their assertion that their alleged reliance was either justifiable or foreseeable. *See Alston v. City of Camden*, 322 S.C. 38, 48, 471 S.E.2d 174, 179 (1996) (health insurance is a fringe benefit subject to *prospective* modification and there can be no reasonable expectation that the terms of such benefits will remain unchanged.)

The Second Order fails to address this issue as previously raised by the City. Moreover, the Second Order constitutes a violation of S.C. Const. art. I, § 8 – judicial interference in a legislative function of the City.

G. The Second Order Does Not Award Reliance Damages

Plaintiffs' sole claim is for promissory estoppel. Consequently, Plaintiffs are limited to the recovery of *reliance* damages only.

"The final element of promissory estoppel requires demonstrating that the reasonably relying promisee [Plaintiffs] sustains injury due to a disposition [act] inconsistent with alleged promise." *Barnes v. Johnson*, 402 S.C. 458, 474, 742 S.E.2d 6, 14 (Ct.App.2013). "In order to demonstrate that the injury was sustained in reliance upon an alleged promise, the promisee must show, but for the promisor's inconsistent disposition [act], the complained-of injury would not

have otherwise resulted." *Id.* "Promissory estoppel . . . always requires some *reliance on the promise which leads to injury.*" *Prescott v. Farmers Telephone Cooperative, Inc.*, 328 S.C. 379, 396, 491 S.E.2d 698, 706, n.8 (Ct.App.1997), *rev'd on other grounds*, 335 S.C. 330, 516 S.E.2d 923 (1999) (emphasis added). *See also Craft v. South Carolina Commission for the Blind*, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct.App.2009) (plaintiff's promissory estoppel claim failed because *he could not show he lost a better opportunity* because of alleged reliance on agency promise).¹¹

As in *Craft*, Plaintiffs assert they relied upon representations and lost a prospective benefit (i.e. post-retirement Medicare supplement). If the lost value of a representation were adequate to support a promissory estoppel claim, the courts in *Craft* would have been compelled to consider the income stream lost from cancellation of future business at the Commission for the Blind. Instead, the trial judge awarded summary judgment and the Court of Appeals affirmed.

In addition to Plaintiffs showing a connection between their reliance on a promise(s) and any injury, Plaintiffs must show "the existence or amount of damages [reliance damages] cannot be left to conjecture, guess or speculation." *Piggy Park Enterprises, Inc. v. Schofield*, 251 S.C. 385, 391, 162 S.E.2d 705, 708 (1968). "As a general rule, the evidence [of reliance damages] should be such as to enable the court or jury to determine the amount of [reliance] damages with reasonable certainty or accuracy; and it is sufficient if they are so established." *Id.*

Proof of the amount of loss with absolute or mathematical certainty is not required, and it does not matter that the determination of damages depends to some extent on the consideration of contingent events. So, it had been held adequate if a reasonable basis of computation is afforded,

¹¹ As noted previously, the same issue was addressed by Judge Gee and retired Justice Jean H. Toal on remand in *Bishop* and a companion case. In each case, the court denied class certification because each promissory estoppel claim requires some proof of opportunity *loss* independent of the "value" of the promise. *See* Exhibits B and C to the City's Pre-Trial Brief.

even though the result may be only approximate, or to adduce evidence which is the best the case is susceptible of under the circumstances and which will permit a reasonably close estimate of the loss.” *Id.* (quoting 25A C.J.S. Damages § 162(2), p. 80.) Plaintiffs, even if they could have proved other elements of their promissory estoppel claim, did not present adequate evidence of **reliance** damages (i.e. *value* of their alleged, lost *opportunity*).

The sole remedy available to Plaintiffs is the recovery of reliance damages. However, no Plaintiff presented evidence of reliance damages (i.e. lost opportunity) and, consequently, no Plaintiff presented evidence of the value or amount of his reliance damages. As a result, the Court, in the Second Order, effectively “enforces” the alleged promise of a Medicare supplement, including enforcement of the alleged promise *prospectively*. In short, the Second Order provides a remedy associated with a breach of contract claim, or other causes of action, even though Plaintiff’s *sole cause of action is for promissory estoppel*.

For each of these reasons, the Court should alter or amend the Second Order.

H. The Second Order Finds the Alleged Promise to Provide a Medicare Supplement Constituted a Promise to Pay Wages

The Second Order should be altered and/or amended to modify and/or remove the finding that the City’s alleged promise to provide a Medicare supplement constituted a promise to pay wages. By law, “wages” are confined to monetary payments. *Anderson v. Baptist Medical Center*, 343 S.C. 487, 489, 551 S.E.2d 526, 530 (2001) (fringe benefits such as “medical, disability and life insurance” are not part of an employee’s wages). *See also* S.C. Code Ann. § 41-1-25(A)(1) (“employee benefit” means anything of value in addition to wages, including “any health benefits”) The Supreme Court stated in *Anderson* that including fringe benefits, such as insurance

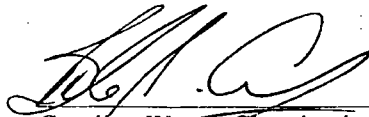
in the calculation of wages, “would dramatically alter the practice in this state.” *Id.* 343 S.C. at 497, 551 S.E.2d at 531.

The Second Order finds a post-retirement healthcare benefit, in this instance a Medicare supplement, is a form of deferred compensation “earned” during their employment and to which Plaintiffs are entitled upon retirement. In this regard, the Second Order is contrary to the Supreme Court’s decisions in *Alston* and *Anonymous Taxpayer* and the General Assembly’s definition of “employee benefits” in Section 41-1-25.

For each of these reasons, the Court should alter or amend the Second Order.¹²

CONCLUSION

For the reasons discussed above, the City respectfully requests the Court alter and/or amend the Second Order.



Caroline Wrenn Cleveland

Bob E. Conley

Emmanuel J. Ferguson

CLEVELAND & CONLEY, L.L.C.

One Seventy-One Church Street, Suite 310

Charleston, South Carolina 29401

Telephone: (843) 577-9626

Facsimile: (843) 577-6672

ccleveland@clevelandlaborlaw.com

bconley@clevelandlaborlaw.com

eferguson@clevelandlaborlaw.com

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
November 26, 2018

¹² If left unaltered, the Second Order creates confusion as to whether the City is required to withhold, and Plaintiffs are each required to pay, state income tax, federal income tax, Medicare withholding, Social Security withholding, and any other applicable “payroll taxes” from the amount awarded as “wages” to each Plaintiff.

2013-CP-10-3210

CERTIFICATE OF SERVICE

This is to certify that I have this 26th day of November 2018, caused to be served a copy of Defendant's Motion to Alter or Amend on all counsel by depositing in the mail and addressed to:

Nancy Bloodgood, Esquire
BLOODGOOD & SANDERS, LLC
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464

Loretta M. Plitnick

Loretta M. Plitnick
Paralegal

This 26th day of November 2018.

FILED
2018 NOV 26 AM 11:31
JULIE J. ARISTON
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Alvar R. Rissanen; Michael H. Baxley;	)	Case No.: 2013-CP-10-3210
Clifford W. Forner; and Willie L. Hood,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' MEMORANDUM IN
	)	OPPOSITION TO DEFENDANT'S
	)	MOTION TO ALTER OR AMEND
City of North Charleston,	)	
	)	
Defendant.	)	

Plaintiffs respectfully submit this Memorandum in response to Defendant's Motion to Alter or Amend the Court's Second Order in their favor. Plaintiffs respond to each of Defendant's arguments as follows.

LEGAL ARGUMENTS

A. The Second Order addresses the issue of whether Plaintiff's claims were filed beyond the applicable Statute of Limitations.

The Court made the following Findings of Fact in its Second Order:

33. Between 2009 and 2011, the Mayor met with Plaintiffs Rissanen and Baxley and Plaintiffs Rissanen and Baxley were assured by the Mayor, City Council members, and HR personnel that they would be not treated differently as they had already they retired so they were grandfathered. Plaintiffs Rissanen and Baxley relayed this information to the other Plaintiffs and retirees.

34. The former HR Director, Bob Canella, repeatedly assured Plaintiff Rissanen he would be grandfathered.

35. City Councilmembers Rhonda Jerome and Bob King assured Plaintiff Baxley he would be grandfathered.

37. The Plaintiffs filed this lawsuit on May 31, 2013. The City contends that their claims are barred by the three year statute of limitations because it began to run in 2009 when Plaintiffs received the letter from the City stating all healthcare benefits will cease one a retiree becomes Medicare eligible. Absent the City's promises that the Plaintiffs would be grandfathered into the former

FILED
 2019 JUN -4 AM 11:33
 JILL J. ARMSTRONG
 CLERK OF COURT
 BY 

retirement system, the statute would in fact begin to run on the date of the City's letter. However, as stated more fully below, the City's actions bar then from asserting the statute of limitations as a defense.

Further, a 2011 email from the City's HR Department to Plaintiff Rissanen, which was made an exhibit at trial, assured Plaintiff Rissanen that he would be "grandfathered" and, as the Court acknowledged in the Second Order, its decision is based in part on the exhibits introduced in this case.

The Court also addressed the statute of limitations issue in Paragraph 16 of the Second Order, stating:

Plaintiffs' claims are not barred by the statute of limitations. Plaintiffs had many discussions with Defendant's Mayor and HR personnel after receiving the Mayor's letter in May of 2009. For at least two years after May of 2009, Defendant continued to represent that Plaintiffs would be "grandfathered." The Mayor's May 2009 letter stated that proposed changes would go into effect in June 2010 inferring that employees retiring before June 1, 2009 would be treated differently than employees retiring after June 1, 2009. A memorandum authored by Mayor Summey confirmed that grandfathering was being discussed. Plaintiffs were not on notice that Defendant had decided not to grandfather them until after 2011. As late as 2011, Mayor Summey told Plaintiffs he wanted to keep the promise and would try to find a way to do so. Plaintiffs testified they knew the Mayor was an outstanding mayor who could make things happen, and was a man of his word. As late as 2011, the Mayor was directing City employees to find a way to help Plaintiffs.

The Court went on to conclude as a matter of law in Paragraph 17 of the Second Order:

[A] defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct." *RWE NuKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 644 S.E.2d 730 (2007) (quoting *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997)). Here, the Mayor and the City's HR and administrative personnel continued over the

course of many months after the Mayor's 2009 letter to assure Plaintiffs verbally and in writing that they would be grandfathered; the City even arranged for Plaintiffs to meet with an insurance company. The City's conduct was intended to, and did, induce the Plaintiffs to hold off filing a law suit as they believed that the promises made to them would be kept. *Order*, p. 13.

The application of the Statute of Limitations to the facts in this case was, thus, addressed by the Court and there is no need to alter or amend the Second Order regarding this issue.

B. The Second Order did not address the type of Medicare Supplement the City promised each Plaintiff as there was no need to do so.

The City never promised a specific Medicare Supplement; it promised retirees health insurance that was the same as it offered active employees. The Court found that Ordinance No. 1984-23, which was never repealed, provided upon retirement to employees at age 50 with 25 years of covered service health insurance through the City at the same price active employees paid (which has always been provided at no cost.) (Second Order, ¶¶ 11-13.) Per this Ordinance, retirees were provided the same insurance as full-time employees at the same price.

In May of 1998, the Mayor restated his intent to provide retirees with free retiree health insurance. (*Id.* ¶¶ 15-18.) In 1998, the Mayor did not specify the type of Supplemental Medicare Plan the City would provide once the retirees reached age 65, although it is clear from the language in Ordinance No. 1984-23 that any Medicare Supplemental Plan would have to provide retirees comparable insurance as full-time employees received. As the Mayor did not specify a particular Plan, the Court properly refused to guess at which Supplemental Medicare Plan on any given date provided benefits most similar to the City's health insurance.

Instead, the Court held that damages for the breach of a promise can be money damages in the form of reimbursement for Plaintiffs' past and future out of pocket costs. (*Id.* ¶¶ 18-19.) The Second Order acknowledged the Court could not force the City to change its budget to

account for the cost of Plaintiffs' Medicare Supplement Policies so it determined a lump sum should be awarded. (*Id.* ¶ 21.) Acknowledging the amount could not be determined with mathematical precision, the Court required each party to obtain expert witnesses to estimate of cost of Plaintiffs' Medicare Supplement Policies in the future, gave the parties the opportunity to take the experts' depositions, and held a separate hearing on the issue of damages. Plaintiff's expert assumed cost information based on what three (3) of the Plaintiffs actually currently pay for the Medicare Supplemental Policy each has chosen. (See, Amended Affidavit of Nancy Bloodgood, Ex. C.) Using different processes, both experts arrived at surprisingly similar numbers and both expert reports were introduced as evidence at the damages hearing. The Court then exercised its discretion and chose the numbers in Plaintiff's expert's opinion report.

C. The Second Order does not contain inconsistent or undefined directives as to the monetary awards to each Plaintiff.

As stated above, the specific amount of reimbursement for each Plaintiff is found in Plaintiff's expert opinion report which was made part of the trial record. The award of damages is not inconsistent. Plaintiffs do not incur any out of pocket costs until they turn 65 so the Plaintiff's expert report represents what Plaintiffs have already paid since turning 65 and an estimate of the future cost. It appears the Court's individual awards, costs and attorney fees add up to \$214,232.15 rather than \$212,236.15, which is likely a scrivener's error. The four dollar difference is not material and Plaintiffs do not believe an amendment to the Order is necessary; they agree to the judgment is what it adds up to, or \$214,232.15.

D. The Court's award of Attorney Fees complies with S.C. Code § 15-77-300 although there is a scrivener's error in the Second Order regarding the amount of attorney fees.

The amount of \$51,100 of attorney fees is the amount that appeared in the first Order based on undersigned counsel's initial Affidavit in Support of Attorney Fees filed February 20, 2018 (§ 7, p. 4.) Subsequent to this Order, per the Court's instructions, experts were identified and deposed and a hearing was held on damages. Additionally, post-trial motions were prepared and filed. Based on this additional work, a revised calculation of attorney fees was presented to the Court in an Amended Affidavit filed November 8, 2018 reflecting additional hours and attorney fees of \$55,335 (§ 8, p.4.), which the Court awarded. The number in Paragraph 5 on the last page of the Second Order is incorrect as that was the award of attorney fees in February, eleven (11) months earlier. Again, this was a scrivener's error and Defendant knows from the pleadings that the award of attorney fees in the Second Order is based on the Amended Affidavit and is \$55,335.00.

"Plaintiffs are entitled to attorney fees as they prevailed against a state entity. S.C. Code § 15-77-300 provides in relevant part:

In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if: (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.

Id.

Defendant is a municipal corporation authorized under the State Constitution and State law. Municipal corporations only exist when they are created by the State. Municipalities are agents of the State as an agent is one who acts in place of another by authority from him or one who acts in some matter pertaining to the administration of government per Black's Law

Dictionary. This is exactly what municipalities when they are created per the State Constitution and State law.

Specifically, Article VIII Section 8 states the General Assembly shall provide by general law the criteria and the procedures for the incorporation of new municipalities. Further, S.C. Code Ann. § 5-1-10 states, "A municipality having a certificate of incorporation issued by the Secretary of State and a township established by act of the General Assembly are declared to be perpetual bodies, politic and corporate, entitled to exercise all the powers and privileges provided for municipal corporations in this State, and subject to all the limitations and liabilities provided for municipal corporations in this State. "Municipality" means a city or town issued a certificate of incorporation, or township *created by act of the General Assembly*. S.C. Code Ann. § 5-1-20 (emphasis added). S.C. Code Ann. § 5-1-26 requires that upon receipt of a filing for a proposed municipal incorporation, the Secretary of State shall transfer a copy of the filing to the Joint Legislative Committee on Municipal Incorporation for review who makes a recommendation to the Secretary of State whether the area meets the minimum State statutory service standard incorporation requirements. Counties and cities are both creations of State constitutional and statutory law and there is no basis to distinguish between them for purposes of this Statute.

Plaintiffs are the prevailing party in this matter and the City, an agency of the State, acted without substantial justification when it broke its promise, which was contested by Plaintiffs, so the Court's Order regarding attorney fees is appropriate.

Defendant's argument that the Court made no specific findings is without merit, as the requisite requirements of S.C. Code § 15-77-300 (B) are contained in undersigned Amended Affidavit, which is a pleading that the Court incorporated by reference in its Order.

Defendant's cite to *S.C. Pub. Interest Found. v. Courson*, 801 S.E.2d 185 (Ct. App. 2017) is not on point as the issue was whether the State Senate was an agent of the State, not whether a municipal corporation created by the State is an agent of the State. In *Courson*, the Court of Appeals held, "because the Senate's duties are entirely different from those of executive agencies, defining "appropriate agency" under the state action statute to include the Senate would be a forced construction of the term based on the customary meaning of agency. 801 S.E.2d at 187, 420 S.C. at 124. Here, there is no need to resort to customary meaning as the Constitution and state law provide that municipalities are political subdivisions of the State. A municipality is a political subdivision of the State for governmental purposes: *Hill et al. v. City of Greenville*, 223 S.C. 392, 76 S.E.2d 294, 295 (1953).

E. The Court's Second Order addresses whether a Promise for Future Benefits is an unenforceable Violation of Public Policy claim.

The Court addressed whether the promise concerned wages or future benefits in paragraphs 8-13 on pages 10 to 13 of its Second Order, citing to *Bishop v. City of Columbia*, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013). The Court of Appeals in *Bishop* has already addressed and decided this issue when it remanded the *Bishop* case to a circuit court to decide whether there was evidence to support the elements of a promissory estoppel claim.

It was argued to, and acknowledged by, the Court of Appeals in the *Bishop* case that a promise of wages in the future can be part of an employee's salary as the South Carolina Payment of Wages Act defines wages as "*all amounts at which labor rendered is recompensed*, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee *under any employer policy or employment contract.*" *S.C. Code § 41-10-10* (emphasis added).

The future wages promised to Plaintiffs are compensation for work which had already been performed by them. They earned the free retiree health insurance on the day they retired. Plaintiffs worked for the City for the requisite number of years to obtain insurance that would cost them nothing (or almost nothing in Plaintiff Forner's case) and, thus, the promise had significant value which is an easily ascertainable monetary amount. Further, in *Bishop*, the Court of Appeals referred to the promise of retiree health insurance as a promise for "free" insurance, indicating its agreement that the promise involved the money value of the insurance and not just a future benefit:

Retirees also testified that several supervisors informed them they would receive *free* health insurance for life during their individual merit interviews and evaluations, which were incidental to the supervision of their employment. Therefore, the employment review context during which the representations were made provides a scintilla of evidence to suggest the representations and promises were within the supervisors' authority and reasonably relied upon.

Bishop v. City of Columbia, 401 S.C. 651, 667, 738 S.E.2d 255, 263 (Ct. App. 2013) (emphasis added).

The Court of Appeals considered and ruled that a claim for free retiree health insurance is not precluded based on the same argument that Defendant is making now - that a claim for benefits rather than a claim for money. This Court is bound by the Court of Appeals' decision as to this issue. By allowing the *Bishop* case to go forward, the Court of Appeals rejected Defendant's argument that the promise was unenforceable because it was a promise for future benefits."

The Court's Order acknowledges that a promise to pay the cost of retiree health insurance for employees who work a certain number of years is a promise regarding money, as did the

Court of Appeals in the *Bishop* case. There is no merit in Defendant's argument that this issue was not addressed.

F. The Second Order does not need to address the City's Budget Ordinance.

The City's Budget Ordinance is irrelevant. How the City funds its promise has nothing to do with its obligations to fulfill the promise. The impossibility of payment is not an element of—or defense—to estoppel. Further, there was testimony indicating it is a minimal expense to the City to pay these four (4) Plaintiffs. In its Second Order, the Court found, "Plaintiffs testified they trusted HR Director Bob Cannella and Mayor Summey when they made promises about free health insurance for retirees because Bob Cannella and Mayor Summey had authority as Mayor and Finance Department Head to make those promises. Additionally, they testified (and the Mayor agreed) that the Mayor had made the promises repeatedly through the years at staff meetings and luncheons and at different fire stations to hundreds of employees. Plaintiffs testified they knew they could count on the Mayor because he had never broken a promise to them and was a man of his word. It is undisputed that the Mayor confirmed the promises made in his 1998 Memo verbally on many occasions."

The Court additionally found, "Defendant's Mayor used the promise of free retiree health insurance as a recruiting tool to keep firefighters, including Plaintiffs, employed by the City. Plaintiffs testified when firefighters would complain about low wages or consider leaving the City, Defendant's Mayor would point to the promise of free retiree health insurance and boast to the employees, "You've got a honey of a deal."

Then, citing the *Bishop* case, the Court held:

The acts of a city official acting within the proper scope of his or her authority may give rise to estoppel against a municipality. *Charleston Cnty. v. Nat'l Advert. Co.*, 292 S.C. 416, 418, 357 S.E.2d 9, 10 (1987); *Landing Dev. Corp. v. City of Myrtle Beach*,

285 S.C. 216, 221, 329 S.E.2d 423, 426 (1985) ("Government agents, acting within the proper scope of their authority, can by their acts give rise to estoppel against a municipality.") *Bishop v. City of Columbia*, 401 S.C. 651, 665, 738 S.E.2d 255, 262(Ct. App. 2013)

As the authorized acts of an administrator can give rise to a claim for estoppel, the acts or non-acts of a legislative body are irrelevant. How the City funded or intended to keep its promise is irrelevant to any of the elements necessary to prove a promissory estoppel claim.

G. The Second Order did not need to address reliance damages.

The fourth element of a promissory estoppel claim is injury caused by reliance.¹ Defendant is confusing detrimental reliance with "reliance" damages available for a breach of contract.² *Carrigg v. Blue*, 283 S.C. 494, 498, 323 S.E.2d 787, 789 (Ct. App. 1984), is the only published case in South Carolina that uses the words "reliance damages." *Carrigg* is a contract case. This is a promissory estoppel case so the Court did not need to address "reliance" damages. Expectation damages are the type of damages available in a promissory estoppel claim

The Court addressed expectation damages (which are available in a promissory estoppel claim) in paragraphs 18--22 on pages 14 and 15 of the Second Order. There was ample testimony

¹ "The elements of promissory estoppel are: (1) a promise unambiguous in its terms; (2) the party to whom the promise is made reasonably relies on it; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise." *Bishop v. City of Columbia*, 401 S.C. 651, 664 (Ct. App. 2013) citing *Woods v. State*, 314 S.C. 501, 505 (Ct. App. 1993).

² Detrimental reliance is not an element of promissory estoppel or estoppel against a municipality under South Carolina law. Other state courts have referred to it as the "doctrinal sibling" of promissory estoppel. *Roberts v. Geosource Drilling Servs., Inc.*, 757 S.W.2d 48, 50 (Tex. App. 1988) (attached). In Texas, for example, "For the doctrine of 'detrimental reliance' to be available, [a plaintiff] must show the existence of a promise 'designedly made to influence the conduct of the promisee, tacitly encouraging the conduct, which conduct, although not necessarily constituting any actual performance of the contract itself, is something that must be done by the promisee before he could begin to perform, and was a fact known to the promisor." *Garcia v. Lucero*, 366 S.W.3d 275, 281 (Tex. App. 2012) (quoting *Roberts v. Geosource Drilling Servs., Inc.*, 757 S.W.2d 48, 50 (Tex. App. 1988)). There is no equivalent doctrine at issue in this case, and there does not appear to be one under South Carolina law.

at trial and in trial exhibits to support the Court's conclusion that Plaintiffs relied on the City's promise by continuing to work the requisite number of years with the City. This is not a detrimental reliance claim and there is no requirement that Plaintiffs prove "lost opportunity" as Defendant contends.

Further, the Court of Appeals clearly set forth the elements of a promissory estoppel claim in the *Bishop* case and detrimental reliance is not one of the elements. Finally, Plaintiffs' damages are not speculative as evidenced by the fact that two experts determined monetary amounts that were surprisingly similar.

H. The Second Order properly found that the promise by the City to its retirees was a promise of deferred wages in the form of paid up health insurance benefits, which after the age of 65, would necessarily take the form of Medicare benefits.

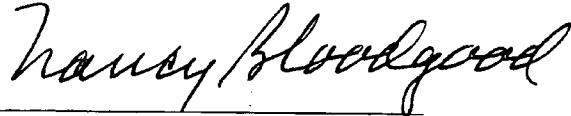
Defendant's concern about the term "wages" is misplaced. This Court has awarded equitable damages in the form of "make whole" damages which included reimbursement for out of pocket costs incurred as the result of the City breaking its promise and an award of a reasonable estimate of what Plaintiffs will pay out of their pocket in the future in lieu of the City paying the cost of their insurance. These are out of pocket costs by individuals- no taxes or withholding has to come out of such funds. When the City currently pays the premium for retirees under the age of 65, it does not deduct taxes or withhold FICA, etc.

CONCLUSION

To the extent the Court wishes to fix the two minor scrivener errors in its Second Order (changing \$214,236.15 to \$214,232.15 and changing \$51,100 in Paragraph 5 on the last page to \$55,335) Plaintiffs have no objection although it is unnecessary as explained above. Plaintiffs

respectfully request this Honorable Court deny the remainder of Defendant's Motion to Alter or Amend.

BLOODGOOD & SANDERS, LLC



Nancy Bloodgood, SC Bar No.: 6459

Lucy C. Sanders, SC Bar No.: 78169

242 Mathis Ferry Road, Suite 201

Mt. Pleasant, SC 29464

Telephone: (843) 972-0313

Email: nbloodgood@bloodgoodsanders.com

lsanders@bloodgoodsanders.com

Attorneys for Plaintiffs

Charleston, South Carolina

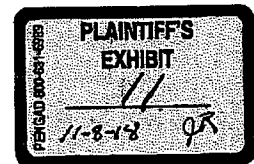
Date: December 18, 2018

Rev: tkg 8/13/2018

Name	DOB	2015	2018	SS Life Exp.	Retirement Date	Total	PV @ 2.5% DR
RISSANEN	3/14/1951	64	67	83	9/30/2005 \$	53,289	\$ 43,556
BAXLEY	6/12/1951	64	67	83	6/30/2005 \$	52,418	\$ 42,740
HOOD	1/9/1946	69	72	84	*12/31/2005 \$	46,854	\$ 38,633
FORNER	2/10/1959	56	59	81	6/1/2009 \$	45,321	\$ 31,255
					\$	197,883	\$ 156,183

*Reimbursed for Med
*City not responsible

**2015 Social Security
<https://www.ssa.gov/>



Rissanen

<u>Age</u>	<u>Year</u>	<u>BCBS Supp Plan F</u>	<u>Plan Prem. Total</u>	<u>PV</u>	<u>PV Total</u>	<u>YRS</u>
65	2016	\$ 1,465		\$ 1,465		-2
66	2017	\$ 1,849		\$ 1,849		-1
67	2018	\$ 1,945		\$ 1,945		0
68	2019	\$ 2,046		\$ 1,996		1
69	2020	\$ 2,153		\$ 2,049		2
70	2021	\$ 2,265		\$ 2,103		3
71	2022	\$ 2,383		\$ 2,159		4
72	2023	\$ 2,508		\$ 2,217		5
73	2024	\$ 2,638		\$ 2,275		6
74	2025	\$ 2,776		\$ 2,335		7
75	2026	\$ 2,920		\$ 2,397		8
76	2027	\$ 3,072		\$ 2,460		9
77	2028	\$ 3,232		\$ 2,525		10
78	2029	\$ 3,401		\$ 2,592		11
79	2030	\$ 3,578		\$ 2,660		12
80*	2031	\$ 3,764		\$ 2,730		13
81*	2032	\$ 3,764		\$ 2,664		14
82*	2033	\$ 3,764		\$ 2,599		15
<u>SS Life Exp</u>	83*	2034	\$ 3,764	\$ 53,288.90	\$ 2,536	\$ 43,556

*Premiums lock age 80+ based on BCBS Premium Schedule for Plan F

*Rates sourced from 2015 BCBS Rate summary

Baxley

	<u>Age</u>	<u>Year</u>	<u>BCBS</u>	<u>Plan Prem. Total</u>	<u>PV</u>	<u>PV Total</u>	<u>YRS</u>
	65	2016 \$	964		964		-2
	66	2017 \$	1,652		1652		-1
	67	2018 \$	1,773		1773		0
	68	2019 \$	2,046		1996		1
	69	2020 \$	2,153		2049		2
	70	2021 \$	2,265		2103		3
	71	2022 \$	2,383		2213		4
	72	2023 \$	2,508		2217		5
	73	2024 \$	2,638		2275		6
	74	2025 \$	2,776		2335		7
	75	2026 \$	2,920		2397		8
	76	2027 \$	3,072		2460		9
	77	2028 \$	3,232		2525		10
	78	2029 \$	3,401		2592		11
	79	2030 \$	3,578		2660		12
	80	2031 \$	3,764		2730		13
	81	2032 \$	3,764		2664		14
	82	2033 \$	3,764		2599		15
<u>SS Life Exp</u>	83	2034 \$	3,764 \$	52,418.42	2536 \$	42,740	16

*Rates sourced from 2015 BCBS Rate summary

Hood

<u>Age</u>	<u>Year</u>	<u>AARP Plan N</u>	<u>Totals</u>	<u>PV</u>	<u>PV Total</u>	<u>YRS</u>
65	2011	\$ 1,009		\$ 1,009		-7
66	2012	\$ 1,093		\$ 1,093		-6
67	2013	\$ 1,217		\$ 1,217		-5
68	2014	\$ 1,305		\$ 1,305		-4
69	2015	\$ 1,402		\$ 1,402		-3
70	2016	\$ 1,512		\$ 1,512		-2
71	2017	\$ 1,581		\$ 1,581		-1
72	2018	\$ 1,644		\$ 1,644		0
73	2019	\$ 1,792		\$ 1,748		1
74	2020	\$ 1,953		\$ 1,859		2
75	2021	\$ 2,129		\$ 1,977		3
76	2022	\$ 2,321		\$ 2,103		4
77	2023	\$ 2,529		\$ 2,235		5
78	2024	\$ 2,757		\$ 2,377		6
79	2025	\$ 3,005		\$ 2,528		7
80	2026	\$ 3,276		\$ 2,689		8
81	2027	\$ 3,571		\$ 2,859		9
82	2028	\$ 3,892		\$ 3,040		10
83	2029	\$ 4,242		\$ 3,233		11
SS Life Exp	84	\$ 4,624	\$ 46,854	\$ 1,222	\$ 38,633	12

*Corrected premium amounts for years 2023 - 2030 to reflect life expectancy based on SS Tables

Assumptions:

*9% increase year over year - estimated age 73-84

*Based on AARP Plan N documents

*Corrected Age 77 -84 data input on 7/17/2018 - TKG

Forner

<u>Age</u>	<u>Year</u>	<u>Based on BCBS Plan F</u>	<u>Totals</u>	<u>PV</u>	<u>PV Total</u>	<u>YRS</u>
65	2024	\$ 1,025		884		6
66	2025	\$ 1,849		1555		7
67	2026	\$ 1,945		1596		8
68	2027	\$ 2,046		1641		9
69	2028	\$ 2,153		1682		10
70	2029	\$ 2,265		1726		11
71	2030	\$ 2,383		1772		12
72	2031	\$ 2,508		1819		13
73	2032	\$ 2,638		1867		14
74	2033	\$ 2,776		1917		15
75	2034	\$ 2,920		1967		16
76	2035	\$ 3,072		2019		17
77	2036	\$ 3,232		2072		18
78	2037	\$ 3,401		2127		19
79	2038	\$ 3,578		2184		20
80	2039	\$ 3,764		2241		21
<u>SS Life Exp</u>	81	2040	\$ 3,764	\$ 45,321	2186 \$ 31,255	22

Assumptions:

*Rates sourced from 2015 BCBS Rate Plan F summary

*Mr. Forner not currently on Medicare Policy due to age. Schedule assumes he will enroll in medicare in yea

Tyler K. Gibbons CPA, CFE

Riser McLaurin & Gibbons LLP
Certified Public Accountants
1417 Remount Road
North Charleston, SC 29406

Phone: (843) 554-5600
Fax: (843) 589-1287
Email: tg@mgcpas.com

Education

College of Charleston
Study in Accountancy, 2009 – 2010;

University of South Carolina-Columbia
Bachelor of Science, Criminology and Criminal Justice, 2001 - 2005

Certifications

Certified Public Accountant
American Institute of Certified Public Accountants

Certified Fraud Examiner
Association of Certified Fraud Examiners

Experience

Tyler is a CPA in public practice and partner with Riser, McLaurin & Gibbons LLP CPAs. He attended the University of South Carolina where he received a B.S. in Criminology and Criminal Justice; he later completed his study in Accountancy at the College of Charleston to fulfill requirements for the CPA examination.

Tyler specializes in the field of financial forensics and provides litigation support on active financial fraud investigations. He works closely with businesses to provide guidance on tax reporting issues as they relate to Federal and State compliance; as well as creating and implementing accounting systems and technology. Experience includes extensive consulting work in the areas of taxation and financial issues for individuals, corporations and other entities. Litigation experience includes forensic accounting services in accounting, financial and business issues. He has also assisted on governmental audits for the past 10 years and has ongoing continuing education in this field, specifically, as it relates to Government Auditing Standards (GAS). He has also serves on the board for the SC Association of CPAs. Mr. Gibbons' specialized assignments have included:



- Employee Fraud and Embezzlement Calculations
- Search for asset analysis in divorce disputes
- Reconstruction of accounting records
- Analysis of financial and tax records
- Economic loss calculations

Certified Public Accountant at Riser, McLaurin & Gibbons, LLP CPAs
2009 to Present

Advisor at Prudential Financial
2007 to 2009

Speaking Engagements

Digital Assets Conference | Raleigh, NC June 15-16, 2018
Participated in a panel discussion related to taxation of digital assets.

Digital Assets Conference | Charlotte, NC August 14-15, 2015
Participated in a regulation panel with various representatives discussing Federal and State level regulation of digital currencies and money transmitting businesses.

Digital Assets Conference | Raleigh, NC August 15-16, 2014
Participated in a regulation panel with various leaders in the digital currency community including 38th Director of the US Mint Edmund C. Moy.

35th Annual National Judges Education Conference | Charleston, SC June 21 – 26, 2014
Presented to the annual judges conference on recent IRS regulations and related issues.

Affiliations

- American Institute of Certified Public Accountants (AICPA)
- Association of Certified Fraud Examiners (ACFE)
- South Carolina Association of CPAs - Coastal Chapter (SCACPA)
- Charleston Metro Chamber of Commerce
- SCACPA Legislative Advocacy & Regulatory Committee
- SCACPA Business Valuations, Forensic and Litigations Committee

Tyler K. Gibbons CPA, CFE

Riser McLaurin & Gibbons LLP
Certified Public Accountants
1417 Remount Road
North Charleston, SC 29406

Phone: (843) 554-5600
Fax: (843) 589-1287
Email: tg@rmgcpas.com

Litigation Support and Expert Engagements

- *Victor J. Sansouci, JR et al v. Donald Weathers*
- *SIB Development & Consulting, Inc. v. Milwaukee Healthcare Operator*
- *South Carolina Department of Revenue v. Phillip Gizzi*
- *United States of America v. Stephen Griebel*
- *United States of America v. Cynthia Soard*
- *Wheeler v. Trifecta Foods LLC*