THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Circuit Court Judge R. Scott Sprouse

Consolidated Cases 2009-CP-40-05680 and 2013-CP-40-05097

Appellate Case No. 2019-000374

Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam III, Alma C. Hill, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith, Appellants,

v.

City of Columbia, Respondent.

and

Larry Strickland, Denious L. Dimery and Bailey G. McClinton, Appellants,

v.

City of Columbia, Respondent.

RECORD ON APPEAL
VOLUME I OF II

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INDEX

VOLUME I

ORDERS

Order of Judge Barber dated September 13, 2010 1

Order of Judge Gee dated August 2, 2016 22

Order of Judge Toal dated April 19, 2017, filed April 25, 2017 27

Trial Court Order of Judge Sprouse dated January 29, 2019 29

Order Denying Plaintiffs' Rule 59 Motion dated February 19, 2019 39

PLEADINGS

Complaints 42, 63

Answers 72, 88

Defendant's Memorandum for Summary Judgment 97

Plaintiffs' Response to Motion for Support of Summary Judgment 320

Plaintiffs' Post-Trial Brief 386

Defendant's Post-Trial Brief 444

Plaintiffs' Motion to Alter or Amend 460

Defendant's Memorandum in Response to Motion to Alter or Amend 473

VOLUME II

PORTIONS OF THE TRANSCRIPT OF DECEMBER 19-20, 2018 HEARING

Transcript of December 19-20, 2018 Hearing Testimony 477

Direct, Arthur (Cam) Gillam 478

Cross, Arthur (Cam) Gillam 481

Redirect, Arthur (Cam) Gillam 497

Recross, Arthur (Cam) Gillam 497

Direct, Larry Strickland 498

Cross, Larry Strickland 503

Redirect, Larry Strickland 512

Recross, Larry Strickland 513

Direct, Bailey McClinton 515

Cross, Bailey McClinton 517

Redirect, Bailey McClinton 524

Recross, Bailey McClinton 526

Direct, Charles Morris 527

Cross, Charles Morris 529

Direct, Alma Hill 537

Cross, Alma Hill 539

Redirect, Alma Hill 545

Recross, Alma Hill 546

Direct, Steve Gantt 548

Direct, Joseph Floyd 567

Cross, Joseph Floyd 572

Redirect, Joseph Floyd 583

Direct, Rusty Smith 585

Cross, Rusty Smith 586

Direct, Basilides (Frank) Cruz 597

Cross, Basilides (Frank) Cruz 606

Direct, Barry Martin 611

Cross, Barry Martin 613

Direct Denious Dimery 616

Cross, Denious Dimery 618

Direct, Pamela Benjamin 623

Cross, Pamela Benjamin 628

Direct, Missy Caughman 629

OTHER MATERIALS

Plaintiffs' Trial Exhibits

Plaintiff Exhibit 1, September 1991 Inside Columbia Newsletter 633

Plaintiff Exhibit 2, September 1996 Inside Columbia Newsletter 637

Plaintiff Exhibit 3, November 1997 Inside Columbia Newsletter 639

Plaintiff Exhibit 4, June 1998 Inside Columbia Newsletter 640

Plaintiff Exhibit 5, January-February 1999 Inside Columbia Newsletter 642

Plaintiff Exhibit 6, January-February 2000 Inside Columbia Newsletter 645

Plaintiff Exhibit 7, May June 2000 Inside Columbia Newsletter 649

Plaintiff Exhibit 8, July-August 2000 Inside Columbia Newsletter 657

Plaintiff Exhibit 9, March-April 2002 Inside Columbia Newsletter 663

Plaintiff Exhibit 10, July-August 2002 Inside Columbia Newsletter 666

Plaintiff Exhibit 11, April 2003 Inside Columbia Newsletter 670

Plaintiff Exhibit 12, July 2003 Inside Columbia Newsletter 678

Plaintiff Exhibit 13, July-August 2004 Inside Columbia Newsletter 682

Plaintiff Exhibit 14, 1988 Employee and Retiree Health Coverage book 694

Plaintiff Exhibit 15, 1992 Employee and Retiree Health Coverage book 696

Plaintiff Exhibit 16, 1994 Employee and Retiree Health Coverage book 698

Plaintiff Exhibit 17, 1997 Employee and Retiree Health Coverage book 700

Plaintiff Exhibit 18, 1999 Employee and Retiree Health Coverage book 702

Plaintiff Exhibit 19, 2002 Employee and Retiree Health Coverage book 704

Plaintiff Exhibit 20, 2004 Employee and Retiree Health Coverage book 706

Plaintiff Exhibit 22, 2004 Employee and Retiree Health Coverage book 707

Plaintiff Exhibit 23, Stipulations of Fact 708

Plaintiff Exhibit 25, Hill January 23, 2009 letter re retiree health insurance from Natasha Taylor 713

Plaintiff Exhibit 27, Floyd October 14, 2005 Letter from Mona Holliday 714

Plaintiff Exhibit 29, Smith retiree benefits letter dated June 14, 2006 from Mona Holliday 715

Plaintiff Exhibit 30, June 1, 2007 letter to Cruz from Mona Holliday 716

Defendant's Trial Exhibits

Defendant Exhibit 1

Tab 1, Columbia City Code Article V, §§ 2-201 — 2-301 717

Tab 2, City Council Work Session Minutes of January 7, 2009 720

Tab 3, City Council Meeting Minutes of May 6, 2009 743

Tab 4, City Council Meeting Minutes of February 17, 2010 751

Tab 5, City Council Meeting Minutes of December 7, 2010 762

Tab 6, City Council Meeting Minutes of October 18, 2011 771

Tab 7, City Council Meeting Minutes of January 10, 2012 780

Tab 8, City Council Meeting Minutes of October 2, 2012 785

Tab 9, City Council Meeting Minutes of August 19, 2014 788

Tab 10, City Council Meeting Minutes of October 21, 2014 813

Tab 11, City Council Meeting Minutes of January 19, 2016 823

Tab 12, City Council Meeting Work Session
and Minutes of June 21, 2016 838

Tab 13, Schedule of Benefits (Effective Date: July 1, 2008) 864

Tab 14, City of Columbia Benefits Summary –
2010 Preferred Blue Plan 865

Tab 15, City of Columbia 2013 Retiree Premiums
(October 2, 2012) 866

Tab 16, City of Columbia Employee and Retiree Health
Coverage Booklet Excerpts (September 1, 1988; pp. 1-3; 6-7) 872

Tab 17, City of Columbia Employee and Retiree Health
Coverage Booklet Excerpts (July 1, 1990; pp. 1; 14-17) 876

Tab 18, City of Columbia Employee and Retiree Health
Coverage Booklet Excerpts (July 1, 1992; pp. 1; 16-19) 880

Tab 19, City of Columbia Employee and Retiree Health
Coverage Booklet Excerpts (September 1, 1994; pp. 1; 22-23) 884

Tab 20, City of Columbia Employee and Retiree Health
Coverage Booklet Excerpts (July 1, 1996; pp. 1; 22-25) 887

Tab 21, City of Columbia Employee and Retiree Health
and Dental Coverage Booklet Excerpts (July 1, 1997; pp. 1; 24-27) 891

Tab 22, City of Columbia Employee and Retiree Health
Coverage Booklet Excerpts (August 1, 1999; website information;
introduction; table of contents; pp. 26-27) 895

Tab 23, City of Columbia Employee and Retiree Health
Coverage Booklet Excerpts (July 1, 2002; website information; introduction;
table of contents; pp. 1-4; 25-26) 899

Tab 27, City of Columbia Employee Handbook Disclaimer 910

Defendant Exhibit 2:

Tab 1, Basilides Cruz 912

Tab 2, Denious Demery 914

Tab 3, Joseph Floyd 916

Tab 4, Arthur Gillam 918

Tab 5, Alma Hill 920

Tab 6, Barry Martin 927

Tab 7, Bailey McClinton 929

Tab 8, Charles Morris 931

Tab 9, Joseph Smith 935

Tab 10, Larry Strickland 939

Defendant Exhibit 3:

Tab 13, Deposition of Joseph Floyd 942

Tab 15, Deposition of Alma Hill 945

Tab 16, Deposition of Barry Martin 947

City of Columbia Ordinances

City of Columbia Ordinance, Chap. 2, art. 1 Sec 2-1 950

City of Columbia Ordinance, Chap. 2, art. 1 Sec 2-5 950

City of Columbia Ordinance, Chap. 2, art. 1 Sec 2-32 (a) 951

City of Columbia Ordinance, Chap. 2, art. 1 Sec 2-32 (b) 952

City of Columbia Ordinance, Chap. 2, art. 1 Sec 2-122 953

City of Columbia Ordinance, Chap. 2, art. 1 Sec 2-151 954-955

Certificate of Appellant 956

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL DISTRICT**
COUNTY OF RICHLAND	**Civil Action File No.: 2009-CP-40-5680**
Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith,	**ORDER**
Plaintiffs,	
vs.	
City of Columbia,	
Defendant.	

RICHLAND COUNTY FILED
2010 SEP 13 AM 9:37
JEANETTE W. [illegible]
CLERK OF COURT

This matter comes before me on Defendant's motion for summary judgment filed May 6, 2010. Having considered the written materials presented by both parties and having heard oral argument on August 12, 2010, I find that Plaintiffs cannot establish the essential elements necessary to obtain the relief requested in their Complaint. Accordingly, Defendant is entitled to summary judgment pursuant to Rule 56, SCRCP.

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Green v. Cottrell, 346 S.C. 53, 550 S.E.2d 324 (Ct. App. 2001); Bruce v. Durney, 341 S.C. 563, 534 S.E.2d 720 (Ct. App. 2000); see also Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d. 187, 191 (1997) ("Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a

matter of law.").

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 799 (Ct. App. 1999). In determining whether any triable issues of material fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing summary judgment. Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). In responding to a motion for summary judgment, a plaintiff must offer evidence that a genuine issue of material fact exists as to each element necessary to establish the asserted claims. McLaughlin v. Williams, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008).

CONTROLLING FACTS

1. The City of Columbia ("City") has selected a manager/council form of government.

2. In the council/manager form of government, council retains all legislative power and policy making authority while the manager exercises administrative responsibility.

3. Policies and procedures are subject to change.

4. Adoption of a budget is a legislative power confined to City Council.

5. The City Manager must administer the City within the budget approved by Council.

6. The City Manager may enter agreements requiring expenditure only in amounts of $10,000 or less. All other commitment of City funds must be authorized by Council.

7. Council has approved a pay and classification plan for City employees. This plan sets ranges of compensation for employees.

8. The City Manager cannot provide compensation to employees beyond the range set for a position. The City Manager may approve an initial salary for an employee only up to five percent (5%) above the minimum set for the position. The City Manager may not approve compensation that exceeds a salary range.

9. Health insurance is provided by Council through a self funded group health plan available to City employees and eligible retirees administered by Blue Cross/Blue Shield of South Carolina. The City must reflect the cost of providing group health insurance as a contingent liability.

10. The group health insurance plan adopted by Council is available to City employees and eligible retirees on the same basis. At all times relevant to this action, active employees and eligible retirees have been offered the same group health insurance options.

11. Prior to July 1, 2009, the City paid all costs required to fund group health insurance for individual employees and eligible retirees.

12. Council voted on May 6, 2009, to require financial contributions by individual employees and eligible retirees for participation in the group health insurance plan beginning July 1, 2009.

13. Beginning July 1, 2009, all eligible group health insurance plan participants are charged on the same basis for individual coverage. This is $33.18 per month for Plan A and $63.17 per month for Plan B.

14. The Plaintiffs retired between January 26, 1997, and January 8, 2009.

15. Each of the Plaintiffs elected to participate in the City's group health insurance plan upon retirement.

16. The membership application providing for group health insurance coverage

contains a certification statement which includes the following language:

> I understand that upon acceptance of this application by the insurance company, and so long as I meet the eligibility requirements of the contract with this employer, I will be provided with coverage as specified by the group health contract between my employer [City] and the Corporation [Blue Cross/Blue Shield]."

17. Retirees are provided a letter from the benefits administrator in the City's Human Resources Department that describes benefits available upon retirement. Prior to July 1, 2009, in reference to group health insurance, this letter stated, in part: "Under the current policy, the City pays retirees' portion of the health premium. Therefore, no monthly payments are necessary."

18. At oral argument, counsel for the Plaintiffs indicated that the Plaintiffs seek a ruling that they cannot be charged for participating in the City's group health plan. The record reveals, however, that certain Plaintiffs seek exclusion from the City's group health insurance plan. For example, Plaintiffs Catt, Floyd, Hill and Smith claim entitlement to individual health insurance plans with the following features:

a. Reimbursement of all premiums paid since July 1, 2009;

b. Individual health insurance at the same terms (or better) as provided on the date of the individual Plaintiff's retirement;

c. Guarantee of no future reductions in benefits for the life of each Plaintiff;

d. Guarantee of no charges for health benefits for the life of each Plaintiff;

19. Because the Plaintiffs and others have retired on different dates, freezing heath benefits on individual retirement dates would require individual health plans, with different terms and benefits, on the date of every retirement prior to July 1, 2009.

20. There are presently five-hundred forty (540) individuals covered by the City's group health plan that retired before July 1, 2009.

CONCLUSIONS OF LAW

I. Plaintiffs cannot establish a cause of action for breach of contract.

A. Fringe benefits such as health insurance are not vested or enforceable by contract.

Plaintiffs' cause of action for breach of contract fails because Plaintiffs have no contractual right to receive free health insurance in perpetuity. As a matter of law, municipal employees have no contractual right or vested interest in prospective benefits. Alston v. City of Camden, 322 S.C. 38, 45-46, 471 S.E.2d 174, 177-78 (1996). Plaintiffs have stipulated that the manager/council form of government applies to both the City of Camden and the City of Columbia. It was this form of government that the South Carolina Supreme Court addressed in Alston.

In Alston, a group of employees and retirees sued the City of Camden challenging a reduction in the percentage of health insurance costs borne by the City. There, as here, the plaintiffs sought to prevent a municipality from making a prospective change in health benefits applicable to current and former employees. In holding for the City, the Supreme Court made the following observations:

- South Carolina law is clear that "public employees generally have no contractual rights in their employment merely by virtue of a statute describing the terms of that employment." Id. at 45, 417 S.E.2d at 177.
- Ordinances or other policies that establish a standard personnel system do not constitute contracts. Id. at 46-47, 417 S.E.2d at 178-79.
- Policies that apply to fringe benefits are not permanent in nature and may be changed prospectively. Id. at 48-49, 417 S.E.2d at 179.

- Even assuming the language of a handbook (or other documents) constituted a contract, employees have "no reasonable expectation that the terms of the 'contract' would remain unchanged." Id. at 48, 417 S.E.2d at 179.
- Any contractual rights created by a handbook or other writing cannot "give rise to any legitimate expectation that fringe benefits provided for them will continue for any specific amount of time." Id. at 48, 417 S.E.2d at 179.
- Employee contractual rights created by a handbook are subject to unilateral modification. This rule rests on the recognition that "the employer-employee relationship is not static. Employers must have a mechanism which allows them to alter the employee handbook to meet the changing needs of both business and employees. . . . This is especially true where . . . employees concede their at-will status." Id. at 48-49, 417 S.E.2d at 179 (internal citations omitted).
- Government "should have more flexibility than business with respect to the employer/employee relationship." Id. at 49, 417 S.E.2d at 179. Accordingly, a prospective change in benefits does not impair any contractual right.

The Supreme Court confirmed the changeable nature of fringe benefits for municipal employees in Layman v. State, 368 S.C. 631, 630 S.E.2d 265 (2006). In an expressly narrow decision, the Supreme Court found "contractually significant" language in TERI legislation that grandfathered participants who joined the program before a change in the law took effect on July 1, 2005. Addressing concerns by the State that this opinion overruled Alston, the Court responded:

> We find that Alston is distinguishable in several respects. First, the Court held that the benefits affected in Alston were "fringe benefits," and that the employees had a reasonable expectation that those benefits might be subject to change. In addition, the

> agreement in Alston was the type of unilateral contract that is subject to modification at any time.

Id. at 640, 630 S.E. 2d at 270 (internal citations omitted).

Two years after Layman, the Supreme Court rejected a claim by public retirees seeking to avoid a change in the State's approach to taxing retirement benefits. See Anonymous Taxpayer v. S.C. Dep't of Revenue, 377 S.C. 425, 661 S.E.2d 73 (2008). In that opinion, the Supreme Court dismissed the retirees' claims under contract, due process, and the takings clause, finding that the challenged action served a legitimate governmental purpose. Id. at 436-37, 661 S.E.2d at 79. Applied to the present circumstances, there can be no question that City Council acted within its legitimate legislative authority in requiring retiree participants in the City's group health plan to share a portion of the costs of their health care benefits.

B. Fringe benefits are not "wages" protected by state law.

By law, "wages" are confined to monetary payments. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 489, 551 S.E.2d 526, 530 (2001) (stating fringe benefits such as "medical, disability and life insurance" are not part of an employee's wages); see also Stokes v. Westinghouse Savannah River Co., 206 F.3d 420, 426 (4th Cir. 2000). The Supreme Court ruled in Anderson that including fringe benefits such as insurance in the calculation of wages "would dramatically alter the practice in this state." Id. at 497, 551 S.E.2d at 531.

Plaintiffs assert that their health insurance is a form of deferred compensation "earned" during their employment and to which they are entitled upon retirement. This assertion is contrary to the Supreme Court's decisions in Alston, Layman, and Anonymous Taxpayer. It is also inconsistent with the legislative authority of the City Council to adopt a budget. S.C. Code Ann. § 5-13-30(b). In the present case, City Council voted on May 6, 2009, to alter the fringe benefit program available to all current and former employees. The City Manager is obligated to

implement all resolutions adopted by Council. Plaintiffs' requests for relief would invalidate a duly adopted resolution and require the City Manager to operate in a manner inconsistent with the City's elected governing authority.

C. City Handbooks and Benefit Booklets do not establish a contractual right to continuing free health insurance.

Plaintiffs further contend that statements in handbooks, benefit booklets, and other publications permanently bind the City to provide free health insurance for their lifetimes. This assertion is not consistent with or supported by the following established facts of record and controlling law:

1. The handbooks and other publications relied upon by Plaintiffs do not contain language making permanent guarantees. Instead, these publications are each in the present tense and apply only to the period of their effectiveness.

2. Plaintiffs acknowledge and the record establishes that handbooks were subject to change and were changed during Plaintiffs' employment.

3. The benefits booklets relied upon by Plaintiffs do not contain language making permanent guarantees. Instead, all booklets are in the present tense and apply only to the period of their effectiveness.

4. Plaintiffs acknowledge and the record establishes that benefits booklets were subject to change and were changed during Plaintiffs' employment.

5. Plaintiffs acknowledge that handbooks and benefit booklets presented accurate information during the time they were in effect.

6. Handbooks and benefit booklets were amended before July 1, 2009, to reflect charges for individual health coverage to employees and retirees.

7. Plaintiffs signed up for continuing group health coverage knowing that a charge

for the individual benefit would be imposed.

8. No Plaintiff was required to continue with coverage under the group health plan after July 1, 2009.

9. Plaintiffs acknowledge that no former colleague, supervisor, or representative of the City intentionally deceived or knowingly made any false statements concerning health insurance benefits.

10. Plaintiffs acknowledge that information regarding the availability of health insurance benefits upon retirement was accurate at the time provided.

11. Documents provided at retirement before July 2009 described the "current" policy of not charging for health insurance. Plaintiffs acknowledge that the term "current" does not guarantee that the policies will stay the same "forever."

12. Each Plaintiff received individual benefits under the City's group health plan without charge following retirement until July 1, 2009.

All of these facts, as well as the Alston and Layman decisions, establish that the group health insurance benefits made available to the Plaintiffs were subject to change. Furthermore, the Alston and Layman decisions were issued before adoption of the change in the group health plan challenged here. City Council had the right to rely on the published decisions of our Supreme Court in deciding to require all participants share in a portion of the costs necessary to provide group health insurance benefits.

Plaintiffs have presented no publication or other evidence that Council intended to establish a permanent, vested right to unchanging health insurance benefits. Conversely, years prior to the earliest retirement of the Plaintiffs (1997), our Supreme Court affirmed a summary judgment ruling that the City's handbook does not create an employment contract with its

employees. Marr v. City of Columbia, 307 S.C. 545, 547, 416 S.E.2d 615, 616 (1992). Accordingly, the handbooks, booklets, and testimony offered by Plaintiffs provide no support for their exemption from the City's group health plan, including its premium requirement.

D. Any contract for future benefits would be unenforceable as a violation of public policy.

Even if the benefits booklets, handbooks, and other representations relied upon by Plaintiffs could form a basis for a contractual cause of action, Plaintiffs' breach of contract claim fails. This court cannot enforce a contract that violates public policy, statutory law, or constitutional provisions. See McConnel v. Kitchens, 20 S.C. 430 (1884); Batchelor v. Am. Health Ins. Co., 234 S.C. 103, 107 S.E.2d 36 (1959). South Carolina law has established for more than fifty years that a council "has no authority to make . . . a contract extending beyond the terms of its office; that the acts of former councils relating to governmental functions of said councils which involve a matter of discretion to be exercised by such councils are without force and effect upon succeeding councils." Newman v. McCullough, 212 S.C. 17, 25, 46 S.E.2d 252, 256 (1948); see also Piedmont Pub. Serv. Dist. v. Cowart, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995), aff'd, 478 S.E.2d 836 (1996) (affirming Newman's holding that a municipal council lacks power to bind a successor council to a contract involving terms and conditions of municipal employment). A lifetime health insurance program would span multiple four-year council terms and restrict subsequent elected officials in representing the interests of their constituents. Accordingly, no council in the 1980s, 1990s, or 2000s had or has the authority to provide such a benefit.

Had the City intended to create a lifetime contractual entitlement to free health insurance benefits, and the authority to bind future councils, the contract would be void as a matter of constitutional law. South Carolina Constitution, Article X, § 14, entitled "Bonded Indebtedness

of Political Subdivisions," governs the extent to which municipalities and other political subdivisions may incur indebtedness. Subsection (2) of this article provides:

> Such 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].

S.C. Const. art. X, § 14(2).

Any general obligation debt by a municipality must be incurred "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." S.C. Const. art. X, § 14 (2),(5); see also S.C. Code Ann. §§ 11-15-10 et seq. ("Bonds of Political Subdivisions," noting the limitation of general obligation debt is eight percent of the total assessed value of the taxable property of a political subdivision). None of these procedural safeguards have been alleged and "no other" form of activity is an allowed method of incurring debt under the South Carolina Constitution. Accordingly, the City is constitutionally prohibited from undertaking an open-ended pledge of future payments on behalf of former employees.

E. All municipal employees are at-will and contract rights do not attach to compensation or other benefits.

All employees of the City of Columbia are at-will and non-contractual. Bunting v. City of Columbia, 639 F.2d 1090, 1094 (4th Cir. 1981); Bane v. City of Columbia, 480 F. Supp. 34 (D.S.C. 1979). No Plaintiff has provided a "written agreement" signed by an authorized representative that establishes an unalterable, vested interest in free lifetime health insurance. Moreover, any "contract" or promise of such coverage would be unenforceable under controlling statutory and constitutional provisions.

In support of their claims, Plaintiffs have offered Middleton Township Policemen's Benevolent Ass'n Local No. 124 v. Township of Middleton, 744 A.2d. 649 (N.J. 2000). This case involved a claim arising from a collective bargaining agreement and application of New Jersey law. Having carefully examined this opinion, I find that it does not apply to facts before me and is not consistent with the controlling Alston and Anderson decisions. Accordingly, Plaintiffs cannot establish a right to free lifetime health insurance benefits.

F. All participants in the City's group health plan, including retirees, agree that benefits shall be governed by the contract entered between the City and BlueCross/Blue Shield of South Carolina.

Participants in the City's group health insurance plan must sign standard applications to qualify for coverage during employment and upon retirement. The standard application contains a certification which includes the following language:

> I understand that upon acceptance of this application by the insurance company, and so long as I meet the eligibility requirements of the contract with this employer, I will be provided with coverage as specified by the group health contract between my employer [City] and the Corporation [Blue Cross/Blue Shield]."

The group health plan in effect beginning July 1, 2009, provides all participants, including retirees, the option of selecting between a Plan A and Plan B. Under Plan A, all participants are charged a premium of $33.18 per month. Under Plan B, the premium is $63.17 per month. Having agreed to accept coverage under the group health plan, Plaintiffs cannot now seek exemption from their premium obligation.

II. Plaintiffs cannot establish a cause of action for promissory estoppel.

As a second cause of action, Plaintiffs allege that the City made unambiguous promises of free lifetime health insurance on which they justifiably and detrimentally relied. To establish

a claim of promissory estoppel, Plaintiffs must show: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. Powers Constr. Co. v. Salem Carpets, Inc., 283 S.C. 302, 306, 322 S.E.2d 30, 33 (Ct. App. 1984). For purposes of this motion, Plaintiffs' testimony that individual employees, supervisors, and City representatives made statements that free health insurance would continue upon retirement is not disputed. Nevertheless, Plaintiffs cannot establish the essential element of reasonable reliance because none of these statements can bind a city council in the exercise of "governmental functions," including the terms and conditions of employment. See Cowart, 319 S.C. 124, 459 S.E.2d 876; Newman, 212 S.C. 17, 46 S.E.2d 25.

"Estoppel [against a municipality] may not be based on an illegal act." Berkeley Elec. Coop., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 210, 417 S.E.2d 579, 582 (1992). This is true even if the party asserting the estoppel claim was unaware of the illegality of the act because all parties are charged with knowledge of the law, including the limitations of a city's authority. Id.; see also Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267-68 (Ct. App. 2008). The representations identified by Plaintiffs are not binding or enforceable because these statements or expectations cannot restrict a city council from exercising its legislative authority.

The actions or statements of a city manager or any other municipal employee in the council/manager form of government cannot bind the municipality. This issue was addressed by our Supreme Court in Todd v. Smith, 305 S.C. 227, 407 S.E.2d 644 (1991). Affirming summary judgment in favor of the City of Myrtle Beach, the Court stated as follows:

> In the council/manager form of city government all legislative powers of the municipality and the determination of all matters of

> policy shall be vested in the municipal council, each member, including the mayor to have one vote. Section 5-13-30, Code of Laws of South Carolina, 1976. Under the form of government adopted by the City of Myrtle Beach, the city manager and the director of the Myrtle Beach Convention Center do not have the authority to set city policy, nor can their acts be said to represent official policy in view of the legislative authority granted to the municipal council.

Id. at 231, 407 S.E.2d at 646-47.

Subsequently, in rejecting a § 1983 action against the City of Columbia, the Supreme Court confirmed that, as a matter of law, only City Council can serve as a policymaker. Stanley v. Kirkpatrick, 357 S.C. 169, 176, 592 S.E.2d 296, 299 n.6 (2004). As Todd and Stanley make clear, only City Council may make policy and only those policy decisions enacted by Council can bind the City. Accordingly, Plaintiffs' purported entitlement to a lifetime of free health benefits based upon promises by City employees or individual representatives cannot form the basis of a successful claim under contract or promissory estoppel. See Berkeley Elec. Coop., Inc., 308 S.C. at 210, 417 S.E.2d at 582 (1992). Any reliance on promises of free lifetime health insurance was *per se* unreasonable because such promises would be illegal.

Plaintiffs offer Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976), in support of their argument that representations by supervisors, co-workers, and the City Manager can estop the City from imposing a premium for their health care insurance. Neither the facts addressed in Townes nor the Court's opinion support this position. In Townes, the Supreme Court deferred to findings by the master in equity and trial judge that the Greenville City Council had authorized its manager to enter a contract employing an architecture firm. Council knew that the services were being performed and benefitted from those services. Id. at 87-88, 221 S.E.2d at 776. The Supreme Court acknowledged the general principal that a municipality cannot be estopped by the unauthorized acts of its officers, but held that it would

not enforce that rule in Townes because the failure of Council to ratify the contract "was a mere technicality not entitling it to escape liability for the reasonable value of the plaintiff's services." Id. In contrast, Plaintiffs here have not shown a delegation of legislative authority from City Council to the manager. In addition, Plaintiffs have not shown any intent by City Council to enact a permanent health care plan with a lifetime guarantee of free benefits. Unlike Townes, this case does not present a "mere technicality," but involves a clear enactment by Council to adopt a group health plan in keeping with its legislative, budget making authority.

Regardless of what they were told, Plaintiffs agreed to be bound by the terms of the group health plan and were aware that the terms of the group health plan changed during their employment. Plaintiffs could not reasonably assume that changes would cease to take place after they retired. In fact, the letter provided to retirees from the City's benefits administrator prior to July 1, 2009, made clear that payment of the retirees' portion of the health premium was "under the current policy." Plaintiffs signed acknowledgements during their employment that policies were subject to change. This record establishes that Plaintiffs cannot prove reasonable reliance, an essential element of promissory estoppel. McLaughlin v. Williams, 379 S.C. 451, 457-58, 665 S.E.2d 667, 671 (Ct. App. 2008) ("[T]here can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter.").

Plaintiffs have asserted that the presence of material disputed facts renders summary judgment improper on their estoppel claims. By way of response, the City does not challenge any verbal representations asserted by Plaintiffs and points out that written representations relied upon are before the Court. In this context, it is clear that the element of reasonable reliance may be properly adjudicated by way of summary judgment.

Estoppel is an issue to be decided by the court. Gaymon v. Richland Mem'l Hosp., 327

S.C. 66, 488 S.E.2d 332 (1997) (holding that equitable estoppel is an issue for the judge and denying a request for a jury trial). As in other claims, estoppel is an issue of law for the court to determine when the facts are not in dispute or when only one inference can be reasonably drawn from them. T. Leigh Anenson, The Triumph of Equity: Equitable Estoppel in Modern Litigation, 27 Rev. Litig. 377, 422 (2008). Both the Court of Appeals and the Supreme Court have confirmed that the issue of reliance may be determined on summary judgment motions. See, e.g., Davis v. Greenwood Sch. Dist. 50, 365 S.C. 629, 634-35, 620 S.E.2d 65, 67-68 (2005); McLaughlin v. Williams, 379 S.C. 451, 457-58, 665 S.E.2d 667, 671 (Ct. App. 2008); West v. Gladney, 341 S.C. 127, 134-35, 533 S.E.2d 334, 337-38 (Ct. App. 2000). Here, discovery is complete and the material facts are before me. These facts lead to only one conclusion: that reliance by the Plaintiffs was unreasonable. In this context, summary judgment in favor of the Defendant is proper on the issue of promissory estoppel.

III. Plaintiffs cannot establish a basis for declaratory judgment.

For a fourth cause of action, Plaintiffs assert that there is a "justiciable controversy" regarding their alleged rights pursuant to terms of "written contracts." A decision to grant or withhold declaratory judgment is within the sound discretion of the trial court and requires a "real and substantial controversy" ripe for determination. Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 422, 593 S.E.2d 462, 466 (2004). For the reasons stated above, Plaintiffs have failed to identify any enforceable "written contracts." Accordingly, Plaintiffs' request for declaratory judgment is denied.

IV. Plaintiffs cannot establish a cause of action for equitable estoppel.

As a fifth cause of action, Plaintiffs assert that a promise of compensation to employees is an "administrative" rather than "legislative" act. In support, Plaintiffs offer language from certain

handbooks and booklets that health insurance is an important element of compensation and assert that "a city manager's promise of free single coverage health insurance for life is lawful." This argument fails for a number of reasons. First, the fixing of city employees' compensation is a legislative act. 4 McQuillin Mun. Corp. § 13.03.15 (3d ed. 2010). Second, our Supreme Court acknowledged in Alston that municipal employee benefits are not vested and that any "promise" of such benefits, even by way of ordinance, is unenforceable. Third, no municipality, whether through council or manager, is authorized by our Constitution to enter into open-ended indebtedness as would be required to afford lifetime free health insurance. Fourth, under the council/manager form of government, it is the duty of the council to adopt the budget of the municipality. S.C. Code Ann. § 5-13-30(3). Finally, the City's manager may not expend more than $10,000 for any contract or service, including a group health plan, without prior approval of Council.[1] There can be no dispute that the cost of the group health plan borne by the City runs in the millions of dollars each year.

Plaintiffs understandably seek to shift responsibility for adoption of the group health plan from Council to the City's manager. This is not supported by the testimony of the current City Manager, the public vote of Council in adopting the plan, or controlling law. As stated above, the Todd and Stanley decisions affirm that only a city council is authorized by law to make policy. Specifically, the Court stated in Stanley that under the City of Columbia's council/manager form of government "all legislative powers of the municipality and the determination of all matters of policy [are] vested in the municipal council." 357 S.C. at 176, 592 S.E.2d at 299 n.6. South Carolina law has established for more than 100 years that an "administrative" act is enforceable only if supported by legislative authority. See Glenn v.

[1] Under the City's council/manager form of government, the city manager may fix salaries of individual employees subject to limits established in an approved compensation plan and the budget adopted by Council.

County Comm'rs of York, 6 S.C. 412, 440 (1873) ("administrative" act cannot create new rights or obligations but may be exercised only under legislative authority). Accordingly, any promises by a City Manager, supervisor, or individual Council member of lifetime free health insurance are not binding against the City.

The essential elements of equitable estoppel against a government agency are (1) lack of knowledge and means of knowledge of the truth as to the facts in question; (2) justifiable reliance on the government's conduct; and (3) a prejudicial change of position. See Am. Legion Post 15 v. Horry County, 381 S.C. 576, 584, 674 S.E.2d 181, 185 (Ct. App. 2009). Citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests. Id. (citing Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (finding estoppel unavailable where a representative of the state's retirement system erroneously provided retirement benefit advice beyond the scope of his authority and in contradiction of law)). As the Supreme Court observed in Berkeley Electric Coop., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 417 S.E.2d 579 (1992), parties are charged with knowledge of limiting legislation and cannot have "reasonably justified" reliance on actions inconsistent with such legislation. In reaching this conclusion, the Court stated:

> Restrictions on municipal power are created to protect citizens. Although it may seem harsh to deny Berkeley a remedy . . . it is better that Berkeley suffer from the mistake of Mount Pleasant than for this Court to adopt a rule which, through improper combination or collusion, could be detrimental or injurious to the public.

308 S.C. at 210, 417 S.E.2d at 583.

Taking all the allegations by the Plaintiffs as true, it remains clear that no person, whether employee, city manager, or council member had the authority to guarantee free lifetime health insurance. Like their promissory estoppel claim, Plaintiffs' equitable estoppel cause of action is

properly adjudicated by summary judgment. As addressed above, it is well established that an equitable estoppel claim may be determined by way of summary judgment. See, e.g., Quail Hill v. County of Richland, 387 S.C. 223, 236-37, 692 S.E.2d 499, 506-07 (2010). Furthermore, a claim of equitable estoppel is an issue for the judge to determine, not the jury. Gaymon, 327 S.C. 66, 488 S.E.2d 332. Based upon these controlling principles of law and a comprehensive review of the record, it is clear that the City is entitled to summary judgment on the issue of equitable estoppel.

CONCLUSION

Plaintiffs argue that adoption of a group health plan is an administrative function within the authority of the City's manager. Once adopted, Plaintiffs contend that the terms of a group health plan cannot be altered without their consent. Both the record and the established law of this State lead to a different conclusion. In this case it is clear that Council has reserved to itself the authority to determine what costs, if any, will be borne by participants in the City's group health plan. This is consistent with Council's legislative authority to place limits on spending of public funds. In this factual and legal context, Plaintiffs cannot establish breach of contract, promissory, or equitable estoppel.

ORDER

For the reasons stated above and evidenced in the testimony and documents of record, there is no genuine issue of material fact for determination by a jury in this case. Instead, controlling legal principles establish that Plaintiffs cannot satisfy essential elements necessary to obtain the relief requested in this action. On this basis, the City of Columbia is entitled to an order granting summary judgment pursuant to Rule 56, SCRCP.

AND IT IS SO ORDERED.

James R. Barber, III, Judge
Fifth Judicial Circuit

September 10, 2010.
Columbia, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2009-CP-40-05680

Kirby L. Bishop, Herman G. Boney, et al. — PLAINTIFF(S)

City of Columbia — DEFENDANT(S)

Submitted by: _____ Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** *This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.*

☒ **DECISION BY THE COURT.**

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge Jeanne A. Gee **Judge Code** 2756 **Date** 8/2/2016

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of August, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL DISTRICT**
Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith, **Plaintiffs,** **v.** **City of Columbia,** **Defendant.**	**Civil Action File No.: 2009-CP-40-05680**
Larry Strickland, Denious L. Dimery and Bailey G. McClinton, **Plaintiffs,** **vs.** **City of Columbia,** **Defendant.**	**Civil Action File No.: 2013-CP-40-05097**

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ORDER DENYING CLASS CERTIFICATION

Strickland Plaintiffs seek class certification. Having considered the arguments and materials presented by both parties, for the following reasons I find that Plaintiffs cannot establish the commonality and typicality elements necessary to pursue class claims. Accordingly, the motion to certify is denied and the Strickland case is confined to individual claims.

PROCEDURAL BACKGROUND

The Bishop case originally involved fourteen individuals who retired from employment

with the City of Columbia ("City") prior to July 1, 2009. These retirees brought a number of claims against the City seeking reinstatement of free health insurance coverage and compensation for any payments made for health insurance. The Honorable James R. Barber, III granted summary judgment in favor of the City on all claims. Seven of the fourteen plaintiffs filed an appeal from this decision. The South Carolina Court of Appeals upheld summary judgment on all causes of action with the limited exceptions of promissory estoppel and equitable estoppel based upon alleged verbal "promises and representations made by City employees." The Court of Appeals found that the seven retirees had provided a "scintilla of evidence" that they reasonably relied upon promises of free health insurance to their detriment. The Court ruled that there remains "a question of fact" as to whether the alleged representations to these retirees were authorized and reasonably relied upon to their detriment. This issue alone was remanded to the Court of Common Pleas for further review. See, Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013)

The Strickland case was filed by three retired City firefighters seeking equitable relief individually and on behalf of two categories of former employees. Putative "Class A" is defined as former employees over the age of sixty-five receiving Medicare. Putative "Class B" is defined as former employees who have not yet reached the age of sixty-five.[1] The Bishop and Strickland cases have been consolidated for trial. This order renders discovery complete as to both cases.

LEGAL ANALYSIS

Our Supreme Court summarized the elements necessary to obtain class certification in Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 20-21, 577 S.E.2d 190, 200 (2003) The requirements to certify a class under Rule 23(a) SCRP are: (1) the class must be "so numerous that joinder of all members is impracticable;" (2) there must be "questions of law or fact

[1] Plaintiffs voluntarily withdrew claims on behalf of "Class B."

common to the class;" (3) the "claims or defenses of the representative parties [must be] typical of the claims or defenses of the class;" (4) the representative parties [must] fairly and adequately protect the interests of the class; and (5) "the amount in controversy [must] exceed one hundred dollars for each member of the class." Rule 23(a), SCRCP.

Failure to satisfy even one pre-requisite is fatal to class certification.[2] As noted in Gardner, "in practical terms," the commonality criteria requires the class proponent to "articulate the existence of significant common legal or factual issues which bind the proposed class together." Id. at 21, 577 S.E.2d at 200 (internal quotes omitted) Accordingly, "[a] representative class cannot exist where the court must investigate each plaintiff's prejudice claim where it is one of the two predominant issues in the case." Id. at 22, 577 S.E.2d at 201; see also Comcast Corp. v. Behrend, ___ U.S. ___, 133 S. Ct. 1426 (2013); Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011) (reversing class certifications because the plaintiffs were obligated to demonstrate individualized grounds for relief)

Like their counterparts in Bishop, Plaintiffs here must offer individual proof that representations were made, the representations were authorized, they relied upon the representations, reliance was reasonable, they acted in reliance, their actions were reasonable and they were injured. See generally, Barnes v. Johnson, 402 S.C. 458, 474-475, 742 S.E.2d 6, 14-15 (Ct. App. 2013); Craft v. South Carolina Commission for the Blind, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009); In Craft, the Court of Appeals found that the Commission for the Blind, through its agents, made unambiguous promises, Craft reasonably relied upon the promises and the Commission expected Craft to rely upon the promises. Craft's estoppel claim failed, however, because he could not demonstrate that an injury resulted from his reliance. Specifically, Craft could not show that he lost a better opportunity based upon his reliance on the

[2] The City does not challenge numerosity, adequacy of representation or amount in controversy.

Commission's promise.

To recover under Plaintiffs' theories, each affected retiree would be required to demonstrate that he actually received and relied upon an authorized representation. In addition, each claimant would need to demonstrate how he was prejudiced or how his position was made worse in reliance on a promise by the City. Shared circumstance is insufficient to support class where the issue of "prejudice" must be determined individually. See Gardner at 21-22, 577 S.E.2d at 201; see also, Amchem Products, Inc. v. Windsor, 521 U.S. 591 (1997) (rejecting settlement class certification due to predominant questions affecting individual members)

Plaintiffs' deposition testimony demonstrates the injuries alleged are not common and there is no "typical" plaintiff. For example, Plaintiff Dimery did not apply for any other positions while serving as a City firefighter. Dimery further admitted that his schedule as a firefighter allowed him to "moonlight at home," to be with his family and to "make up the difference" in his salary. Plaintiff McClinton worked part time for a construction company during his employment as a City firefighter. He also acted as a general contractor. Like Dimery, McClinton did not seek any other public employment and offered no testimony of declining more favorable employment. McClinton conceded that he has no "personal knowledge" concerning detrimental reliance on free health insurance by other firefighters. Plaintiff Strickland operated a boarding stable and performed floor covering and countertop work while employed by the City as a firefighter. Strickland testified that he was "more or less" offered a position in the 1970s with Southern Railroad by his brother-in-law. Strickland did not examine any pension or health plan offered by Southern Railroad and never pursued any other alternative employment. Like McClinton, Strickland has no personal knowledge that other employees rejected offers to leave the City's employment for better pay or benefits in reliance on permanent

free health insurance.

As illustrated by their deposition testimony, Plaintiffs' individual claims cannot be advanced by information relating to alleged actual or detrimental reliance on promises made to others. While consolidation of the Bishop and Strickland cases may result in judicial economy, treating individual claims as a class action is incompatible with the rigors of Rule 23. Moreover, the individualized examination that will be required as to both the claims and defenses presented negates any benefit afforded by class treatment. See, O'Quinn v. Beach Assocs., 272 S.C. 95, 104, 249 S.E.2d 374, 378 (1978) (the purpose of class action is to avoid the necessity of requiring each member of the class to prove the elements of the cause of action)

CONCLUSION AND ORDER

Each Plaintiff in this proceeding must prove all elements necessary to obtain relief under the doctrines of promissory and equitable estoppel. These individual requirements render class certification inappropriate. Plaintiffs' motion to certify class therefor is denied.

AND IT IS SO ORDERED.

Tanya A. Gee, Judge
Fifth Judicial Circuit

August 2, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL DISTRICT**
Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith, **Plaintiffs,** **v.** **City of Columbia,** **Defendant.**	**Civil Action File No.: 2009-CP-40-05680**
Larry Strickland, Denious L. Dimery and Bailey G. McClinton, **Plaintiffs,** **vs.** **City of Columbia,** **Defendant.**	**Civil Action File No.: 2013-CP-40-05097**

RICHLAND COUNTY
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JEANETTE W. McBRIDE
C.C.P. & G.S.

#5

ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND CLASS CERTIFICATION ORDER

By motion dated August 16, 2016, Plaintiffs moved to alter or amend the order denying class certification issued by the Honorable Tanya A. Gee on August 4, 2016. Plaintiffs argue that Judge Gee erred in holding that they do not meet the commonality and typicality requirements for class certification.

STANDARD OF REVIEW

To alter or amend a judgment requires demonstration that the court misapprehended controlling law or that a "previous argument" requires attention. In this instance, Plaintiffs have identified no controlling authority overlooked or misapprehended in the order denying class

certification.

CONCLUSION AND ORDER

Counsel for the parties appeared before me on March 21, 2017. Having considered the memoranda, orders and argument relating to this motion, I find denial of class certification is consistent with the controlling law of this State that individualized examinations necessary to address the detrimental reliance (injury) element of Plaintiffs' estoppel claims negate the benefit of class treatment. See, Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003); O'Quinn v. Beach Assocs., 272 S.C. 95, 104, 249 S.E.2d 374, 378 (1978); Benjamin v. S.C. National Bank of Charleston, 269 S.C. 250, 253-254, 237 S.E.2d 72, 73-74 (1977). Accordingly, Plaintiffs' motion to alter or amend the order denying class certification is denied.

AND IT IS SO ORDERED.

Jean H. Toal
Special Circuit Court Judge

March 19, 2017
Columbia, South Carolina

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STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL DISTRICT**
Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam III, Alma C. Hill, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith, **Plaintiffs,** **v.** **City of Columbia,** **Defendant.**	**Civil Action File No.: 2009-CP-40-05680**
Larry Strickland, Denious L. Dimery and Bailey G. McClinton, **Plaintiffs,** **vs.** **City of Columbia,** **Defendant.**	**Civil Action File No.: 2013-CP-40-05097**

ORDER

The above consolidated cases were tried before me on December 19 and 20, 2018. For the following reasons, I find that the Plaintiffs have failed to prove all necessary elements of the sole cause of action presented at trial. Accordingly, I find in favor of the Defendant.

STATEMENT OF THE CASE

Plaintiffs were formerly employed by the City of Columbia ("City"). At the time of their various retirements, City policy provided individual health coverage without charge for employees and retirees. A premium was charged for spouse and dependent coverage.

Due to increasing costs and the obligation to prefund benefits, in 2009 City Council

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announced that it was considering a change in policy that would require all participants in its group health plans to pay a premium. Committees were formed and public meetings were called to address this change. As a result of this process, Council voted to charge a premium for all active and retired members under 65 who chose to continue participating in the City's group health insurance plan effective July 1, 2009. The cost to individual participants was set at $33.18 per month, with the City contributing $800.00 per month for each member.

On August 10, 2009, a group of retirees under 65 years of age filed suit asserting that the premium charge breached contractual rights, violated the Unfair Trade Practices Act, and should be equitably barred on ground of promissory estoppel. At the conclusion of discovery, Judge Barber granted summary judgment on all claims.

On January 23, 2013, the Court of Appeals affirmed summary judgment on all claims except promissory estoppel. That cause of action was remanded for nonjury trial. Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013)[1]

Also in January 2013, the City extended the premium requirement to its Medicare supplemental coverage for post-65 retirees. On August 27, 2013, Plaintiffs Strickland, Dimery and McClinton filed a class action suit on behalf of all post-65 retirees, alleging that the City was estopped from charging this premium. By order dated August 2, 2016, the late Tanya A. Gee denied class certification. On April 19, 2017, former Chief Justice Jean H. Toal denied Plaintiffs' motion to reconsider.

The two cases were consolidated for nonjury trial on August 18, 2018. The only claim remaining in each case was Plaintiffs' assertion that the City is estopped from imposing any charge for their continuing participation in group health coverage and must provide reimbursement for

[1] Of the original Bishop plaintiffs, Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith preserved their claims on appeal.

ELECTRONICALLY FILED - 2019 Jan 29 9:01 AM - RICHLAND - COMMON PLEAS - CASE#2013CP4005097

any insurance premiums paid. As addressed below, Plaintiffs failed to prove by a preponderance of the evidence that they sustained damages in reliance upon representations regarding continuing individual health coverage without cost. The absence of this necessary element bars relief under Plaintiffs' estoppel claim and compels me to rule in favor of the City.

FINDINGS OF FACT

1. Each Plaintiff participates in the City's group health insurance program. Plaintiffs testified that during the course of their employment, fellow employees, including city managers, supervisors and human resources staff informed them that they would receive group health coverage without cost during retirement. Plaintiffs introduced newsletters directing employees to the Office of Human Resources for benefits questions and offered group health booklets containing references to "escalating health care costs" and "the possibility of contribution increases."

2. Plaintiffs signed applications for group health insurance during employment and as retirees confining their participation to the same terms and benefits as other participants. Plaintiffs were informed in writing by the City's benefits administrator that "current policy" provided retirees health insurance without charge. Plaintiffs conceded that the term "current" means "now" or "at the present."

3. Plaintiffs acknowledged that health care benefits are determined by City Council on an annual basis as part of the City-wide budget. Plaintiffs further conceded that no supervisor, department head or City manager has the authority to spend funds which are not budgeted.

4. Handbooks issued during Plaintiffs' employment stated that the City reserved the right "to revise, supplement or rescind any policies . . . in its sole and absolute discretion," and "alter its rules, policies and procedures from time to time."

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5. Plaintiffs testified that they relied upon verbal and written promises of post-employment group health insurance without charge and observed other retirees receiving these benefits over a period of many years. Plaintiffs further testified that they may have explored other employment opportunities or postponed their retirements had they been made aware that charges could be imposed for retiree health insurance.

6. The City offered the testimony of former City Manager, Steve Gantt, Human Resources Director, Pamela Benjamin and Budget and Program Management Director, Missy Caughman. These witnesses confirmed that City Council reserves to itself the authority to determine benefits provided to employees and retirees.

7. Mr. Gantt held several administrative positions before serving as City Manager. He testified that neither he nor his fellow administrators had authority to bind Council. This testimony is consistent with the City's ordinances and state law.

8. Ms. Benjamin has served as a human resources professional in state and municipal governments for more than twenty years. She testified that in her prior positions and as Director of the City's Human Resources Office, human resources staff routinely administers employee and retiree benefits. Ms. Benjamin further testified that the authority to administer does not extend to policymaking or offering any "promise" that benefits will be provided beyond the time frame affected by the City's budget or Council vote.

9. Ms. Caughman testified that she had been involved in budgeting for employee and retiree benefits since her first employment with the City in 1998. Ms. Caughman further testified that Council alone votes on employee and retiree benefits, including any charges that might be imposed. Records of City Council meetings admitted without objection confirm that the City's

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Council received information from staff and outside consultants before voting on imposing charges for employee and retiree health benefits, including the actions challenged by Plaintiffs.

CONCLUSIONS OF LAW

To establish a claim of promissory estoppel, Plaintiffs must show: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. Powers Constr. Co. v. Salem Carpets, Inc., 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984). I am mindful of Plaintiffs' expressions of frustration and betrayal arising from the imposition of charges for individual health insurance following retirement. Moreover, I have no doubt regarding the sincerity and honesty of their testimony. As addressed below, however, I am compelled to conclude that Plaintiffs failed to establish compensable injuries incurred in reliance upon representations regarding the availability of individual health insurance without charge throughout their retirements.

The order of remand in Bishop specifically affirms dismissal of Plaintiffs' contract claim seeking enforcement of continuing health insurance without charge. The order further states that relief under promissory estoppel requires proof of "injury in reliance on the promise." Bishop v. City of Columbia, 401 S.C. at 664, 738 S.E.2d at 261 (Ct. App. 2013), *citing* Woods v. State, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App. 1993). In dismissing the class claims in Strickland, both Judge Gee and former Chief Justice Toal rejected Plaintiffs' attempts to avoid proving reliance damages by arguing that each was entitled to the same "expectation relief" in the form of reimbursement for premiums paid and compensation for future premium costs. Specifically, Judge Gee ruled that each Plaintiff must "demonstrate how he was prejudiced or how his position was made worse in reliance on a promise by the City" in order to prevail. Similarly, Chief Justice Toal

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observed that "the controlling law of this state [requires] individualized examinations necessary to address the detrimental reliance (injury) element of Plaintiffs' estoppel claims. . . ."

To prove the detrimental reliance element necessary to obtain relief on promissory estoppel, a plaintiff must demonstrate that he would have been better off if he had not relied upon a promise and provide a measure of relief not dependent upon speculation. Plaintiffs failed on both counts. Although some Plaintiffs testified that they could have pursued or accepted other employment if informed that they may be charged for health insurance in the future, no Plaintiff identified an available employment opportunity that offered better pay, benefits or future guarantees. Other Plaintiffs testified that they may have postponed their retirement dates had they known that after July 1, 2009 retirees would be required to pay $33.18 per month for individual group health coverage. These Plaintiffs likewise offered no measure of loss beyond premiums charged for their insurance and conceded that they experienced substantial increases in pay during employment, obtained significant promotions, enjoyed personal gratification and continue to receive valuable pension benefits as a result of their employment with the City.

Plaintiffs did not meet their burden of proving by a preponderance of the evidence that any opportunities lost due to reliance upon an expected post-employment benefit would have exceeded or equaled the compensation, benefits, continuing retirement pension and access to group health insurance made available through their employment with the City. This failure to prove a determinable reliance injury bars estoppel relief. See generally, Craft v. South Carolina Commission for the Blind, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009); Barnes v. Johnson, 402 S.C. 458, 474-476, 742 S.E.2d 6, 14-15 (Ct. App. 2013) (reversing a promissory estoppel judgment despite the plaintiff's sympathetic situation based upon failure to prove an unambiguous promise and "injury sustained in reliance upon such a promise.")

ELECTRONICALLY FILED - 2019 Jan 29 9:01 AM - RICHLAND - COMMON PLEAS - CASE#2013CP4005097

The burden of proving reliance damages addressed in Craft applies here as it applied in Barnes. In Craft, the Court of Appeals found that the Commission for the Blind, through its agents, made unambiguous promises, Craft reasonably relied upon the promises and the Commission expected Craft to rely upon the promises. Craft's estoppel claim failed, however, because he could not demonstrate that a compensable injury resulted from his reliance. Specifically, Craft could not show that he lost a better business opportunity.

Like Craft, Plaintiffs assert that they relied upon representations regarding a future event. In this case, Plaintiffs seek no cost health insurance throughout retirement. Like Craft, however, no Plaintiff offered evidence that he lost a better opportunity, such as higher pay and guaranteed benefits, or suffered any determinable loss beyond expectation that his health insurance would continue to be paid in full by the City. As in Craft and Barnes, this failure prohibits relief on promissory estoppel grounds.

Plaintiffs presented a 1987 Hofstra Law Review article entitled "Promissory Estoppel Damages" to support their request for expectation damages. I have examined this publication and have carefully considered the evidence presented, as well as the arguments advanced by Plaintiffs' capable counsel. As Craft confirms, however, promissory estoppel is not available to enforce even an authorized promise absent evidence of reliance injuries. The opportunity to obtain enforcement relief ended with the summary judgment dismissal of Plaintiffs' contract cause of action and affirmance of that dismissal by the Court of Appeals in Bishop. Instead, as Judge Gee and Chief Justice Toal ruled in Strickland, promissory estoppel relief requires a detrimental change of position separate from the value of the promise itself. Expectation of future benefits does not provide a basis for relief regardless of the "reasonableness" of the expectation or the authority supporting the promise. No Plaintiff offered the necessary proof of a more favorable employment

ELECTRONICALLY FILED - 2019 Jan 29 9:01 AM - RICHLAND - COMMON PLEAS - CASE#2013CP4005097

opportunity or other compensable loss due to an expectation of continuing post-employment benefits. Therefore, as in Craft and Barnes, Plaintiffs' claims fail.

CONCLUSION AND ORDER

To prevail in this consolidated proceeding, Plaintiffs had the burden of proving by a preponderance of the evidence all necessary elements of their promissory estoppel cause of action. Having considered the testimony and evidence presented at trial, I find that the Plaintiffs relied on the representations made by the City through its agents and the City's official policy over the years, even though the City had the right to change its policies regarding employees. As stated above, I am sympathetic to the Plaintiffs' situation. However, the Plaintiffs have failed to prove by a preponderance of the evidence that they incurred damages as a result of their reliance. There was much testimony about possible other employment opportunities or possible dates of retirement from the various Plaintiffs. There was no testimony with specifics regarding post-retirement health insurance costs had the Plaintiffs not continued in their employment with the City through retirement, making the Plaintiffs' claims for damages speculative. Each Plaintiff's specific costs of their post-retirement health insurance once the policy changes went into effect go toward the now dismissed breach of contract cause of action, not promissory estoppel. A requirement that post-retirement health insurance be provided free of charge, or specific performance, also goes directly to a breach of contract cause of action, not promissory estoppel. Accordingly, judgment is hereby rendered for the Defendant City of Columbia.

IT IS SO ORDERED.

R. Scott Sprouse
Circuit Court Judge

ELECTRONICALLY FILED - 2019 Jan 29 9:01 AM - RICHLAND - COMMON PLEAS - CASE#2013CP4005097

_____, 2019
Columbia, South Carolina

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Richland Common Pleas

Case Caption: Larry Strickland , plaintiff, et al vs City Of Columbia

Case Number: 2013CP4005097

Type: Order/Civil Judgment

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

ELECTRONICALLY FILED - 2019 Feb 19 4:49 PM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL DISTRICT
Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam III, Alma C. Hill, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith, Plaintiffs, v. City of Columbia, Defendant.	Civil Action File No.: 2009-CP-40-05680
Larry Strickland, Denious L. Dimery and Bailey G. McClinton, Plaintiffs, vs. City of Columbia, Defendant.	Civil Action File No.: 2013-CP-40-05097

ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND THE JUDGMENT

After careful consideration of the able argument and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Plaintiffs' Motion, pursuant to Rule 59, SCRCP, [1] is DENIED.

[1] The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

AND, IT IS SO ORDERED.

R. SCOTT SPROUSE
Judge, Tenth Judicial Circuit

Walhalla, South Carolina
February ____, 2019

ELECTRONICALLY FILED - 2019 Feb 19 4:49 PM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

ELECTRONICALLY FILED - 2019 Feb 19 4:49 PM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

Richland Common Pleas

Case Caption: Kirby L Bishop , plaintiff, et al vs City Of Columbia

Case Number: 2009CP4005680

Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT CASE NO. 2009-CP-40-_____
KIRBY L. BISHOP; HERMAN G. BONEY; RICHARD H. BROWN; MICHAEL D. CATT; BASILIDES F. CRUZ; ROBERT B. DOZIER; JOSEPH A. FLOYD, SR.; ARTHUR C. GILLAM, III; ALMA C. HILL; BARRY N. MARTIN; WILLIAM J. MEYER; CHARLES F. MORRIS, SR.; AND JOSEPH A. SMITH, PLAINTIFFS, vs. CITY OF COLUMBIA, DEFENDANT.	**COMPLAINT** **(JURY TRIAL REQUESTED)**

RICHLAND COUNTY
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JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiffs complaining of the Defendant City of Columbia allege as follows:

JURISDICTION AND VENUE

1. Plaintiffs are citizens and residents of the Counties of Richland, Lexington, Orangeburg and Spartanburg in the State of South Carolina. Plaintiffs are a group of retired City of Columbia police officers and fire fighters.

2. Defendant City of Columbia ("the City") is a municipal corporation organized and existing pursuant to the laws of the State of South Carolina which owns property and does business in the County of Richland in South Carolina.

3. All actions pertinent to the allegations in this Complaint took place in Richland County.

4. Jurisdiction and venue is proper in this Court.

FACTS PARTICULAR TO EACH PLAINTIFF

5. Plaintiff Kirby L. Bishop was employed by the City in the Fire Department for approximately twenty-seven (27) years. At the time of his retirement on June 30, 2004, Plaintiff Bishop was a Battalion Chief.

6. While employed by the City, Plaintiff Bishop was provided free health insurance. Until July 1, 2009, Plaintiff Bishop paid $0 per month for single health insurance coverage. As of July 1, 2009, Plaintiff Bishop must pay $33.18 per month for lesser coverage.

7. During Plaintiff Bishop's employment, he was promised by the City verbally and in writing that if he remained employed for a certain period of time, he would be provided free retiree health insurance for life.

8. Until Plaintiff Bishop retired, and after he retired in 2004, the City of Columbia's "Employee and Retiree Health and Dental Coverage" Booklet (hereafter "Benefits Booklet") stated, "**Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. Contact Personnel when you attain age 65 at (803) 545-3007." (*emphasis added*)

9. The health insurance benefits Plaintiff Bishop is currently paying for are inferior in quality to those "specified" at the time of his retirement.

10. Plaintiff Herman G. Boney was employed by the City in the Fire Department for approximately thirty seven (37) years. At the time of his retirement he was a Battalion Chief. While employed by the City, Plaintiff Boney was provided free employee health insurance. Plaintiff retired Boney on June 30, 2005. Until July 1, 2009, Plaintiff Boney paid $0 per month

for single health insurance coverage. As of July 1, 2009, Plaintiff Boney must pay $63.17 per month for similar coverage.

11. During Plaintiff Boney's employment, he was promised by the City that if he remained employed for a certain period of time, he would be provided free retiree health insurance for life.

12. Plaintiff Boney acted as Shift Coordinator for eighteen years and during that time he repeatedly told his recruits City policy was that City fire fighters would not be rich to start off with from working for the City, but they would receive good health benefits when they retired.

13. When Plaintiff Boney retired in 2005, the City of Columbia's Benefits Booklet stated, **"Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

14. The health insurance benefits Plaintiff Boney is currently paying for are inferior in quality to those "specified" at the time of his retirement.

15. Plaintiff Richard H. Brown was employed by the City as a police officer for approximately nineteen and a half (19.5) years. He retired as a Sergeant with the City with thirty-two (32) total years of service credit. While employed by the City, Plaintiff Brown was provided free employee health insurance. Plaintiff Brown retired on January 29, 1997. Until July 1, 2009, Plaintiff Brown paid $0 per month as premiums for single coverage. As of July 1, 2009, Plaintiff Brown's insurance premium is $63.17. Additionally, Plaintiff Brown's co-payments for prescriptions are $225.00 more per month than he was paying just last year.

16. During Plaintiff Brown's employment, he was promised by the City that if he remained employed for a certain period of time, he would be provided free retiree health insurance for life. The City's 1997 Handbook states details of the retirement programs are available through the Personnel Department. When Plaintiff Brown inquired, the Personnel Director, Leona Pugh, told him in 1997 that he would pay nothing for health insurance when he retired. Plaintiff Brown was also provided a Benefits Booklet in 1997 that stated, "**Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

17. The health insurance benefits Plaintiff Brown is currently paying for are inferior in quality to those "specified" at the time of his retirement.

18. Plaintiff Michael D. Catt was employed by the City as a police officer for approximately twenty-six and a half (26.5) years. Plaintiff Catt retired from employment with the City as a Lieutenant on January 1, 2002. While employed by the City, Plaintiff Catt was provided free employee health insurance. When Plaintiff Catt retired, he obtained health insurance coverage for his wife and himself at a cost of $177.30 per month. As of July 1, 2009, Plaintiff Catt's premium is $172.54 per month, but the insurance coverage is not as good. Plaintiff Catt's deductible is much higher and the co-payment for necessary non-generic drugs is much higher. Plaintiff Catt would have liked to purchase the better insurance coverage recently offered by the City (Plan B), but that coverage is too expensive so he will have to pay much more each month for prescriptions.

19. During Plaintiff Catt's employment, he was promised by the City that if he remained employed for a certain period of time, he would be provided free retiree health insurance for life and pay reduced premiums for his wife's health insurance coverage when he retired.

20. In 2002 when Plaintiff Catt retired, the City's Benefits Booklet stated, "**Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

21. The health insurance benefits Plaintiff Catt is currently paying for are inferior in quality to those "specified" at the time of his retirement.

22. Plaintiff Basilides F. Cruz was employed by the City in its Fire Department for approximately twenty-five (25) years. Plaintiff Cruz retired as a Shift Commander in early June of 2007. While employed by the City, Plaintiff Cruz was provided free employee health insurance. Until July 1, 2009, Plaintiff Cruz paid $0 per month as the premium for single coverage. As of July 1, 2009, Plaintiff Cruz must pay $63.17 for similar coverage.

23. During Plaintiff Cruz's employment, he was promised by the City that if he remained employed for a certain period of time, he would be provided free retiree health insurance for life. Plaintiff was told he would not be paid a great deal of money in salary or bonuses when he was employed by the City because he would have free health insurance when he retired.

24. When Plaintiff Cruz was in charge of orientation for new employees, he advised the new employees that their salary was low but the insurance benefits were excellent, especially the benefit of free health insurance for life.

25. Plaintiff Cruz was assured as recently as June 1, 2007 that he should not take Medicare Part D because the City provided better prescription coverage, and that the City would pay the entire cost of his health insurance premium. On information and belief, Plaintiff Cruz never signed any disclaimer regarding the City's contractual obligations to provide free health insurance to him during his retirement.

26. When Plaintiff Cruz retired in 2007, the City's Benefits Booklet stated, "**Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

27. The health insurance benefits Plaintiff Cruz is currently paying for are inferior in quality to those "specified" at the time of his retirement.

28. Plaintiff Robert B. Dozier was employed by the City as a police officer for approximately twenty-five (25) years. He retired as a Sergeant on June 30, 1998. While employed by the City, Plaintiff was provided free employee health insurance. Before July 1, 2009, Plaintiff Dozier paid approximately $250 per month for family coverage. As of July 1, 2009, Plaintiff Dozier must pay approximately $348.00 per month for similar coverage.

29. During Plaintiff Dozier's employment, he was told by employees of the City at a "Planning for the Future" seminar held on April 8, 1997 that he would receive a lifetime benefit

of free health insurance and the ability to buy health insurance for his family at the City's discounted group rate.

30. Plaintiff Dozier was also told on numerous occasions by the City that his free health insurance for life was a retirement benefit he would receive in exchange for continuing to work for the City. Plaintiff Dozier could have obtained other employment but stayed with the City because he wanted free health insurance for life when he retired.

31. In 1998 when Plaintiff Dozier retired, the City's Benefits Booklet stated, "**Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

32. The health insurance benefits Plaintiff Dozier is currently paying for are inferior in quality to those "specified" at the time of his retirement.

33. Plaintiff Joseph Floyd, Sr. was employed by the City in the Fire Department for approximately twenty-eight (28) years. He retired on September 22, 2005 as Assistant Chief and Fire Marshall. While employed by the City, Plaintiff was provided free employee health insurance. Until July 1, 2009, Plaintiff Floyd paid $0 per month as the premium for single coverage. As of July 1, 2009, Plaintiff Floyd must pay $63.17 per month for similar coverage, but he has a higher co-payment for prescriptions, higher cost for routine and special office visits, and a higher deductible.

34. During Plaintiff Floyd's employment Plaintiff Floyd was promised by the City that if he remained employed by the City for a certain period of time, he would be provided free retiree health insurance for life.

35. In 2005 when Plaintiff Floyd retired, the City's Benefits Booklet stated, "**Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

36. The health insurance benefits Plaintiff Floyd is currently paying for are inferior in quality to those "specified" at the time of his retirement.

37. Plaintiff Arthur C. Gillam, III was employed by the City in the Fire Department for approximately twenty-six (26) years. Plaintiff Gillam retired as the Fire Department's Administrative Officer on July 1, 2007. While employed by the City, Plaintiff Gillam was provided free employee health insurance. Before July 1, 2009, Plaintiff Gillam paid $0 per month as the premium for single coverage. As of July 1, 2009, Plaintiff Gillam must pay $33.18 per month for lesser coverage.

38. During Plaintiff Gillam's employment, he was promised by the City that if he remained employed by the City for twenty (20) years, he would be provided free retiree health insurance for life. Plaintiff took a job with the Fire Department initially due to the promise of free health insurance.

39. In 2007, the City's Benefits Booklet stated, "**Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

40. The health insurance benefits Plaintiff Gillam is currently paying for are inferior in quality to those "specified" at the time of his retirement.

41. Before Plaintiff Gillam retired he paid a substantial amount of money to purchase service credit time so he would be able to retire with full benefits. After his retirement package was secure, he stayed with the City for another five (5) years to build up his state retirement benefit to maintain his standard of living.

42. After Plaintiff Gillam retired, he was provided a letter stating "no monthly payments" would be necessary to continue his health coverage.

43. Plaintiff Alma C. Hill was employed by the City as a fire fighter for approximately twenty-seven (27) years. At the time of his retirement on January 9, 2009, he was a Battalion Chief. While employed by the City, Plaintiff Hill was provided free health insurance. Until July 1, 2009, Plaintiff Hill paid $0 per month for single health insurance coverage. As of July 1, 2009, Plaintiff Hill must pay $63.17 per month for coverage.

44. In a letter dated January 23, 2009, Plaintiff Hill was told, "Under current policy, the City only pays single coverage health premiums."

45. In January of 2009 when Plaintiff Hill retired, the City's Benefits Booklet stated, **"Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

46. The health insurance benefits Plaintiff Hill is currently paying for are inferior in quality to those "specified" at the time of his retirement.

47. Plaintiff Barry N. Martin was employed by the City in the Fire Department for approximately thirty-five (35) years. While employed, Plaintiff Martin was provided free employee health insurance. Plaintiff Martin retired on March 31, 2008. Until July 1, 2009, Plaintiff Martin paid $0 per month as premiums for single coverage. As of July 1, 2009, Plaintiff Martin must pay $63.17 for similar coverage.

48. During Plaintiff Martin's employment, he was promised by the City that if he remained employed for a certain period of time, he would be provided free retiree health insurance for life. Plaintiff Martin's father retired from the City and he received free employee health insurance for life.

49. In 2008 when Plaintiff Martin retired, the City's Benefits Booklet stated, "**Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

50. The health insurance benefits Plaintiff Martin is currently paying for are inferior in quality to those "specified" at the time of his retirement.

51. Plaintiff William J. Meyer was employed by the City as a police officer for a little over twenty-six (26) years. He retired as a Sergeant on January 16, 2006. While employed by the City, Plaintiff Meyer was provided free employee health insurance. Until July 1, 2009, Plaintiff Meyer paid $0 per month as the premium for single coverage. As of July 1, 2009, Plaintiff Meyer must pay $33.18 per month for lesser coverage.

52. During Plaintiff Meyer's employment, he was promised by the City that if he remained employed for a certain period of time, he would be provided free health insurance for

life. Specifically, Plaintiff Meyer was promised in a City handbook and in a subsequent letter that his individual health insurance would be free. Plaintiff Meyer commuted for four years from Spartanburg to Columbia to ensure he worked the requisite number of years in order to obtain free health insurance for life.

53. In 2006 when Plaintiff Meyer retired, the City's Benefits Booklet stated, "**Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

54. The health insurance benefits Plaintiff Meyer is currently paying for are inferior in quality to those "specified" at the time of his retirement.

55. Plaintiff Charles F. Morris, Sr. was employed by the City in the Fire Department for almost twenty-five (25) years. Plaintiff Morris retired on August 30, 2001 as a Fire Captain. While employed by the City, Plaintiff Morris was provided free employee health insurance. Before July 1, 2009, Plaintiff Morris paid $0 per month as the premium for single coverage. As of July 1, 2009, Plaintiff Morris must pay $63.17 for similar coverage.

56. During Plaintiff Morris's employment, he was promised by the City that he if he remained employed for a certain period of time, he would be provided free retiree health insurance for life. Plaintiff Morris did not seek other employment because of the good retiree health benefits he was promised.

57. In 2001 when Plaintiff Morris retired, the City's Benefits Booklet stated, "**Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART

A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

58. The health insurance benefits Plaintiff Morris is currently paying for are inferior in quality to those "specified" at the time of his retirement.

59. Plaintiff Joseph A. Smith was employed by the City in the Fire Department for approximately thirty three (33) years. Plaintiff Smith retired as an Assistant Chief. While employed by the City, Plaintiff Smith was provided free employee health insurance. Plaintiff Smith retired on June 30, 2006. Until July 1, 2009, Plaintiff Smith paid approximately $177.00 per month for family coverage. As of July 1, 2009, Plaintiff Smith must pay $244.50 per month for similar coverage.

60. During Plaintiff Smith's employment, he was promised by the City that if he remained employed for a certain period of time, he would be provided free retiree health insurance for life. Plaintiff Smith thought this was a good benefit and it was the reason he stayed with the City.

61. In 2006 when Plaintiff Smith retired, the City's Benefits Booklet stated, "**Retiree Health Coverage for this program will be paid under the benefits specified in this book until the attainment of the age of 65.** At age 65 the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. (*emphasis added*)

62. The health insurance benefits Plaintiff Smith is currently paying for are inferior in quality to those "specified" at the time of his retirement.

FACTS COMMON TO ALL PLAINTIFFS

63. Plaintiffs could have left employment with the City but the retirement package promised by the City induced them to stay with the City for many years.

64. Plaintiffs could have remained employed by the City longer and retired at a later date in order to increase their monthly retirement benefits and cover the increased costs of health insurance had they known the City would renege on its promise to provide free single health insurance coverage for life and the same insurance benefits in effect at the time of their retirement.

65. For all years pertinent to the allegations in this Complaint, and until the spring of 2009, the City's Benefits Booklet, recently also published on the Blue Cross/ Blue Shield website, stated, "Effective July 1, 1992, the eligibility requirements for retirees increased from 15 to 20 years of service. **Retirees who are currently covered will remain covered as stated at the time of retirement.**" (*emphasis added*)

66. There is no disclaimer on any of the City's annual Benefit Booklets.

67. All Plaintiffs are currently paying higher co-payments for prescriptions and more for routine and special doctors' office visits, and all Plaintiffs have higher deductibles than when they retired.

68. All Plaintiffs with single coverage are no longer receiving free insurance and started paying monthly premiums on July 1, 2009.

69. Most Plaintiffs have to pay more for spouse and family coverage than they did when they retired.

70. For more than two decades and until recently, the City's Employee Handbook stated that employees who remained employed with the City for more than a certain period of

time (10 years, then 15 years, then 20 years, and currently 25 years) would have free single health insurance for life when they retired.

71. Without fail for over two decades, the City paid on behalf of all retirees 100% of each retiree's single health insurance coverage. Additionally until recently, the majority of the cost of prescriptions was paid through the City's group insurance policy with each retiree paying only a small co-payment. Spousal and family health insurance coverage was available at a reduced rate and the deductible was small.

72. Plaintiffs had no reason to believe that their promised retiree insurance benefits would be subject to change.

FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

73. Plaintiffs incorporate all prior allegations, where not inconsistent, as if fully set forth herein.

74. In 2000, the City began placing a disclaimer in the front of its Employee Handbook, but the disclaimer did not mention "benefits" or "insurance" and focused instead on the issue of "at-will" employment. When the City began having employees sign this disclaimer, most of the Plaintiffs in this law suit had already retired and never signed the S.C. Code § 41-1-110 disclaimer.

75. Promises were made to Plaintiffs in the City's Employee Handbook that the City would pay the total health insurance premium for single coverage for retired employees.

76. Besides repeated promises made to Plaintiffs in the City's Employee Handbooks, Plaintiffs received additional written documentation from the City confirming that when they retired they would not have to pay for, or pay less for, health insurance, and they would have the same health insurance benefits as were in effect when they retired.

77. Specifically, from 1994 through 2008, the City of Columbia distributed to Plaintiffs a Benefits Booklet which described the Blue Cross /Blue Shield plan Plaintiffs were entitled to upon retirement. There was never a disclaimer on the first page of this booklet and every year the following two statements were made: 1) "Effective July 1, 1992, the eligibility requirements for retirees increased from 15 to 20 years of service. **Retirees who are currently covered will remain covered as stated at the time of retirement;**" (*emphasis added*) and 2) "Retiree Health Coverage for this program **will be paid under the benefits specified in this booklet** until the attainment of age 65. At age 65 the retiree must be enrolled in Medicare PART A and PART B under Title VIII of the Social Security Act. The benefits for this program are paid after Medicare benefits are paid. ... Following the death of a covered retired employee, the surviving spouse and children may remain covered as long as they meet the "eligible surviving spouse/child (ren) requirements as stated above." (*emphasis added*)

78. Additionally, in multiple *Inside Columbia* newsletters provided to all City employees, including Plaintiffs, the City repeatedly stated retiree health insurance was "free."

79. From 1993 through 2007, and possibly at other times, the following statement appeared in the City's "*Notes to Combined Financial Statements and Combining Component Unit Statements*" (which statement was subsequently approved by a majority vote of City Council every year): "The City provides post-employment health care benefits, in accordance with City policy, to all employees who retire from the City under early or regular retirement and have been employed by the City for twenty years or more. ...**The City pays all premiums for all qualifying retirees.**" (*emphasis added*)

80. The City is bound by the unambiguous promises made to Plaintiffs in its Employee handbooks, benefits brochures, newsletters, letters and other public documents.

81. The City has repeatedly failed to comply with the requirements of S.C. Code §41-1-110.

82. The promises made to Plaintiffs by the City in various written employment documents are clear and stated in mandatory language and, therefore, create contractual obligations on the party of the City.

83. As of July 1, 2009, the City began requiring Plaintiffs to pay more for insurance benefits than the City had previously paid on their behalf.

84. It is expected, based on published consultants' reports to the City that Plaintiffs may have to pay even more for their health insurance in future years.

85. The City has failed to fulfill the promises it made to Plaintiffs in its written documents.

86. As a result of the City's breaches of its written contractual obligations, Plaintiffs have suffered, and will continue to suffer, monetary and consequential damages.

87. Plaintiffs seek actual and consequential damages, costs, attorney fees per S.C. Code §15-77-300, and post judgment interest for the City's wrongful breaches of contracts.

SECOND CAUSE OF ACTION
(PROMISSORY ESTOPPEL)

88. Plaintiffs incorporate all prior allegations, where not inconsistent, as if fully set forth herein.

89. At various times, the City has made specific verbal representations and promises to Plaintiffs. Specifically, upon retirement, the City promised Plaintiffs' health insurance benefits would be paid for, either in full or in large part, by the City and that Plaintiffs would continue to receive the health benefits promised to them at the time of their retirement.

90. When Plaintiffs were hired, throughout their employment, at the City's Human Resource seminars conducted for retirement, in conversations with City personnel department representatives, in public statements by City Councilmember(s), and through the actions of the City towards other retirees and their family members, Plaintiffs were repeatedly promised free single coverage health insurance for life, reduced health insurance premiums for their spouses and families, low deductibles and low co-pays for prescriptions and doctors' office visits, and told they could expect to receive during their retirement the same benefits in effect at the time they retired.

91. Plaintiffs were exposed to dangerous situations during the decades they worked for the City, yet they continued to work in these dangerous situations to earn the promised retiree health benefits.

92. Plaintiffs made long term financial decisions for themselves and their families based on the City's promises to Plaintiffs.

93. Plaintiffs could have pushed off their retirement dates had they known that they would have to pay more for health care after they retired. Changing the date of their retirement would have afforded Plaintiffs additional funds to pay for increased insurance costs.

94. Based on the City's promises, some Plaintiffs failed to procure other health insurance from other sources when they had the opportunity to do so.

95. Plaintiffs relied on the City's promises and continued to work for the City when they may have obtained other positions, in order to obtain free health insurance for life and the other promised retiree benefits from the city.

96. Plaintiffs accepted lesser salaries and bonuses while employed than their peers in exchange for the City's promised retirement benefits.

97. Plaintiffs' reliance was reasonable based on the City's explicit promises and the City's past conduct.

98. The City intended Plaintiffs rely on its promises in order to retain them as employees and pay them lesser salaries.

99. The City failure to honor its promises to Plaintiffs is without substantial justification. Accordingly, the City is estopped from now failing to provide Plaintiffs the promised and agreed upon retiree health insurance benefits.

100. Plaintiffs seek actual and consequential damages, costs, attorney fees per S.C. Code §15-77-300, and post judgment interest for the City's wrongful actions.

THRID CAUSE OF ACTION
(SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT CLAIM)

101. Plaintiffs incorporate all prior allegations, where not inconsistent, as if fully set forth herein.

102. This cause of action is brought pursuant to S.C. Code § 39-5-10 *et seq.*.

103. The City provides police and fire protection services to the public, which services are funded through the collection of taxes, receipt of grant monies, and state and federal funds.

104. The City competes with and could contract with other public or private entities to provide police and fire services.

105. The City competes with other private and public entities to attract and retain trained and experienced personnel to provide its police and fire services.

106. The public has an interest in ensuring that the City's fire and police services are provided by high quality personnel.

107. The City promised Plaintiffs free health insurance for life, reduced health insurance premiums for their spouses and family, low deductibles and low co-payments for

prescriptions and office visits, in exchange for lower salaries and continued service to induce Plaintiffs not to leave City employment.

108. The public and the City benefited from retaining experienced police officers and firefighters.

109. The public benefited from having to pay lower salaries to its police and firefighters for many years based on the City's promises of future monetary benefits.

110. The City's recent breach of its health insurance promises to its retirees has an adverse impact on the public as it will deter quality applicants from applying for and remaining in the City's employment.

111. The City's wrongful actions towards Plaintiffs do not occur in an employment context as none of the Plaintiffs are employed by the City.

112. The City's acts are deceptive and unfair to Plaintiffs and to their families.

113. The City's acts are deceptive and unfair to the public as well because the City has misrepresented to the public for years the true cost of providing police and fire service by artificially keeping salaries and bonuses low based on the promise of valuable post-retirement benefits.

114. The City has knowingly and willfully made misrepresentations to the public regarding the real costs of fire and police services, and the provision of post-retirement benefits to its former employees.

115. Plaintiffs have been damaged by the City's deceptive practices and have suffered actual and consequential damages as a result of the City's willful actions.

116. Plaintiffs are entitled to actual damages, liquidated damages, attorney fees and costs per S.C. Code § 39-5-140.

FOURTH CAUSE OF ACTION
(DECLARATORY JUDGMENT)

117. Plaintiffs incorporate all prior allegations, where not inconsistent, as if fully set forth herein.

118. This cause of action is brought pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and S.C. Code § 15-53-10 *et seq.*

119. There exists a justiciable controversy regarding the rights of the Plaintiffs pursuant to the terms of written contracts, and this determination is ripe for a decision and is not moot.

120. The City has ceased paying 100% of Plaintiffs' single health insurance and has increased the deductible, prescription co-payment amount, and cost of doctors' office visits so that the insurance the Plaintiffs are now receiving is not the insurance they had when they retired.

121. Plaintiffs believe a binding agreement exists whereby the City is obligated to provide the same health insurance coverage and benefits Plaintiffs had at the time of their retirement and to provide free single health insurance coverage.

122. The public has an interest in seeing that the City acts in the manner promised, as the City will have difficulty attracting and retaining quality employees if it is allowed to breach its contractual obligations to its retirees.

123. Plaintiffs are entitled to, and request, a declaration from this Court or by the finder of fact that the City is so obligated, and that the City is compelled to provide retiree health insurance coverage beyond July 1, 2009 on the same terms previously promised and agreed upon by the parties- specifically free single health insurance coverage for life and the same insurance benefits in effect at the time of each Plaintiff's retirement date.

124. Plaintiffs also seek damages as provided in S.C. Code § 15-53-10 *et seq.* and any out of pocket costs they have incurred as a result of the City's wrongful actions.

Wherefore, having fully stated their Complaint against the City, Plaintiffs pray for actual and consequential damages, a declaration of this court consistent with Plaintiff's request in this Complaint, exemplary damages, attorney fees, costs, post judgment interest and such other legal and equitable relief as the Court deems appropriate.

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Charleston, South Carolina

Date: August 7, 2009

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JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	IN THE FIFTH JUDICIAL CIRCUIT Case No.: 13-CP- 43 - 1026
LARRY STRICKLAND, DENIOUS L. DIMERY, and BAILEY G. McCLINTON, PLAINTIFFS, vs. CITY OF COLUMBIA, DEFENDANT.	**COMPLAINT** **(JURY TRIAL REQUESTED)**

The Plaintiffs, by and through their undersigned counsel of record, individually and on behalf of all others similarly situated, makes this complaint for monetary damages and injunctive relief against the City of Columbia.

JURISDICTION AND VENUE

1. Plaintiffs are citizens and residents of various counties in the State of South Carolina. All Plaintiffs are retired City of Columbia employees who were promised they would be provided lifetime health insurance by the City of Columbia during retirement.

2. Plaintiff Larry Strickland is a resident of Lexington County, South Carolina, and was formerly employed by the City of Columbia.

3. Plaintiff Denious L. Dimery is a resident of Lexington County, South Carolina, and was formerly employed by the City of Columbia.

4. Plaintiff Bailey G. McClinton is a resident of Lexington County, South Carolina, and was formerly employed by the City of Columbia.

5. Defendant City of Columbia ("City of Columbia") is a municipal corporation organized and existing pursuant to the laws of the State of South Carolina which owns property and does business in the County of Richland in South Carolina.

6. All actions pertinent to the allegations in this Complaint took place in Richland County, State of South Carolina.

7. Jurisdiction and venue is proper in this Court.

COMMON FACTS FOR ALL PLAINTIFFS

8. The Plaintiffs in this action are retired employees of the City of Columbia throughout their careers until they reached retirement.

9. When Plaintiffs were hired, throughout their employment, at the City's Human Resource seminars conducted for retirement, in conversations with City personnel department representatives, in public statements by City Councilmember(s), and through the verbal and written communications by the City towards retirees and their family members, Plaintiffs were repeatedly promised free single coverage health insurance for life if they worked for the City for a specified number of years[1].

10. Additionally, in multiple *Inside Columbia* newsletters provided to all City employees, including Plaintiffs, the City of Columbia repeatedly stated retiree health insurance was "free."

11. Plaintiffs who worked in law enforcement (police officers) and Plaintiffs who performed emergency services jobs (fire fighters) were exposed to dangerous situations during the decades they worked for the City, yet they continued to work in these dangerous situations to earn the free promised retiree health insurance.

[1] Depending on the year that employee was hired, the required time worked to obtain lifetime health insurance ranged between five and twenty years.

12. Plaintiffs made long-term financial decisions for themselves and their families based on the City's promises to Plaintiffs.

13. Based on the City's promises, some Plaintiffs failed to procure other health insurance from other sources when they had the opportunity to do so.

14. During their years of employment, Plaintiffs accepted lesser salaries and bonuses than their peers employed elsewhere, in exchange for the City's promised retirement benefits.

15. Plaintiffs could have left employment with the City of Columbia while employed but the promise of free single coverage health insurance for life by the City of Columbia induced them to stay employed with the City of Columbia.

16. All Plaintiffs met the requirements to retire and receive free single health coverage insurance for life.

17. The majority of these Plaintiffs are in their 70's and 80's and have been retired from the City of Columbia for several decades.

18. Until January of 2013, the City of Columbia paid the full cost of the single coverage health insurance for all Plaintiffs since the date of their retirement.

19. Three (3) years ago, the City of Columbia began requiring its retirees under the age of 65 and/or retirees who were not Medicare beneficiaries to pay part of the cost of their single coverage health insurance. At the time, the City of Columbia continued to pay the entire cost of single coverage health insurance for retirees over the age of 65 and/or retirees who were Medicare beneficiaries; specifically, the City of Columbia continued to pay the entire cost of single coverage health insurance for these Plaintiffs.

20. In January of 2013, the City of Columbia stopped paying the entire cost of single coverage health insurance and started requiring these Plaintiffs to start paying a portion of the cost of their single coverage health insurance.

21. Based on the City of Columbia's verbal and written promises and representations, Plaintiffs had no reason to believe that their promised free single coverage retiree health insurance would be subject to change.

CLASS ALLEGATIONS

22. Plaintiffs reincorporates paragraphs 1 through 21 above as if fully set forth verbatim herein.

23. Plaintiffs brings this action pursuant to Rule 23, SCRCP, on behalf of themselves and two classes (collectively, "the Classes") of similarly situated persons.

24. Class A ("Class A") is defined as:

> Any former employee of the City of Columbia who is over the age of 65 years old and/or receiving Medicare who was promised that he or she would receive lifetime health insurance, who was receiving lifetime health insurance and then was forced to begin paying part of the cost of their single coverage health care, or for whom the Defendant stopped paying the entire cost of their single coverage health care.

25. Class B ("Class B") is defined as:

> Any former employee of the City of Columbia who has not yet reached the age of 65 years old, who was promised that he or she would receive lifetime health insurance, who is receiving lifetime health insurance and has been notified that they will have to begin paying part of the cost of their single coverage health care when they turn 65, or for whom the Defendant will stop paying the entire cost of their single coverage health care.

26. The proposed classes are so numerous that joinder of all members is impracticable.

27. There are questions of law and fact common to the Classes which predominate over any questions affecting only individual members of the class.

28. Plaintiffs' claims are typical of the claims of the Classes and Plaintiffs do not have interests adverse to other members of either class.

29. The defenses of the Defendant to the named Plaintiffs' claims are typical of the defenses available against each member of the proposed classes.

30. The representative named Plaintiffs will fairly and adequately protect the interests of the proposed classes.

31. The amount in controversy exceeds One Hundred and 00/100 ($100.00) Dollars for each member of the proposed classes.

32. A class action is superior to other available methods for the fair and efficient adjudication of the issues in dispute.

33. Plaintiffs have retained counsel who are experienced in class action litigation and Plaintiffs will fairly and adequately protect the interests of the Classes.

34. Given the size of the individual Plaintiffs' claims, many class members of each or both Classes may not be able to afford to seek legal redress individually for the wrongs committed by Defendant.

35. The prosecution of separate actions by individual members of the class would create the risk of inconsistent adjudications.

36. Plaintiffs seek certification of the action as a class action so that the liability of the Defendant may be adjudicated.

37. Certification of the Classes as requested herein will result in an orderly and expeditious administration of class claims, economy of time, effort and expense, and uniformity of decisions will be insured.

38. Plaintiffs ask this Court to issue its Order, as soon as practicable, pursuant to SCRCP 23(d)(1), allowing this action to be maintained on behalf of all persons as a class as described above.

39. Plaintiffs request that this Court, pursuant to SCRCP 23(d)(2), direct that notice be given to the members of the proposed classes in the best manner practicable under the circumstances, including individual notice to all members who can be identified through reasonable efforts:

a. that the Court will exclude the members from the classes if the member so requests by a specified date; and

b. that the judgment, whether favorable or not, will bind and include all members of the classes who do not request exclusion.

FIRST CAUSE OF ACTION
(PROMISSORY AND EQUITABLE ESTOPPEL)

40. Plaintiffs incorporate all prior allegations, where not inconsistent, as if fully set forth herein.

41. At various times, the City of Columbia has made specific verbal and written representations and promises to Plaintiffs.

42. Plaintiffs relied on the City of Columbia's promises and continued to work for the City when they might have obtained other job positions, in order to obtain free health insurance for life.

43. Plaintiffs' reliance was reasonable based on the City of Columbia's explicit promises and the City of Columbia's past conduct.

44. Defendant City of Columbia's promise to Plaintiffs that their compensation included free single coverage health insurance for life was unambiguous.

45. Plaintiffs had no way of knowing that a future elected body would attempt to interfere with the promises that had been made to them regarding their terms of employment years earlier, especially as the City of Columbia has for decades paid the entire cost of single coverage health insurance for these Plaintiffs.

46. City of Columbia has had a Council-Manager form of government since 1950, and under this form of municipal government, the City Manager performs the administrative functions of the City, not the Council.

47. Plaintiffs reasonably relied upon Defendant's promise of free single coverage health insurance for life as it was made to them while they were employees by Defendant City of Columbia's City Manager.

48. Under the Council-Manager form of government, a City Manager's promise of free single coverage health insurance for life is lawful.

49. Plaintiffs' reliance upon the promise of free single coverage health insurance for life was foreseeable by the City of Columbia.

50. The City of Columbia intended that Plaintiffs rely on its promises in order to retain them as employees and pay them lesser salaries while Plaintiffs were employed.

51. Plaintiffs have been injured as a result of their reliance on the City of Columbia's promise of free single coverage health insurance for life.

52. The City of Columbia's failure to honor its promises to Plaintiffs is without substantial justification. Accordingly, the City of Columbia is estopped from now failing to provide Plaintiffs the promised and agreed upon free single coverage health insurance for life.

53. Plaintiffs seek actual and consequential damages, costs, attorney fees per S.C. Code §15-77-300 and post judgment interest for the Defendant City of Columbia's wrongful actions.

FOR A SECOND CAUSE OF ACTION
(INJUNCTIVE AND DECLARATORY RELIEF)

54. Plaintiffs incorporate all prior allegations, where not inconsistent, as if fully set forth herein.

55. City of Columbia is not entitled to stop providing free single health care coverage to its retirees who were promised this health coverage for life.

56. City of Columbia has announced its intention to stop providing single health care coverage for Plaintiff-retirees when they turn 65, and City of Columbia will continue to stop providing benefits absent an adjudication that it is not entitled to do so.

57. Plaintiffs are entitled to a declaration of their rights, declaring that:

a. City of Columbia must continue to pay the full cost of their single coverage health care for life as promised; and

b. Plaintiffs and Class Members are entitled to injunctive relief to prevent City of Columbia from engaging in the practices complained of herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the proposed classes, pray for the following relief, temporarily and permanently:

1. That the Classes alleged above be Certified;

2. That an award of actual and consequential damages plus interest for the Defendant City of Columbia's wrongful actions and such other equitable and legal relief as this Court deems fair;

3. That this Court award costs and attorney fees pursuant to S.C. Code §15-77-300 and in accordance with state law.

4. That this Court grant an injunction prohibiting the City of Columbia from stopping payment of the free lifetime single coverage health insurance that was promised to its retired employees; and

5. For such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Pursuant to SCRCP 38, Plaintiff hereby demands a trial by jury of all issues triable in this action.

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Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL DISTRICT
COUNTY OF RICHLAND	)	
	)	Civil Action File No.: 2009-CP-40-5680
Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith,	)	
Plaintiffs,	)	
vs.	)	ANSWER
City of Columbia,	)	
Defendant.	)	

The Defendant, responding to Plaintiffs' Complaint, alleges as follows:

FOR A FIRST DEFENSE

I. The Complaint fails to state a claim for which relief can be granted.

FOR A SECOND DEFENSE

II. Defendant specifically asserts all rights, benefits and limitations available pursuant to the doctrine of sovereign immunity.

FOR A THIRD DEFENSE AND BY WAY OF ANSWER

III. The Defendant answers each of the allegations of the Complaint by numbers which correspond or refer to the numbered paragraphs of the Complaint as follows. Each allegation of the Complaint not hereinafter specifically admitted is denied.

JURISDICTION AND VENUE

1. Admitted upon information and belief.

2. Admitted.

3. Admitted.

4. The allegations of this Paragraph are legal in nature and do not require a response.

PARTICULAR ALLEGATIONS

5. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff.

6. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

7. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

8. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

9. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

10. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

11. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

12. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, the Plaintiff was not authorized to make promises or enter binding agreements on behalf of Defendant.

13. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

14. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

15. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

16. Defendant is without sufficient information to respond to the allegations of this Paragraph. Defendant denies that any employee was authorized to make promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable. By way of further response, Defendant craves reference to the "benefits booklet" referenced therein.

17. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

18. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

19. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

20. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein.

21. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

22. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

23. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

24. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, the Plaintiff was not authorized to make promises or enter binding agreements on behalf of Defendant.

25. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any contractual obligation to provide free health insurance to any employee or retiree.

26. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

27. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

28. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

29. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

30. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

31. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

32. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

33. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

34. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

35. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

36. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

37. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

38. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

39. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

40. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

41. Defendant is without sufficient information to respond to the allegations of this Paragraph.

42. In response to the allegations of this Paragraph, Defendant craves reference to the letter referenced therein.

43. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

44. In response to the allegations of this Paragraph, Defendant craves reference to the letter referenced therein.

45. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

46. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

47. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

48. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

49. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

50. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

51. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

52. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

53. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

54. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

55. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

56. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

57. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

58. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

59. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

60. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

61. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

62. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

COMMON ALLEGATIONS

63. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

64. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

65. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

66. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

67. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by each Plaintiff.

68. Admitted.

69. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by each Plaintiff.

70. In response to the allegations of this Paragraph, Defendant craves reference to the handbooks referenced therein. The remaining allegations of this Paragraph are denied.

71. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by each Plaintiff.

72. Denied.

PLAINTIFFS' FIRST CAUSE OF ACTION
(Breach of Contract)

73. Defendant incorporates Paragraphs 1-72 above as if set forth verbatim.

74. In response to the allegations of this Paragraph, Defendant craves reference to the handbooks referenced therein. By way further response, Defendant craves reference to the employment records of the Plaintiffs.

75. In response to the allegations of this Paragraph, Defendant craves reference to the handbooks referenced therein.

76. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, these allegations are denied.

77. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

78. In response to the allegations of this Paragraph, Defendant craves reference to the newsletters referenced therein. The remaining allegations of this Paragraph are denied.

79. In response to the allegations of this Paragraph, Defendant craves reference to the financial statements referenced therein. The remaining allegations of this Paragraph are denied.

80. Denied.

81. Denied.

82. Denied.

83. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by each Plaintiff.

84. Defendant is without sufficient information to respond to the allegations of this Paragraph.

85. Denied.

86. Denied.

87. The allegations of this Paragraph are legal in nature and do not require a response. By way of further response, Defendant denies that Plaintiffs are entitled to the relief requested.

PLAINTIFFS' SECOND CAUSE OF ACTION
(Promissory Estoppel)

88. Defendant incorporates Paragraphs 1-87 above as if set forth verbatim.

89. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

90. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies that any employee or other individual

was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

91. In response to the allegations of this Paragraph, Defendant craves reference to the Plaintiffs' records of employment. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

92. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

93. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

94. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

95. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

96. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

97. Denied.

98. Denied.

99. Denied.

100. The allegations of this Paragraph are legal in nature and do require a response. By way of further response, Defendant denies any "wrongful actions."

PLAINTIFFS' THIRD CAUSE OF ACTION
(Unfair Trade Practice)

101. Defendant incorporates Paragraphs 1-100 above as if set forth verbatim.

102. The allegations of this Paragraph are legal in nature and do require a response. By way of further response, Defendant denies that Plaintiffs have stated a claim under the South Carolina Unfair Trade Practices Act.

103. Admitted.

104. Denied.

105. Denied.

106. Admitted.

107. Denied.

108. In response to the allegations of this Paragraph, Defendant endeavors to employ the best available staff for each of its positions of employment.

109. Denied.

110. Denied.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

PLAINTIFFS' FOURTH CAUSE OF ACTION
(Declaratory Judgment)

117. Defendant incorporates Paragraphs 1-116 above as if set forth verbatim.

118. The allegations of this Paragraph are legal in nature and do require a response. By way of further response, Defendant denies that Plaintiffs are entitled to declaratory judgment.

119. Denied.

120. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by each Plaintiff.

121. Defendant is without sufficient information to ascertain Plaintiffs' subjective beliefs. All remaining allegations of this Paragraph are denied.

122. In response to the allegations of this Paragraph, Defendant denies that it has breached any contractual obligation to Plaintiffs.

123. Denied.

124. The allegations of this Paragraph are legal in nature and do require a response. By way of further response, Defendant denies any "wrongful actions."

FOR A FOURTH DEFENSE
(Statute of Limitations)

IV. Plaintiff's claims and requests for relief are barred by the applicable statutes of limitations.

FOR A FIFTH DEFENSE
(Accord and Satisfaction)

V. Plaintiff's claims and requests for relief are barred by the doctrine of accord and satisfaction.

FOR A SIXTH DEFENSE
(State Tort Claims Act)

VI. Defendant specifically asserts and preserve all immunities and limitations contained in the State Tort Claims Act.

FOR A SEVENTH DEFENSE
(Lack of Standing)

VII. Plaintiffs are without standing to seek the relief claimed in the Complaint.

FOR AN EIGHTH DEFENSE
(Exercise of Governmental Authority)

VIII. The availability of fringe benefits sought by Plaintiffs is a matter within the governmental authority of the Defendant. Plaintiffs are without standing and Plaintiff's claims are barred by the lawful exercise of governmental discretion. Additionally, any alleged promises regarding future benefits are unenforceable as such communications are unauthorized and *ultra vires* as a matter of law.

WHEREFORE, having fully answered the Complaint of Plaintiffs, Defendant demands that the Complaint be dismissed with prejudice.

SIGNATURE PAGE FOLLOWS

NICKLES & SOLOMON, LLC

By: _____

W. Allen Nickles, III
Carl L. Solomon
1519 Richland Street
Post Office Box 1866
Columbia, South Carolina 29202-1866
(803) 779-8080

August 26, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL DISTRICT**
COUNTY OF RICHLAND	**Civil Action File No.: 2013-CP-40-05097**
Larry Strickland, Denious L. Dimery and Bailey G. McClinton,	
Plaintiff,	
vs.	**ANSWER OF DEFENDANT**
City of Columbia,	
Defendant.	

RICHLAND COUNTY FILED
2013 SEP 10 AM 10:10
JEANETTE W. McBRIDE C.C.P. & G.S.

FOR A FIRST DEFENSE
(General Denial)

I. Defendant City of Columbia ("City") responds to the allegations of the Complaint in the following fashion. Each and every allegation of the Complaint not specifically admitted or qualified is hereby denied, and strict proof thereof is demanded.

JURISDICTON AND VENUE

1. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

2. Admitted upon information and belief.

3. Admitted upon information and belief.

4. Admitted upon information and belief.

5. Admitted.

6. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

7. Defendant does not contest venue.

COMMON FACTS FOR ALL PLAINTIFFS

8. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

9. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

10. In response to the allegations of this Paragraph, Defendant craves reference to the content of the Inside Columbia newsletters referred to therein.

11. In response to the allegations of this Paragraph, Defendant craves reference to the job descriptions and personnel records of the Plaintiffs.

12. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

13. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

14. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

15. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

16. Denied.

17. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

18. In response to the allegations of this Paragraph, Defendant admits that prior to January 2013 participants in the City of Columbia group health plan were not required to pay a

premium for single coverage health insurance. All remaining allegations of this Paragraph are denied.

19. In response to the allegations of this Paragraph, Defendant craves reference to the City of Columbia group health plan available to employees and eligible retirees. All remaining allegations of this Paragraph are denied.

20. In response to the allegations of this Paragraph, Defendant admits that prior to January 2013 participants in the City of Columbia group health plan were not required to pay a premium for single coverage health insurance. All remaining allegations of this Paragraph are denied.

21. Denied.

CLASS ALLEGATIONS

22. Defendant incorporates its responses to Paragraphs 1-21 as if set forth verbatim.

23. The allegations of this Paragraph are legal in nature and do not require a response. Defendant denies that the allegations of Plaintiffs satisfy the requirements of bringing a class action.

24. The allegations of this Paragraph are descriptive in nature and do not require a response. Defendant denies that the allegations of Plaintiffs satisfy the requirements of bringing a class action.

25. The allegations of this Paragraph are descriptive in nature and do not require a response. Defendant denies that the allegations of Plaintiffs satisfy the requirements of bringing a class action.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

32. Denied.

33. In response to the allegations of this Paragraph, Defendant does not challenge the experience of Plaintiffs' counsel. All remaining allegations of this Paragraph are denied.

34. Denied.

35. Denied.

36. The allegations of this Paragraph are legal in nature and do not require a response. Defendant denies that the allegations of Plaintiffs satisfy the requirements of bringing a class action.

37. The allegations of this Paragraph are legal in nature and do not require a response. Defendant denies that the allegations of Plaintiffs satisfy the requirements of bringing a class action.

38. The allegations of this Paragraph are legal in nature and do not require a response. Defendant denies that the allegations of Plaintiffs satisfy the requirements of bringing a class action.

39. The allegations of this Paragraph are legal in nature and do not require a response. Defendant denies that the allegations of Plaintiffs satisfy the requirements of bringing a class action.

FIRST CAUSE OF ACTION
(Promissory and Equitable Estoppel)

40. Defendant incorporates the responses to Paragraphs 1-39 as if set forth verbatim.

41. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

42. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, all allegations are denied.

43. Denied.

44. Denied.

45. Denied.

46. In response to the allegations of this Paragraph, Defendant admits that the City of Columbia has a council-manager form of government. Defendant craves reference to the laws of this state providing for this form of municipal government and ordinances adopted by City Council for the City of Columbia. All remaining allegations of this Paragraph are denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. The allegations of this Paragraph are legal in nature and require no response. Defendant denies that Plaintiffs are entitled to any relief in this action.

SECOND CAUSE OF ACTION
(Injunctive and declaratory relief)

54. Defendant incorporates the responses to Paragraphs 1-53 as if set forth verbatim.

55. Denied.

56. In response to the allegations of this Paragraph, Defendant craves reference to the "announcement" referred to therein and to the group health plan available to employees and eligible retirees. All remaining allegations of this Paragraph are denied.

57. Denied.

FOR A SECOND DEFENSE
(Failure to State a Claim)

II. Plaintiff's Complaint fails, in whole or in part, to state a cause of action upon which relief can be granted as to the Defendant.

FOR A THIRDAND/OR AFFIRMATIVE DEFENSE
(Immunity)

III. Defendant specifically asserts and reserves all claims to immunity and qualified immunity available under law.

FOR A FOURTH DEFENSE
(Statute of Limitations)

IV. Plaintiff's claims and requests for relief are barred by the applicable statutes of limitations.

FOR A FIFTH DEFENSE
(Accord and Satisfaction)

V. Plaintiff's claims and requests for relief are barred by the doctrine of accord and satisfaction.

FOR A SIXTH DEFENSE
(State Tort Claims Act)

VI. Defendant specifically asserts and preserves all immunities and limitations contained in the State Tort Claims Act.

FOR A SEVENTH DEFENSE
(Lack of Standing)

VII. Plaintiffs are without standing to seek the relief claimed in the Complaint.

FOR AN EIGHTH DEFENSE
(Exercise of Governmental Authority)

VIII. The availability of fringe benefits sought by Plaintiffs is a matter within the governmental authority of the Defendant. Plaintiffs are without standing and Plaintiff's claims are barred by the lawful exercise of governmental discretion. Additionally, any alleged promises regarding future benefits are unenforceable as such communications are unauthorized and *ultra vires* as a matter of law.

FOR A NINTH DEFENSE
(Collateral Estoppel)

IX. The request for relief by Plaintiffs is barred by the doctrine of collateral estoppel.

FOR A TENTH DEFENSE
(Res Judicata)

X. The request for relief by Plaintiffs is barred by the doctrine of *res judicata*.

FOR AN ELEVENTH DEFENSE
(Laches)

XI. The request for relief by Plaintiffs is barred by application of the *laches* doctrine.

FOR A TWELFTH DEFENSE
(Stare Decisis)

XII. The request for relief by Plaintiffs is barred by application of the *stare decisis* doctrine.

FOR A THIRTEENTH DEFENSE
(Release)

XIII. The request for relief by Plaintiffs is barred by their conduct in applying for and accepting group health benefits governed by the terms of the plan.

FOR A FOURTEENTH DEFENSE
(Waiver)

XIV. The request for relief by Plaintiffs is barred by their conduct in applying for and accepting group health benefits governed by the terms of the plan.

FOR A FIFTEENTH DEFENSE
(Estoppel)

XV. The request for relief by Plaintiffs is barred by their conduct in applying for and accepting group health benefits governed by the terms of the plan.

WHEREFORE, having fully responded to the allegations in Plaintiffs' Complaint, Defendant respectfully requests that the Court enter an order dismissing the Complaint, with prejudice, and requiring the Plaintiffs to pay the costs and attorneys fees incurred by Defendant in responding to the Complaint.

NICKLES LAW FIRM, LLC

By: _____

W. Allen Nickles, III
1519 Richland Street
Columbia, South Carolina, 29201
(803) 779-8080

ATTORNEY FOR DEFENDANT

September 10 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Paula Bregovi, the undersigned employee of Nickles Law Firm, LLC, attorneys for the Defendants, hereby certify that I have served the foregoing Answer of Defendant by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

RICHLAND COUNTY
FILED
2013 SEP 10 AM 10:10
JEANETTE W. McBRIDE
C.C.P. & G.S.

William E. Applegate, IV, Esquire
Douglas E. Jennings, Esquire
Yarborough Applegate, LLC
291 East Bay Street, Floor 2
Charleston, SC 29401

Nancy Bloodgood, Esquire
Lucy C. Sanders, Esquire
895 Island Park Drive, Suite 202
Charleston, SC 29492

This 10th day of September, 2013.

Paula Bregovi

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL DISTRICT
Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith, Plaintiffs, v. City of Columbia, Defendant.	Civil Action File No.: 2009-CP-40-05680
Larry Strickland, Denious L. Dimery and Bailey G. McClinton, Plaintiffs, vs. City of Columbia, Defendant.	Civil Action File No.: 2013-CP-40-05097

RICHLAND COUNTY FILED
2013 DEC 27 PM 12:44
JEANNETTE W. McBRIDE C.C.P. & G.S.

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AS TO BISHOP, ET AL.

STANDARD OF REVIEW

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(b), SCRCP; Green v. Cottrell, 346 S.C. 53, 550 S.E.2d 324 (Ct. App. 2001);

Bruce v. Durney, 341 S.C. 563, 534 S.E.2d 720 (Ct. App. 2000) The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)

Under Rule 56(b), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Carolina Alliance for Fair Employment v. South Carolina Department of Labor, Licensing, and Regulation, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999) In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003)

BACKGROUND

Plaintiffs were formerly employed by the City of Columbia ("City"). At the time of their various retirements, City policy provided individual health coverage without charge for employees and retirees. A premium was charged for spouse and dependent coverage.

In 2009 City Council announced that it would impose charges for all participants in its group health plans. Committees were formed and public meetings were called to address this change. As a result of this process, Council voted to discontinue free health insurance for employees and retirees effective July 1, 2009. The premium charged for basic individual coverage was $33.18 per month.

On August 10, 2009, Plaintiffs and others filed suit asserting that imposition of the premium charge breached contractual rights, violated the Unfair Trade Practices Act, and should be equitably barred on ground of promissory estoppel. At the conclusion of discovery, Judge

Barber granted summary judgment on all claims. Plaintiffs appealed.[1]

The Court of Appeals affirmed summary judgment on all claims except promissory estoppel. That claim alone was remanded to determine if Plaintiffs could satisfy the necessary elements of reasonable and detrimental reliance. Neither Judge Barber nor the Court of Appeals ruled on affirmative defenses, including legislative/sovereign immunity, separation of powers, and political question. See, Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013)

As addressed below, the controlling fact of this case and the established law of this State entitle the City to judgment as a matter of law.

CONTROLLING FACTS

1. The City has selected a manager/council form of government.

2. In the council/manager form of government, council retains all legislative power and policy making authority while the manager exercises administrative responsibility. (Gantt dep. dated June 22, 2010, p. 24)[2]

3. Policies and procedures are subject to change. (Floyd p. 39; Martin p. 17).

4. Adoption of a budget is a legislative power confined to City Council. (Gantt dep. dated June 22, 2010, pp. 10-11; Morris pp. 31-32).

5. The City Manager must administer the City within the budget approved by Council. (Gantt dep. dated June 22, 2010, pp. 9-10; Morris pp. 31-32; Smith p. 37).

6. The City Manager may enter agreements requiring expenditure only in amounts of $10,000 or less. All other commitment of City funds must be authorized by Council.

[1] Of the original Plaintiffs, only Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, Charles F. Morris, Sr. and Joseph A. Smith preserved claims for consideration on remand.

[2] All deposition references are by the last name of the deponent. Designated pages from depositions are provided as Attachment A.

(Ordinance Sec. 2-207 provided as Attachment B).

7. Council has approved a pay and classification plan for City employees. This plan sets ranges of compensation for employees. (Gilliam Affidavit provided as Attachment C).

8. The City Manager cannot provide compensation to employees beyond the range set for a position. The City Manager may approve an initial salary for an employee only up to five percent (5%) above the minimum set for the position. The City Manager may not approve compensation that exceeds a salary range. (Gantt dep. dated June 22, 2010, pp. 28-29).

9. Group health insurance is available to City employees and eligible retirees under a self-funded plan administered by Blue Cross/Blue Shield of South Carolina. The City must reflect the cost of providing group health insurance as a contingent liability. (Gantt dep. dated June 22, 2010, p. 31).

10. The group health insurance plan is available to City employees and eligible retirees on the same basis. At all times, active employees and eligible retirees have been offered the same group health insurance options. (Cruz pp. 18-19; Floyd pp. 28, 31; See also Gilliam Affidavit at Attachment C).

11. Prior to July 1, 2009, the City paid all costs required to fund group health insurance for individual employees and eligible retirees. (Gilliam Affidavit at Attachment C).

12. Beginning July 1, 2009, Council voted to require financial contributions by individual employees and eligible retirees for participation in the group health insurance plan. (Council minutes provided as Attachment D).

13. Beginning July 1, 2009, all eligible group health insurance plan participants are charged on the same basis for individual coverage. This is $33.18 per month for Plan A and $63.17 per month for Plan B. (Benefits summary provided as Attachment E).

14. Each of the Plaintiffs retired from employment with the City before July 1, 2009.

15. Each of the Plaintiffs elected to participate in the City's group health insurance plan upon retirement.

16. The membership application providing for group health insurance coverage contains a certification statement which includes the following language:

> I understand that upon acceptance of this application by the insurance company, and so long as I meet the eligibility requirements of the contract with this employer, I will be provided with coverage as specified by the group health contract between my employer [City] and the Corporation [Blue Cross/Blue Shield]."

(Sample applications provided as Attachment F).

SUMMARY OF ARGUMENT

Plaintiffs' promissory estoppel cause of action is barred based upon their inability to demonstrate the necessary element of detrimental reliance. As held in Craft v. South Carolina Commission for the Blind, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009), to prevail on grounds of promissory estoppel, a plaintiff must establish a loss other than the "enforcement" of the asserted promise. Here, Plaintiffs' own testimony demonstrates their inability to meet this obligation.

Independent of the claims asserted in this proceeding, Plaintiffs have failed to offer proof that City Council exceeded its authority in altering retiree benefits. Indeed, the General Assembly has specifically delegated to municipalities the authority to adopt a budget and to direct all operations of the City's offices, departments and agencies. S.C. Code Ann. §§ 5-13-30(3) and 5-13-100. This statutory delegation bars judicial intervention in the valid exercise of the City's authority. See generally, Sandlands C & D, LLC v. County of Horry, 394 S.C. 451,

460, 716 S.E.2d 280, 284 (2011); Hampton v. Haley, 403 S.C. 395, 403, 743 S.E. 2d. 258, 262 (2013); Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 121-122, 691 S.E. 2d 453, 460-461 (2010)

LEGAL ARGUMENT

I. Plaintiffs' claims for relief are barred by the doctrines of sovereign immunity, State Tort Claims Act and exercise of governmental authority.

All municipalities in this State have the power to "enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State..." S.C. Code Ann. § 5-7-30 Such power "must be liberally construed in favor of the municipality..." S.C. Code Ann. § 5-7-10. The powers conferred on municipalities by the General Assembly are vested in council, acting through a majority vote. S.C. Code Ann. § 5-7-160.

Sovereign immunity for legislative and administrative actions, enforcement, implementation and adoption of ordinances, resolutions, rules, regulations and written policies is specifically preserved under the South Carolina Tort Claims Act ("SCTCA") in S.C. Code Ann. § 15-78-60(1), (2), (3), and (4). The SCTCA also preserves immunity in "the exercise of discretion or judgement by the governmental entity or employee or the performance or the failure to perform any act or service which is in the discretion of the governmental entity or employee." S.C. Code Ann. § 15-78-60(5) By statute, these immunities are to be liberally construed and applied. S.C. Code Ann. § 15-78-200

A resolution duly adopted by a municipal council "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). A party challenging a local ordinance bears the burden of proving its

invalidity, keeping in mind that in "[t]his state's constitution . . . the powers of local governments should be liberally construed." Id. (*citing* S.C. Const. art. VIII, § 17); see also, Denene, Inc. v. City of Charleston, 532 S.C. 208, 574 S.E.2d 196 (2002) (rehearing denied) The City is immune from liability on the basis of its decisions to fund or impose costs for its liabilities. See, Health Promotion Specialists, LLC v. S.C. Board of Dentistry, 403 S.C. 623, 635-637, 743 S.E.2d 808, 814-815 (2013) This preserved sovereign immunity is further illustrated by the decision of the United States Supreme Court in Tenney v. Brand Hove, 341 U.S. 367, 376-378 (1951)(exercise of discretion in selecting projects for funding is not a matter of judicial review).

A two-step analysis is employed to determine the validity of a local governmental act. First, the court must determine "whether the [municipality] had the power to enact the ordinance." If the court finds that the City did have the requisite power, it must then "ascertain whether the ordinance is inconsistent with the Constitution or the general laws of this state." Id. If it is determined that an ordinance or other official action of local government is not barred by the Constitution or other general law, the court may not intervene in the valid exercise of the county's legislative authority. Id. at 471-472, 290-291. Indeed, an act within a governmental agency's authority may not be declared unconstitutional if by any reasonable construction it can be harmonized with the state and federal constitutions. City of Darlington v. Stanley, 239 S.C. 139, 122 S.E.2d 207 (1961)

Each Plaintiff concedes that City Council has the authority to set budgets, establish pay and provide employee benefits. The express law of this State confirms this authority. S.C. Code Ann. § 5-13-30(3) The absence of a statutory or constitutional prohibition bars any infringement on the decision by City Council to impose premium costs for retiree health benefits. 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" raises 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.")

Apart from sovereign immunity for its actions relating to legislative, quasi-legislative and administrative actions, the City retains immunity for any "discretionary" conduct. S.C. Code Ann. § 15-78-60(5) The record is clear that Council weighed options in reaching the decision to require retirees to share in the cost of their health care. Various plans and options were presented to Council, with the final vote resulting in the challenged action. (Caughman dep. pp. 26-30; 35-40; 43; Gantt dep. dated January 12, 2016, pp. 39-47; 53-55; 60-63) Because alternatives were offered by professional consultants and a "conscious choice" was made by Council, no liability can be imposed upon the City in this matter. For this reason alone, information concerning the funding of public projects cannot support any cause of action in this proceeding. See, Wells v. City of Lynchburg, 331 S.C. 296, 308-309, 501 S.E. 2d 746, 753 (Ct. App. 1998) (consideration of alternatives by governmental entity bars liability).

In addition to their lack of standing to enjoin enforcement of a lawfully adopted resolution, Plaintiffs cannot prevail on the merits of their estoppel claim. Instead, as addressed below, the established law of this State bars relief.

II. Plaintiffs cannot obtain relief against the City on grounds of promissory estoppel.

In remanding this case, the Court of Appeals limited review to address the narrow

question of whether an individual who has completed employment may rely upon prior verbal representations concerning the availability of post-employment benefits. The Court of Appeals indicated that Plaintiffs should have the opportunity to present this issue for consideration by the trial judge insofar as the representations **did not conflict** with the City's employee handbook. Accordingly, issues on remand are whether Plaintiffs have established reasonable and detrimental reliance and whether affirmative defenses, including sovereign immunity and political question, bar relief. Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013)

To establish a claim of promissory estoppel, Plaintiffs must show: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. Powers Constr. Co. v. Salem Carpets, Inc., 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984). For purposes of this motion, Plaintiffs' testimony that individual employees, supervisors and City representatives made statements that free health insurance would continue beyond retirement is not disputed. (See, for example, Cruz pp. 19-23; Floyd pp. 23-24; Gillam pp. 29-30; Hill pp. 21-22, 33-34; Martin pp. 26-28; Morris pp. 19-22; Smith pp. 22-25).

Regardless of what they were told, Plaintiffs agreed to be bound by the terms of the group health plan (Attachment F). Plaintiffs were aware that the terms of the group health plan changed during their employment and could not reasonably assume that changes would cease to take place after they retired. In fact, the letter provided to retirees from the City's benefits administrator prior to July 1, 2009, made clear that payment of the retirees' portion of the health premium was "under the current policy." (Attachment G). Plaintiffs signed acknowledgements during their employment that policies were subject to change. (Attachment H)

The express terms of the City's handbook and group health applications placed Plaintiffs on notice that benefits were subject to change. As the Court of Appeals correctly determined, no Plaintiff received a document guaranteeing free health insurance for life upon retirement. Moreover, there is a direct **conflict** between acknowledgments signed by Plaintiffs as a condition of continuing employment and reliance on oral or written representations concerning future benefits. This record establishes that Plaintiffs cannot prove reasonable reliance, an essential element of promissory estoppel.

Should the Court find even a scintilla of evidence to support justifiable reliance, Plaintiffs cannot establish a prejudicial change of position. Some Plaintiffs testified that they may have pursued or accepted other employment if informed that they may be charged for health insurance in the future. Other Plaintiffs testified that they may have postponed their retirement dates had they known that after July 1, 2009 they would be required to pay $33.18 or $67.13 per month, depending upon the group health plan selected. This testimony hardly rises above mere speculation and falls far short of establishing a prejudicial change of position. In fact, each Plaintiff acknowledged receiving substantial increases in pay during their employment, significant promotions, personal gratification and valuable pension benefits upon retirement. (Cruz pp. 4-13, 20; Floyd pp. 5-6, 14; Gillam pp. 7-10, 35-36; Hill pp. 5-6, 12, 14, 21-24; Martin pp. 9-13; Morris pp. 9, 17-18, 38-39; Smith pp. 6-7, 9-11, 25, 31). Finally, each Plaintiff chose to continue to participate in the group plan like five-hundred twenty-seven (527) of their fellow retirees. (Gilliam Affidavit provided as Attachment C).

Plaintiffs' failure to demonstrate detrimental reliance establishes an independent bar to their estoppel claim. See generally, Craft v. South Carolina Commission for the Blind, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009); Barnes v. Johnson, 402 S.C. 458, 474-475, 742

S.E.2d 6, 14-15 (Ct. App. 2013) In Craft, the Court of Appeals found that the Commission for the Blind, through its agents, made unambiguous promises, Craft reasonably relied upon the promises and the Commission expected Craft to rely upon the promises. Craft's estoppel claim failed, however, because he could not demonstrate that an injury resulted from his reliance. Specifically, Craft could not show that he lost a better opportunity due to his reliance on the Commission's promise.

Like Mr. Craft, Plaintiffs assert that they relied upon representations regarding a future event, here retirement. Assuming this to be true, also like Mr. Craft no Plaintiff has offered evidence that he turned down a better opportunity, such as higher pay and guaranteed benefits, in reliance upon the promises received. As in Craft, this failure provides an independent bar to relief on promissory estoppel grounds.

Plaintiffs may argue that Craft is limited to its facts and should not apply here. As in Craft, however, Plaintiffs assert that they relied upon authorized representations and lost a prospective benefit or opportunity. If the value of an authorized representation were sufficient 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 summary, Plaintiffs cannot "reasonably" rely upon representations inconsistent with signed acknowledgments. In addition, Craft confirms that promissory estoppel is not available to compel specific performance or to enforce an authorized promise. Instead, relief on promissory estoppel requires a detrimental change of position (lost job opportunity for example) separate

from the "value" of the promise.[3] In this case, no Plaintiff identified any employment opportunity "lost" due to the expectation of post-employment benefits. Plaintiffs' expectations of future benefits cannot establish a basis for relief regardless of the "reasonableness" of those expectations or the authority of the promissors. Therefore, as in Craft, summary judgment must be awarded.

CONCLUSION

For the reasons stated above and evidenced in the testimony and documents provided herewith, Plaintiffs cannot satisfy essential elements necessary to obtain the relief. Accordingly, the City is entitled to an order granting summary judgment pursuant to Rule 56, SCRCP.

NICKLES LAW FIRM, LLC

BY: _____

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Attorney for Defendant

December 27, 2017
Columbia, South Carolina

[3] This very issue was addressed by the late Tanya A. Gee and retired Justice Jean H. Toal on remand and in the companion case Strickland v. City of Columbia. In both cases class was denied because each promissory estoppel claim requires proof of opportunity loss independent of the "value" of the promise. See, Attachments I and J.

ATTACHMENT A

In the Matter Of:

Strickland, Larry, et al v
City of Columbia

Melissa Ann Underwood Caughman

January 12, 2016

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35 YEAR

Q. Okay. As we sit here, you don't know what that liability was?

A. Not then, no, not without looking back. I mean, it's been a number of years now.

Q. Okay.

A. And it's changed.

Q. As you stated, there's a bunch of different financial issues that you were looking at across the budget, correct?

A. Right.

Q. Okay.

A. This being the number one.

Q. This being the number one issue?

A. Correct.

Q. Okay. Was this because it was the largest shortfall?

A. Yes.

Q. Okay. As I understand, in 2007, '8, at some point, y'all suggested or decided to go out and get a healthcare consultant to come look at the issue of the healthcare problem, correct?

A. Yes.

Q. And you were involved in that process?

A. I was involved with that, yes, absolutely.

Q. Okay. And y'all went out and did RFPs and requested that different consultants look at and, ultimately, chose Towers Perrin, correct?

A. Yes.

Q. And they came up with some recommendations?

A. Yes.

Q. And what I'm trying to understand is -- I've seen -- and I understand they made some recommendations --

A. Yes.

Q. -- which I'll ask you about later. But, beyond looking at the healthcare, the health insurance, what other solutions did you come up with for solving the budget problem?

A. As it relates to healthcare?

Q. As it relates to the entire -- I mean, overall, it's across the entire budget, right? I mean, there's a budget problem in that time period, 2008?

A. Right.

Q. Okay. And City Manager Gantt, who testified that they were going through the process of coming up with options --

A. Right.

Q. -- of how to solve this problem.
A. Right.
Q. Okay. One option was to follow Towers Perrin's recommendations, right?
A. Yes.
Q. That ultimately was the option that was chosen?
A. Right.
Q. Okay. What were the other options that were considered by you or suggested by you and/or your colleagues at that time?
A. Other options that we looked at were reducing and eliminating vacant positions. We did eliminate a variety of different services. We furloughed employees. We made some changes to some of our calculations of overtime in terms of what was included, what else could be included in the calculations of overtime and leave requests. Those were some of -- some of the other items that come to mind.
Q. Okay.
A. We also did some -- I mean, vehicle idling required -- you know, operations with how we did our routes that involved -- you know, any of our vehicles involving routes, you know, no idling

policy, meaning not leaving their vehicle idling to save on gas, fuel. Cutting electricity. Turning off phone lines that were not active.

Q. Now, it sounds to me that those were some of -- were those options that you looked at that were implemented or options that were just on the table?

A. Those were options that were implemented.

Q. Okay. And what I'm trying to understand is, what other alternatives were there that, maybe, weren't ultimately implemented?

A. I don't recall any at the moment that were offered and not implemented. Some action was taken by council simply just to cut departments' budgets. Some of those departments had to ultimately make other -- other line item decisions to reduce their -- their budget so that they can meet their budget reductions.

Q. Were the alternatives, I guess, put forth -- I saw a memo somewhere suggesting that you were putting together sort of a list of alternatives. Have you seen that when you were asked to collect documents? Because I've seen a document, it's around here somewhere, which

suggests Ms. Caughman is putting together -- I'm putting together a list of alternatives.

A. No.

Q. But I didn't see, actually, the list, and I was wondering whether you -- here we go.

A. The ones that had come to mind are the ones that I just mentioned, because those were the things that we did actually do. We may have some other revenue generating options or revenue -- or ways to generate some additional revenues. A variety of them, though, were related to changes in operations, ultimately, either reducing services or reducing employee costs by furloughing employees and reducing -- or eliminating a number of services.

Q. Would you have put forth that list in a memorandum kind of like this?

A. Yes.

Q. Okay. So, again, that would be -- in this case, it's from you in the finance department. Was that how that would be titled?

A. Yes. If it was in the period -- calendar year, 2008, which was during the time I was interim finance director as well -- interim finance director and budget. I had a dual role.

would not be familiar enough -- that's about the actuarial.

Q. Okay. As far as the budget goes, I just -- on a basic level, there's -- obviously, the city has had some pretty major investments and budget expenditures over the last five years since these changes were made, correct?

A. Uh-huh, yes.

Q. Okay. And the choice, obviously -- and this is what I'm trying to understand from you and just get your perspective on it is -- the choice by the city was to have retirees pay into the system to help with this GASB 45 situation, as opposed to restricting other economic development, other investments in the community, and paying -- but that was an option?

A. It's an option.

Q. It's an option?

A. Uh-huh.

Q. And what I'm trying to understand is, also, are there documents that you created and prepared which talked about those options?

A. Options to reducing cost?

Q. Yes.

A. Yes, by all means.

Q. Okay. Where would we find those documents?

A. On our website through anything that's reported to council as part of our minutes.

Q. Now, I understand that there's probably situations that are not -- where you've got a bond and that's a little bit separate from the budget, correct?

A. Other than the debt service payments of it, yes, the process.

Q. Right, but it's not -- you don't have to -- there's a payback from revenue from a -- the investment that may offset kind of cost for the city? It's not -- you don't have to budget for the complete cost of that, do you?

A. I -- we budget the annual debt service.

Q. Okay.

A. There is a debt recording on the financial statements as to the liability, the long-term liability.

Q. Okay.

A. And that would differentiate between the general fund liability or simply water and sewer liability.

Q. I think that probably pretty much

covers it. I mean, you would agree with me that the city -- city council --

A. Yes.

Q. -- made a decision to enact this change and have people pay -- the retirees begin paying their -- a portion of their healthcare insurance, as opposed to cutting other investment expenditures and reducing other budget areas, right?

A. Yes.

Q. Okay. And that's all I'm trying to ask.

And what I'd like to do is figure out -- and I don't know if there's a best way to record these dates online. We're talking about stuff in 2008 and '9. Is that -- that's going to be either in the -- that's going to be documents that you've created as part of the city manager's office, either as budget director or interim finance director?

A. That would have been recommendations to city council as part of the minutes, yes.

Q. As part of meeting minutes?

A. Meeting minutes.

Q. Is any -- is that -- would any of that go into executive session, or is that --

A. No, those don't.
Q. Those are all open?
A. Yeah, I don't -- no, those would all be public discussions.
Q. As far as any kind of memorandum that you would have created, that wouldn't be part of -- I mean, that's not part of the minutes? Those would be documents that would, if anywhere, be in archives?
A. Or perhaps referenced from the -- right. Although, the city clerk does attach -- attach documentation to the minutes as well.
Q. If there --
A. That far back may be a little different, though.
Q. If their memorandum discussing alternative, you know, options and alternatives for dealing with this budget issue back in 2008, would you still have some of that on your computer?
I still have everything on my commuter from ten years ago.
A. Well, sometimes -- sometimes we have to clear out space to make room for more things. But specifically related to budgetary matters or to healthcare?

Q. Well, I think it's actually more overall. You know, it's overall. Looking at the overall budget, what alternatives were looked at? And that's what we're trying to figure out concrete examples of.

A. If it's something that I worked on, then, yes, I would still have it. In 2008, during that time, I was both interim finance director and budget director, so, obviously, I would have been serving both roles, but there were other members of staff too. In other words, if somebody else worked on a document, I would only have the things that I worked on.

Q. Okay. Who else besides you would be the actual people making recommendations or suggestions, providing options, as it relates to alternatives to deal with this budget issue?

A. No one else is coming to mind that's -- Bill Ellis was our finance director at the time, but anything else would have been done -- he was -- he came later in the year. But I would have been working with him on those documents, so I would have them as well.

Q. Okay. So in the finance department -- is it a department?

A. There's a finance department.
Q. Okay. So in the finance department, was there anyone else beside him that would have been creating these?
A. Not really, no, because we were working with our -- Towers Watson -- Towers Perrin/Towers Watson.
Q. But wasn't Towers Watson only really focused on this one issue?
A. They were focused on the GASB 45 liability and the actuarials and plan design.
Q. And they weren't looking at the city-wide budget --
A. No.
Q. -- and that you could pull money from here and put it here and do that?
A. No. If you're referring to city-wide, yes, that would be primarily -- yes, that would be me. That would not be Towers Watson.
Q. Did you ever present at the city council meetings?
A. I do and I did.
Q. Okay.
A. Once or twice.
Q. Just to make sure I understand clearly,

Q. Was that something that you had recommended at any time?

A. I'm sure, over my period of 18 years, I've recommended increasing property taxes.

Q. Was that recommended by you in that timeframe related to this project?

A. It could have been considered as part of the overall need to address budgetary matters, but it would have not have been specifically related to this one particular item or issue like this. And with council's interest in not raising taxes -- we'd already been told, don't make that recommendation, or that's not a direction we're going to go down. We would not come back with that recommendation.

Q. Going forward, does Towers Watson do the actuarials every year that you use?

A. They -- they have done -- yes, we have contracted them to do 2014, '12, yes, they've done them for us.

Q. From a budgeting perspective, I mean, when you look at these actuarials and the post-employment benefits, those are considered -- those are obligations of the city, correct?

A. Yes.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) C/A #2009-CP-40-5680

COPY

Kirby L. Bishop; Herman G. Boney;
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Joseph A. Floyd, Sr.; Arthur C.
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Barry N. Martin; William J. Meyer;
Charles F. Morris, Sr.; and
Joseph A. Smith,

Plaintiffs,

v.

City of Columbia,

Defendant.

THE DEPOSITION OF

BASILIDES FRANK CRUZ

****

Wednesday, May 12, 2010
9:24 a.m. - 10:26 a.m.

The deposition of Basilides Frank Cruz, taken on behalf of the Defendant at the law offices of Nickles & Solomon, LLC, 1519 Richland Street, Columbia, South Carolina, on the 12th day of May, 2010 before Margaret S. Smith, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

health insurance over to her coverage?
A: We have looked at it, but I'm not really sure on the guidelines of what ... I know there's something about, you know, you have to go into the system so many years before they retire or something in order to ... as a dependent on her system, and I just never considered it because I figured I'd have insurance for life.
Q: Do you have any children?
A: I have a son who's 28 years old.
Q: Does he live in the Richland/Lexington area?
A: No.
Q: Are you a member of any church, civic organizations here in the midlands?
A: No.
Q: Any professional organizations?
A: No.
(Defendant's Exhibit Number One was marked for identification purposes.)
Q: I'm going to hand you a document here that's marked Exhibit Number One, and that has a collection of materials that are part of you personnel file that's been provided to your attorney. This by no means is everything in your personnel file, but I'd like for you to

look at a few of these documents with me, if you don't mind.

A: Okay.

Q: The first page of Exhibit Number One appears to be the authorization of your employment, and at that time, Chief Evans was the fire chief for the City; is that correct?

A: Yes, sir.

Q: Can you tell by looking at this or recall what your initial salary was when you came to work for the City?

A: You know, I can guesstimate. I think it was close to $10,000 or $11,000 roughly.

Q: What was your initial position of employment?

A: As a fire fighter.

Q: Did you have to go through training here in the city or had you already acquired that?

A: Yes, but back then, Columbia did not have an organized training system. And so what they did is put us on the trucks until they decided they could fit us in a class. I think I was hired along with three other people that year.

Q: So it was primarily on-the-job type training at that time?

A: Until we were sent to school.

Q: During the course of your career with the fire department, did you attend training sessions that were funded by the fire department?
A: Yes.
Q: You mentioned exploring the possibility of a HAZMAT type position with another employer. Did you get HAZMAT training through the City of Columbia?
A: At that time, no, not in depth HAZMAT training like we did later on.
Q: Did you receive any promotions during your career with the fire department?
A: Yes.
Q: What was the position you held after the entry level fire fighter position?
A: At that time, they called it a round driver's position.
Q: Was there a pay increase associated with that promotion?
A: Yes.
Q: Were you promoted after that?
A: Yes.
Q: What was the next position?
A: It was engineer, which was a driving position, full time driving position.

Q: Do you remember about when you were promoted to round driver and engineer?
A: I think I had five years when I got promoted to round driver, and then I waited about a year, I think, to get promoted to engineer.
Q: How long were you an engineer, do you remember?
A: I think about three to four years.
Q: And what position did you have after that?
A: Then I got promoted to captain.
Q: How long were you a captain?
A: I'd say somewhere between 7 and 9 years maybe.
Q: What was the next position that you had?
A: Then I got promotion to battalion chief.
Q: How long were you in that position?
A: Maybe around the same amount of time, maybe 7, 8 years.
Q: And you were a shift commander?
A: Yes. Then they made a promotion for a shift commander.
Q: How long were you in that position?
A: I think just roughly a year, you know.
Q: That was your final position with the City?
A: Yes, sir.
Q: With each of these changes in position, were there increases in pay?

A: Yes. I think there were except when I went from captain to battalion chief. For some reason, I had been getting ... I was top level or something, and they told me that ... so when I got my first promotion, my first raise as a battalion chief, they didn't have ... because my captain's pay had already come together with the battalion chief's pay, there was ... I was very upset. I think I got a one percent check that year.

Q: Did you also receive any cost of living or merit increases during the course of your employment with the City?

A: Yes.

Q: Were there times when cost of living or merit increases were not available?

A: Sure.

Q: And were those, to the best of your knowledge, due to citywide budget issues?

A: That I can't say through my whole career. I mean, you know, certainly sometimes they were an issue.

Q: But from time to time, you were made aware that even though you gave good performance, there was not money available for a merit increase?

A: Oh, yes.
Q: And that wasn't confined to you. That was department or citywide?
A: Right, yes.
Q: According to these documents, you retired ... your last day was February 28, 2007. Does that sound about right?
A: No. Actually, I retired on June .... I mean May 27th was my official state retirement time.
Q: Was your last day worked in February?
A: Yes.
Q: You had some extended leave period that you used?
A: Yes.
Q: And you were allowed to use leave to extend your service credit for retirement purposes; is that accurate?
A: Yes, yes. I believe I had some accrued before I retired.
Q: Did you also have some accrued leave time that you could use as a lump sum payment at the time of your retirement?
A: Yes.
Q: And that increased your retirement benefit, I believe?

about some of the factual allegations in the complaint relating to you in particular. And these are contained in the amended complaint that was filed back in October of 2009. In paragraph 22, it states that while employed by the City, you were provided free employee health insurance.

A: Yes.

Q: In your employment, was the health insurance a part of what was provided to you for your services?

A: I believe so.

Q: So it was in exchange, in part, for the services you provided to the City and to the public?

A: Yes.

Q: Until July 2009, the City bore the total cost of that health insurance coverage for you and other employees and retirees. Is that your understanding?

A: Yes.

Q: And beginning effective July 1, 2009, there was a change in which part of the cost was shifted to the participants in the program; is that correct?

A: Yes.
Q: It says here that you paid $63.17 per month for your coverage; is that correct?
A: Yes.
Q: And that is Plan B; is that correct?
A: Plan B.
Q: Plan A has a different level of coverage and a different premium; is that correct?
A: Yes.
Q: Now, as of July 1, 2009, had you wanted, you could have elected to discontinue your health insurance coverage, paid for Plan A or paid for Plan B; is that correct?
A: I could have discontinued my health insurance or ...
Q: Pay for Plan A or pay for Plan B. You had those three choices available to you?
A: Yes.
Q: And the allegation in the complaint is that during your employment, you were promised by the City that if you remained employed for a certain period of time, you would be provided free health insurance for life. Can you tell me in particular who made that promise to you and when that promise was made?

A: In the early stages of my career, I had several people that had mentioned or told me that I would receive free health insurance if I stayed until retirement age or until my retirement. And most of the time it was during ... like when we had to do merit, they gave merit raises or evaluations. During the early years of my career, they did not give a lot of raises. So they said that the real package there was the long term promise of my health insurance. So I was told by several officers, which at that time you didn't question what you were told basically, and from Captain Jeffcoat, Chief Douglas, Chief Stewart. These were the people that normally handled the evaluation period yearly, and because the raises were not substantial, you know, they almost put it out there like it was an incentive to stay with the City and be loyal to them.

Q: So these were fire chiefs and battalion chiefs?

A: Fire chiefs, battalion chiefs, and one of them was a captain at station one.

Q: And who was that?

A: Captain Jeffcoat.

Q: During this period, you were also participating

in the police officers retirement system?
A: Yes, right in the early years.
Q: And that system provided for full retirement at 25 years of employment, correct?
A: Yes.
Q: Was that an incentive to stay in the system?
A: Certainly.
Q: Do you know what your current retirement compensation is?
A: I can only guesstimate, maybe $2,500.
Q: Per month?
A: Per month.
Q: Is that the net amount that comes to you?
A: Yes.
Q: Do you know whether or not other participants in the police officer retirement system, other than the City of Columbia, actually have to pay for retiree health insurance?
A: Do I know of other people outside the City of Columbia?
Q: Yes, sir.
A: I cannot be specific because I know over the years when I've talked with people about my career and the job and all that, you know, I always tried to emphasize to them that maybe we

weren't making a lot of money, but I had free health insurance for my life. And that's when they would respond, oh, really, you know. So to me that was a big thing to have the health insurance.

Q: Did you ever run a comparison of the compensation levels provided at the City of Columbia and other fire departments in the State of South Carolina?

A: You know, I might have looked at it, but I just can't remember any details.

Q: For example, if you had decided back in the 80s to go to Westinghouse, for example, you would not have been eligible to participate in the state retirement system in that position; is that correct?

A: That's probably correct. I mean certainly, you know, I had to weigh the differences because the pay at Westinghouse was substantially ... was twice as much, I think, as the salary I was making, but I did during that time also, I was in the Marine Corps Reserves. And at that time, the City didn't work so good with the Reserve unit in giving you your time off. It wasn't as easy as it is right now. And I had

to be told by my superiors in the fire department because of the back and forth between the department and the Marine Corps, that I had to make a decision on which one was going to be my career. And it was ... like I said, it wasn't so easy to make my drills, and I was always making them up. So I finally stopped the Marine Corps Reserves and went with the fire department. Both of them have similar benefits. I'm going to go with the career, knowing my health insurance was there.

Q: When were you in charge of orientation for fire fighters?

A: Probably for about nine years. I spent probably the last nine years of my career at headquarters as a battalion chief and then shift commander. So new recruits came in there, and then before they were disbursed out to their stations we did the orientation.

Q: And what information, if any, did you give them concerning the benefits available to them?

A: Well, as probably with the same thing that happened to me. I tried to emphasize to them that if they remain in this career, they'll probably never be rich, but they'll be taken

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
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City of Columbia,

Defendant.

THE DEPOSITION OF

JOSEPH A. FLOYD, SR.

****

Wednesday, May 12, 2010
1:00 p.m. - 1:55 p.m.

The deposition of Joseph A. Floyd, Sr., taken on behalf of the Defendant at the law offices of Nickles & Solomon, LLC, 1519 Richland Street, Columbia, South Carolina, on the 12th day of May, 2010 before Margaret S. Smith, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

Q: What was your next position?
A: Engineer or fire equipment operator.
Q: Approximately how long were you a round driver?
A: Again, that was a few years before I was promoted to engineer.
Q: And was there an increase in pay when you were promoted to engineer?
A: Yes.
Q: What was the next position you held?
A: Captain.
Q: Do you remember approximately when you obtained that position?
A: 19 ... it was in September of 1988, '89. It's when Hugo came through, the day after Hugo.
Q: And did you get a pay increase when you were promoted to captain?
A: I did.
Q: What was your next position?
A: Battalion chief.
Q: Do you remember about when you obtained that position?
A: It was about four years after captain, if I remember correctly.
Q: And what was your next position?
A: Assistant chief.

Q: Do you remember about when you obtained that position?
A: Again, that was a few years after battalion chief.
Q: Were there any other positions that you held?
A: No. I was fire marshal, but it's the same rank as assistant chief.
Q: And that was your final position with the City?
A: Yes.
Q: In addition to pay increases with promotions, did you receive merit increases during the course of your employment?
A: I did.
Q: And did you also receive cost of living increases from time to time?
A: I did.
Q: Were there occasions during your employment when even the best performance could not be rewarded by merit increases because of budget issues?
A: I want to make sure I answer this right. I can never ... if I remember correctly, I got a merit increase every year I was up for one. I could be wrong, but I'm thinking that's right.
Q: Were there years when there were no cost of

fighters, through the years that we have worked for the City, sustained injuries in the line of duty for the City, and at the time we really weren't thinking about ... while we were performing our duties and the hazards of the job that we would be faced with the coverage of health care after we retired because we thought it would be taken care of. We thought ... it didn't cross our mind out there when we were fighting a fire and sustaining the injury that we would be fighting this battle down the road because we felt that we would be taken care of.

Q: One of the things that I asked your attorney to identify are any occasions on which you were verbally promised the cost of single health insurance would be borne by the City. Can you think of any specific individuals who told you that or occasions on which you heard that?

A: Over the years, I've heard it on several occasions. When I first came to the fire department, we heard that, you know, down the road when you retire that, you know, health coverage would be provided. Talking with past chiefs, you know, it was a topic. Sometimes it would come up in a topic of conversation that

health coverage would be taken care of, as recent as Chief Jansen. I can remember having conversations with him. Quite frankly, I can remember him complaining about how he didn't qualify and we did, and that our insurance would be taken care of and he wouldn't be because he hasn't met the time requirement. And they kept moving the ... you know, 10, 15, 20 years. So he would never qualify for it. I can remember talking with Chief Evans about it. He brought it up. And I was told when I was over human resources for the City of Columbia when I was recruiting for fire fighters, talking with Ron Cunningham about things I could and could not tell the recruits or applicants, you know, about the benefits, and this was one of them. And one of them was ... a selling point was if you spend this many years with the department, your insurance would be taken care of.

Q: Now, when Mr. Cunningham made those statements to you and when you made those statements to the recruits, in fact those individuals retiring were offered health care at no cost to them, correct?

coverage I had when I retired.
Q: Well, if the City of Columbia plan in fact was broader at some time after you retired than it was when you retired, do you say that you would not be entitled to any increases in coverage?
A: I felt like and I feel like that I spent my 28, 30 years in the fire service, 28 with the City of Columbia. That I fulfilled my obligation with the City, and that I feel like they should fulfill their obligation of my health insurance. I'm not asking for anything more other than what I was told I would get.
Q: Let's look at it this way. Let me ask you a couple of questions.
A: Okay.
Q: When you were working for the City, you were eligible for health care coverage under the City's group plan, correct?
A: Yes.
Q: And at that time, the City did not charge a premium for participation in that health plan, correct?
A: Correct.
Q: After your retirement, for a period of time the City continued under its plan not to charge any

watching out for what was told we were going to get. I don't know if that answers your question.

Q: I'm trying to ask you two different questions, and I understand your position as to the charges. Your position is as a retiree, you shouldn't be charged for health insurance; is that correct?

A: That's right.

Q: Is it your position also that even though the plan of which you are merely a part has changed; that any changes in that plan, even if you're not charged for them, can't be applied to you?

A: If it takes away and lessens my coverage, it should ... you know, they shouldn't apply. Like I say, if I'm getting this for health insurance on the day I retired, this is what I'm going to get. If the City comes in and says to everybody, well, we're going to lessen what your coverage is, I'm not for that, okay. I want what they said I was going to get. And if that's different from active personnel, that's different. I want what they said I was going to get. If the City wants to give me

A. There are some safety policies that are at our water and sewer plants.
Q. Any others?
A. Not to my knowledge.
Q. Are there any unwritten City policies?
A. Shouldn't be, no, ma'am.
Q. Do you, as City Manager, have authority to establish policies?
A. No, ma'am.
Q. Who establishes policies?
A. Council.
Q. Does Council review and sign off on employment policies, operational policies and all the safety policies?
A. On the safety policies, no. But the other two, yes, they have to approve.
Q. Okay.
A. Safety policies are by OSHA.
Q. So the safety policies are OSHA policies?
A. Yes, ma'am.
Q. Does the City have its own sub-set of policies or do you just adopt OSHA's?
A. We normally use the OSHA policies and then set up procedures in order to follow those.

A And that would be based on education, experience, a lot of other variables that I would look at.

Q All right. Does the City of Columbia contract with any other political subdivisions for the provision of any type of public service?

A We have a contract with Richland County for unified fire service, we have a contract with Richland County for the joint operation of the 911 center, and we have a contract with Richland County for the joint operation of the animal shelter.

Q How about hazardous materials? Do you do that in-house or --

A Hazardous materials?

Q Do you have any department that handles hazardous materials?

A I certainly hope not.

Q Okay. No department that oversees businesses operating in Columbia that handle hazardous materials, is a better way to explain that.

A Well, I -- I guess the closest thing to that would be that we do have special monitoring and permitting that we do for some industrial waste that comes into our waste water treatment plant.

that.

Q And you're not 100 percent sure as to whether you can legally do that?

A Correct.

Q And you're aware of GASB 45?

A Oh, yes.

Q And is it true that the cost of retiree health insurance was not included as a contingent liability of the City prior to the enactment of GASB 45?

A I'm not a hundred -- I'm not -- I can't answer that question. I'm not sure.

Q Okay. Do you know whether or not the City of Columbia is required now to reflect the money it has to pay to retirees as a contingent liability?

A Yes.

Q And are you aware that the City has, through the years, changed the eligibility requirement for retiree health insurance from 10 years to 20 or 25 years, whatever it is now?

A No, I'm not.

Q During the time that you've been with the City since 2001, has the eligibility requirement, in terms of years, changed at all for

In the Matter Of:

Strickland, Larry, et al v
City of Columbia

Steve Gantt

January 12, 2016

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retired employees, and that they're calling that a -- they're calling that a premium.

Q. Does this not reflect the premium that was paid on behalf of the retired employees?

A. By the city?

Q. Yeah, like to Blue Cross Blue Shield?

A. That would have been -- anything we paid to Blue Cross Blue Shield would have just been for third-party administration. It wouldn't have been for actual payment of benefits.

Q. Okay. So you don't actually -- you don't set it up through them as a premium?

A. I don't think so. I think the way that worked, they -- they paid the -- the healthcare bills for us, and then we -- then they billed us, and we paid them for that. And then on top of that, they got paid a fee for administrating -- administering the -- the healthcare program on behalf of the city.

Q. Okay. So as the city manager, you were in charge or responsible for looking at the entire city budget, correct?

A. Yes.

Q. Determining where you were, if there were any shortfalls, etcetera?

A. Yes.

Q. Okay. And in roughly that time that you started as city manager, you determined that there was going to be a shortfall, correct?

A. That there was a shortfall in the insurance reserve fund.

Q. Okay. In the reserve fund?

A. (Witness moves head up and down.)

Q. Okay. Which paid all these claims?

A. Correct.

Q. What was the action that you took as a result of that information?

A. Shared that information with council.

Q. Okay. And beyond that?

A. Asked for direction on how they wanted to proceed.

Q. Okay. To the extent that you didn't take any independent action, can you tell me how they proceeded? I have some general idea, but what specifically did y'all do?

A. I believe that the initial thing that the council did was set up a committee to look specifically at the insurance program that we provided to determine what was the best course of action to move forward.

Q. And one of those actions, I'm assuming, was to bring in an auditor to look at the health retirement program, correct?

A. The health insurance.

Q. The health insurance,

A. They weren't auditors. They were folks that -- that worked in the insurance field that provided guidance to both public and private entities in regard to how they handle their healthcare programs and such.

Q. Okay. At that time, beyond the health shortfall, what were the other shortfalls within the city?

A. Is that 2007 you're talking about?

Q. Yes, sir.

A. Well, that was the great recession, I guess, you remember. We had shortfalls in a lot of areas. We had to eliminate about 100 positions. We had to do ten days of furlough, non-paid furlough, eliminated all travel. There were probably four or five other things that were done in that year in order to reduce our expenses.

Q. So this looked at -- I mean, it sounds like some of the remedies that you employed at that point in time was eliminated positions, furloughs,

eliminated some travel.

As far as that -- helped with sort of immediate cash flow issues, correct?

A. That -- that was -- yes, yes.

Q. But as far as future cash flow issues, some of the concerns that were raised to you about the IRF and having money to fund future healthcare, that wouldn't solve that, correct?

A. No.

Q. All right. What other remedies did city council and/or that city manager look at -- you as city manager -- look at to try to solve this healthcare issue?

A. Well, bringing in a -- a third-party consulting firm to help us determine what was most appropriate for us to do, both for the short term and the long term.

Q. Okay. How about any other areas of government?

A. I'm not sure what you're asking.

Q. Well, it appears to me what the city did was had Towers Perrin come in to do this to sort of help determine the health insurance issue. And ultimately what they determined was that we can begin making retirees, for example, pay for their

benefits?

A. Yes.

Q. That's one of the solutions?

A. Yes.

Q. Okay. Again, as was expressed throughout the city council meetings and as we just discussed today, this was -- these individuals had already retired, they had been promised these benefits, and now you're going back and you're changing these promises that had been made to them retrospectively, okay?

MR. NICKLES: Object to the form.

BY MR. APPLEGATE:

Q. And what I'm asking, that's one solution, right?

What other solutions to this shortfall did you look at?

A. The committee looked at a lot of different options. I think you'll -- well, there were -- they looked at a lot of different options in regard to insurance, the insurance issue, through Towers Perrin. They -- I guess, they met with the council -- the committee and the council for the better part of a year, a year and a half, looking at various options that they could come up

with.

Q. All right. Well, looking at the various different departments, did y'all look at cutting funding from parks and recreation?

A. I think it -- everything was on the table at that time.

Q. Okay. Do you know what other actions were taken by the city, beyond the action that ultimately was taken in 2009, to -- and then ultimately in 2012 -- to have all the retirees begin paying for their premiums?

A. I don't recall, during that time, exactly what we did.

Q. Do you know anything that would have been a large expenditure -- or big items? Were there other big items that come to mind that the city decided to deal with to try to solve this problem?

A. I don't recall any.

Q. Is this, as far as you're concerned -- as far as you know, is this the main solution the city came up with to solve these problems?

A. Well, with GASB 45, it was about the only solution to satisfy GASB 45.

Q. Did you meet with any accountants or

auditors or any other types of individuals to discuss this GASB 45 issue?

A. We had several meetings -- well, a lot of meetings with our financial folks, our finance director.

Q. You tell me. I don't want to assume anything, but is it safe to say that you didn't -- or fair to say that, ultimately, this wasn't your issue to figure out -- the GASB 45 implications and how can we solve this problem -- or was it?

A. This was a -- this was a council -- council issue that had to be addressed by city council.

Q. Do you know whether any cuts were made, budget cuts were made, as far as the economic development?

A. I don't recall specific cuts during that 2007 period, but I know we looked at every possible way to reduce our expenditures.

Q. Okay. And other than this solution of, again, charging retired employees for their benefits and, obviously, raising premiums for current employees and changing the program going forward, what other large solutions did y'all come up with?

And I'm talking about from the time 2007 to 2013. As you know, these benefits were slowly, depending on how old you are and when you retired, were taken away. Some individuals, in fact, didn't have to begin paying for their healthcare coverage until 2012?

A. Yes.

Q. And you were there that whole time?

A. Yes.

Q. You were involved in that entire process, correct?

A. (Witness moves head up and down.)

Q. And you understood the gripes that were being made by all the retired employees, correct?

A. Correct.

Q. And to some extent, we hope, that the city made some effort to try to come up with an alternative solution, correct?

A. Yes.

Q. In fact, when the focus groups were done during the Towers Perrin time period, the majority of people wanted to make sure that retired employees' benefits would not change, correct?

A. Correct.

So you're asking --

Q. What were the other solutions?

A. We created an employee health clinic where we, basically, brought in a doctor and nurses and set up a clinic, where all employees that were covered employees and -- and their dependents could go to the -- that health clinic with no co-pay, and drugs were sold at -- at pennies on the dollar for what they would normally have to pay at a regular doctor's office, which greatly reduced the amount of employees that were using the emergency room as their primary healthcare provider. So they -- they had the opportunity to use the health clinic, which is still in operation, at little or no cost.

Q. Anything else?

A. No. That was -- that was the big one, I believe.

Q. Okay. And, again, as it relates to cutting of funding to any department or to making any changes in the city's economic development plan, are you aware of any significant cuts that were made?

A. I don't. I don't recall. That's too far back for me to remember exactly.

Q. Do you recall the actual out-of-pocket amount of money the city needed to generate, as far

A. I think she did -- provided information to Towers Perrin, and then Towers Perrin actually reported back to the -- the insurance committee that was appointed by council and to city council, but they dealt directly with them.

Q. Was Missy Caughman responsible for coming up with any type of alternatives related to the budget issues?

A. The -- the budget was built from the departments up, so the departments would submit their budgets to her. She would go through their budgets, make changes that she thought were appropriate to get us some balance. Our responsibility was to give council a budget that was balanced, that revenue and expenditures were the same. After it was presented to council, those numbers could be moved anywhere. Council could move them within that -- that budget, as long as they didn't exceed the revenue or the expense side.

Q. So, again, y'all would prepare a budget. And would that be based on sort of past experience, what the expenses were in any given year, and you'd look at all the different factors and do your best job consulting with each other?

A. Yes. We -- we had an internal budget

committee that was made up of all the department heads, Ms. Caughman, the assistant city managers, and myself. We would prepare the budget. And then, I guess, the last two or three years, we had actually had a budget committee of council made up of three members of council that actually worked with staff to put the budget together.

Q. Okay. If you had appropriated x amount of money to economic development or to parks and recreations or whatever it might be, city council might come in and put an x through that, move five million from one department to the next, make changes accordingly, correct?

A. They had the authority to move money within the budget, yes.

Q. Would y'all make those recommendations?

A. Sometimes we did, sometimes we didn't.

Q. Okay. Where could -- let me first ask you -- I know you're trying to recall a lot of information that's very old, so I appreciate you trying.

As far as where we would find information related to your suggestions to alternate solutions to this budget shortfall, where would we find that information?

A. I'm not sure.

Q. Would they have been kept in, like, inner office memorandum when used in city council or between you and Missy Caughman or how would that be done?

A. A lot of our communication was oral, that Missy took -- you know, put the information together during a budget meeting. So if that information is available, she may -- she may have that information. I -- I don't have any of that information.

Q. Okay. Do you recall personally ever coming up with alternate solutions beyond the suggestions made by Towers Perrin?

A. No. At that juncture, the insurance committee was pretty much driving the -- the ship on the -- on the insurance issue.

Q. Okay. And one of the things -- it might be me being dense -- but is it fair to say that the only real consultant that came in was -- looked at this one area, which is the health insurance issue, which is Towers Perrin, correct?

A. I believe that's correct.

Q. And y'all didn't bring anyone in to audit any of the other departments or any of the

their healthcare?

A. No, sir.

Q. While you were employed by the city in your various capacities, did you have the authority to deviate from council-adopted policies?

A. No, sir, I did not.

Q. Did you have the authority to authorize expenditures beyond council-adopted budgets?

A. No, sir.

Q. And that was in your position as city manager as well?

A. Yes, sir.

Q. Mr. Applegate asked you if the decision to change the healthcare program was an easy solution.

Was it easy?

A. No, sir.

Q. Were options offered, to the best of your knowledge, to city council?

A. Yes, sir.

Q. I believe you testified there was a third-party brought in to assist in that process?

A. Yes, sir, there was.

Q. You mentioned an insurance committee. Did that include employees and retirees?

A. City council, present employees, and retirees, and staff.

Q. And I believe Mr. Applegate pointed out, there wasn't universal consensus on what should be done in this circumstance; is that right?

A. No, sir, there wasn't.

Q. And who had to make the ultimate decision choosing among the various options?

A. City council.

Q. During this period of time that you were city manager, I believe you testified it was challenging from a financial standpoint, correct?

A. Yes, sir.

Q. I believe you testified there were furloughs, correct?

A. Yes, sir.

Q. Were there pay freezes?

A. Yes, sir.

Q. Was there the elimination of merit pay?

A. Yes, sir.

Q. Were there cutbacks in personnel?

A. Yes, sir.

Q. Mr. Applegate asked you about other areas in the city, such as parks. Were there reductions in the services provided through the

parks program, such as the maintenance of the parks?

A. I can't recall, specifically, no, sir.

Q. All right. But the -- it would be the case that contemporaneous records maintained regarding these various issues are perhaps more reliable than your recollection?

A. Yes, sir.

Q. Now, Mr. Applegate asked you some questions about the cost of -- I believe the term used was premiums -- for the participants in the city's group health plan.

Was the city's cost of providing healthcare limited to a premium for any employee?

A. No, sir.

Q. You used the term self-insured. What does that term mean to you?

A. That means that the city, basically, paid everybody's healthcare bills. You know, we paid it to Blue Cross Blue Shield, they paid the hospitals, the doctors' offices, the drug companies. They paid everybody. We -- we did not have an insurance -- a healthcare insurance policy, per se, that was paid for. We actually paid for the services rendered.

to ask if you recognize that document and the attached pages.

A: (Witness does as instructed.)

Q: If I might just ask you a couple of questions about these, please sir. The first is a form, or personnel report indicating that you are retiring and the dates for which you will be compensated. Do you see that?

A: Yes, sir.

Q: And is your signature at the bottom of the page?

A: Yes, sir.

Q: The second page is a letter or memo that you sent at the time of your retirement, I guess to your colleagues, is that correct?

A: Yes, sir.

Q: And did you mean the expressions of gratitude and support that you put into this letter?

A: Yes, sir.

Q: The final page is an internal document that indicates a rate of pay ending at $64,155.60, does that appear to be the correct ending pay or amount that you were being paid at the time of your retirement?

A: I'm not sure. That figure ... looking at the

a monthly or an annual basis?
A: Monthly, I couldn't tell you including taxes, but my bring home is $2721 and some change at the present time.
Q: Are you employed anywhere at the present time?
A: I run a small business.
Q: Okay. What's the name of that business?
A: CBS signs. Just like the tv station. CBS.
Q: How long have you been involved in that business?
A: Well over ten years.
Q: What's the nature of the business?
A: Sign and graphics fabrication.
Q: Do you have any employees?
A: No, sir.
Q: And do you have any other form of employment?
A: No, sir.
Q: All right. Have you priced any health insurance that might be available to you either individually or through your company, CBS Signs?
A: No, sir.
Q: Mr. Hill, during the course of this lawsuit, there have been certain representations made on your behalf by your attorney. The first of

the state health plan?

A: I don't remember to be honest with you. It seems like I did and I looked at them and they were kind of comparable, the parts I was looking at, so I didn't really pay a whole lot of ... really, really close attention to them.

Q: One of the questions that I asked your attorney to answer on your behalf was to identify the dates on which you were promised verbally or in writing that you would be provided free health insurance for life. Tell me today to the best of your recollection, any occasion that you specifically remember where that promise was made to you.

A: I'm not sure, absolutely for sure the year or the day, but I went through a divorce in the mid to late nineties and I was thinking about quitting the department and one of the supervisors at the time, Don Davis, he's deceased now, he talked me into staying and he reiterated the fact of the benefits that the City provided and how I'd be stupid to quit the job.

Q: Well, health insurance was not the only benefit of your job, was it?

A: Health insurance? No, sir.
Q: I mean you were eligible for participation in the police officer's retirement system, that's a significant benefit, would you agree?
A: Yes, sir.
Q: And when you had this conversation with Mr. Davis in the 1990's, the information he provided to you was accurate, wasn't it?
A: Had no reason to believe otherwise because he was my supervisor.
Q: And to the best of your understanding, what he told you was true at the time, was it not?
A: Yes, sir.
Q: So you don't believe Mr. Davis or anybody intentionally intended to deceive you, do you?
A: No, sir.
Q: Any occasions other than this conversation you recall with Mr. Davis where the topic of health insurance was specifically addressed?
A: No, sir. I don't remember. That one sticks out due to the fact I was going through a traumatic time in my life at that time, so that really sticks out.
Q: I understand. While you were employed by the City, did you apply for jobs in any other place

or location?

A: About a year after I was employed with the City, I did get into the sign business working for another company and that evolved into the business I have right now, which is just a part-time business back then. And that was like a year after I was employed with the City. It was a part-time job.

Q: That was back in the early 1980's then?

A: Early to mid 80's. Yes, sir.

Q: Any positions at any other fire departments or public employers that you applied for?

A: No, sir.

Q: Were you ever offered any jobs at any other fire departments or public employers that you turned down?

A: I was asked, but not offered. And I turned them down because I was satisfied with the job I had.

Q: What was that?

A: I don't remember. I want to say it was someone with Lexington County and it could have been with the City of Cayce, but it's been so many years, I just don't remember.

Q: Do you remember about when that was? A decade?

A: Probably 15 years ago, at least.
Q: When you were approached about that job, did you do any comparison of the pay and benefits available for those two positions?
A: No, sir.
Q: You were happy where you were at the time?
A: Based on the amount of years I had in, I didn't want to start over in another career or another career at another location.
Q: And you in fact, did receive some significant promotions after that period of time, correct?
A: After which period of time?
Q: After this inquiry about Lexington, you were promoted?
A: A couple promotions that I applied for.
Q: To Captain and Battalion Chief?
A: Yes, sir.
Q: And those are significant positions, aren't they?
A: Yes, sir. You could say that.
Q: Very responsible positions?
A: Very responsible positions.
Q: And you took some gratification in the job you were doing for the fire department and the City, did you not?

Q: Why?
A: Documentation that I've seen over the years, common knowledge throughout the department, and fellow employees retiring and the health care is paid for as the City promised them.
Q: Prior to the time you were Battalion Chief, were you ever in a position in the City where you had to train employees working under you?
A: I was in a supervisory role. I helped some of my captains do the training. Although some of the, what I call training, I did myself, if it was a significant change in policy, which was a part of my job to convey that to the employees and make sure they understood the policies, the changes that come about.
Q: And during the 26 years that you were with the City of Columbia, do you ever recall training employees regarding the fact that if they remained employed with the City for a certain period of time they would be eligible for free retiree health insurance?
A: Not on that note because it was common knowledge and my role was if any new memos come out, any significant changes in the department policy, whether it be safety, personnel, it was

sent down through my chain of command. I would try to make sure they understood that policy and any questions that they had. If their supervisor, immediate supervisor, couldn't clarify it, then they would come to me and I would try to get it clarified for them. If I couldn't get it clarified myself, I would get an answer for them. And that was my job as Battalion Chief.

Q: Did you ever advise any of the officers that you supervised that they should not tell employees they were entitled to free insurance when they retired?

MR. NICKLES: Object to form.

A: No, ma'am.

Q: Why not?

A: Because it was common knowledge throughout the department and it was no significant change pointed out to me in that aspect from the prior procedure.

Q: Okay. I don't have any more questions.

MR. HILL - RE-EXAMINATION BY MR. NICKLES:

Q: Just a couple, Mr. Hill. You said that one of the things that you would do in the course of your employment would be to inform folks when

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) C/A #2009-CP-40-5680

COPY

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Gillam, III; Alma C. Hill;
Barry N. Martin; William J. Meyer;
Charles F. Morris, Sr.; and
Joseph A. Smith,

Plaintiffs,

v.

City of Columbia,

Defendant,

THE DEPOSITION OF

ARTHUR C. GILLAM

****

Wednesday, May 12, 2010
2:16 p.m. - 3:17 p.m.

The deposition of Arthur C. Gillam, taken on behalf of the Defendant at the law offices of Nickles & Solomon, LLC, 1519 Richland Street, Columbia, South Carolina, on the 12th day of May, 2010 before Margaret S. Smith, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

a Christian athlete thing they had one day at a cookout.

Q: Are you a member ...

A: Nothing major.

Q: ... of that church?

A: My wife is.

Q: Are you a member of any civic or professional clubs or organizations?

A: International Association of Fire Fighters.

Q: Anything other than that?

A: Master Gardeners, I hope.

(Defendant's Exhibit Number One was marked for identification purposes.)

Q: Let me give you something here to look at. Mr. Gillam, these are documents taken from your personnel file. This is by no means your entire personnel file. A copy of that has been made and delivered to your attorney if you'd care to take a look at it. In Exhibit Number One I've just taken some items I'd like to review with you rather briefly, if I might.

A: Okay.

Q: The first document appears to be an application for employment with the City. Do you generally recognize this document? It should be signed

on the second page.
A: I believe so.
Q: And this was prepared back in February of 1981. That was shortly before you became employed with the City; is that correct?
A: That's correct.
Q: What was your first position of employment with the City?
A: Fire fighter.
Q: And do you remember what the going rate was for pay for fire fighters back in 1981?
A: I want to say it was about $10,400. Because it seems like it was $10,400 and then later on it changed. I'm pretty sure that's where it started at.
Q: What other positions did you hold?
A: What other positions did I hold during my 26 years at the fire department?
Q: Absolutely--yes, sir.
A: Round driver, engineer, captain.
Q: Let's slow down a little bit.
A: Battalion chief, safety officer, administrative officer.
Q: Let's slow down, okay. About how long were you a fire fighter?

A: Five years, I think is what we had to do.
Q: And during the course of that five years, did you get any raises?
A: Yes.
Q: The next position was round driver?
A: Yes.
Q: And was that a promotion?
A: Yes, it was.
Q: Did you get a raise when you were promoted?
A: Yes, I did.
Q: About how long were you a round driver?
A: Two years.
Q: And what was the next position?
A: Engineer.
Q: About how long were you an engineer?
A: Maybe three years. I'm not sure.
Q: Did you get a raise when you were promoted to engineer?
A: Yes, I did.
Q: What was the next position?
A: Captain.
Q: About how long were you a captain?
A: Probably about six years maybe.
Q: This is not a test. I just want to know in general. Did you get a raise when you were

promoted to captain?

A: Yes, I did. Every one of those steps required an increased responsibility, and it came with a raise for requiring that responsibility.

Q: What was the next position you got?

A: Battalion chief.

Q: About how long were you a battalion chief?

A: Just a ... well, I was a battalion chief in the field for a little bit, and then I was a battalion chief in administration. So I stayed a battalion chief for a few years in that pay grade.

Q: What were your duties as an administrative battalion chief?

A: As administrative battalion chief, the first assignment I took was safety officer.

Q: What did that entail?

A: That entailed going to the hospital, checking on hurt firemen, making sure that workers' comp stuff was handled, trying to make sure that they followed protocol on blood borne pathogen procedures and policies, going around checking the stations, talking to OSHA whenever they came around, checking on gear, just trying to help keep them safe and out of trouble.

Q: Are you contending that the policy now available to you is not good or valid?

A: The policy that is ... that I can get right now is a good policy. It's not as good, but it is a good policy.

Q: Have you compared that policy to other policies that might be available to you?

A: I am familiar with some other policies.

Q: Have you ...

A: My wife has insurance and is in a different group. My step-mom was a state employee retired. She had state employee health insurance. My dad was a federal employee. My whole family has been government employees. And one of the things they always said was you've got to go for the benefits. You're not going to make a bunch of money, but the benefits are great and that's what you get are good benefits.

Q: And so your position in this lawsuit is that while there may be minor changes within the comprehensive plan, primarily your concern is that you should not be charged for those; is that fair?

A: My primary concern is that I should not be

charged, and that the policy should effectively remain very similar in its case. We were told that they would just make the policy worthless and not pay us anything, and then we could have it for free. And so that is a concern, too.

Q: Well that hasn't happened, has it?

A: Not yet. My faith in the City has been greatly diminished.

Q: At any time when you were hearing people speak about the availability of benefits upon retirement, did any of those people, to your knowledge, intentionally mislead you?

A: No, sir.

Q: In fact, did they provide you information that was accurate, at least at the time they spoke about it?

A: Yes, sir.

Q: And similarly, if you spoke with individuals from the fire department or elsewhere, did you attempt to accurately portray to them what you understood the City's policy to be?

A: Yes, sir.

Q: Is the sort of nut of this case that your position is that City Council cannot exercise its authority to diminish benefits to a retiree

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) C/A #2009-CP-40-5680

COPY

Kirby L. Bishop; Herman G. Boney; Richard H. Brown; Michael D. Catt; Basilides F. Cruz; Robert B. Dozier; Joseph A. Floyd, Sr.; Arthur C. Gillam, III; Alma C. Hill; Barry N. Martin; William J. Meyer; Charles F. Morris, Sr.; and Joseph A. Smith,

Plaintiffs,

v.

City of Columbia,

Defendant,

THE DEPOSITION OF

BARRY N. MARTIN

****

Monday, May 24, 2010
10:55 a.m. - 11:45 a.m.

The deposition of Barry N. Martin, taken on behalf of the Defendant at the law offices of Nickles & Solomon, LLC, 1519 Richland Street, Columbia, South Carolina, on the 24th day of May, 2010 before Margaret S. Smith, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

Q: Was that the position you held when you retired?
A: Yes, sir.
Q: Do you recall about what you were being paid when you first came on with the City back in 1973?
A: It was around $200 or $225 every two weeks and that was before taxes, so it wasn't a whole lot.
Q: So it was around $225 every other week?
A: Yes, sir. And then we worked more hours then than they work now too.
Q: I'm going to hand you a set of documents. These are from your personnel file. Your attorney has a copy of your full file, but these are just taken from that.
A: Okay.
(Defendant's Exhibit Number One was marked for identification purposes.)
Q: And ask you to take a look at it with me if you would, please sir. And that's marked as Exhibit Number One.
A: (Witness does as instructed.)
Q: On the first page of this exhibit, it indicates that this is a retirement, last compensated day

is March 30, 2008. Do you see that?
A: Yes, sir.
Q: It says effective April 1, 2008, Battalion Chief Barry N. Martin will be retiring with 35 years and one month of service with the City of Columbia Fire Department. Is that correct?
A: Yes, sir.
Q: And is that your signature at the bottom of the page?
A: Yes, sir.
Q: The next page is a hand written statement dated April 18, 2008 indicating that you plan to retire effective April 1, do you see that?
A: Yes, sir.
Q: And then the last page is a document from the Human Resources Office and indicates that an ending rate of pay was $73,639.95, does that sound about right?
A: Sounds about right.
Q: So you experienced a little bi of pay increase over those 35 years?
A: Thirty-five years. No, I think that's also with overtime. I worked in ... when we first began, for 25 years, the police department worked for the fire department, I don't know

about the police department, but we didn't work overtime. Couldn't get overtime. In the last six or seven years, whatever, they allowed us to work overtime.

Q: Even excluding overtime, would it be fair to say that over your 35 with the fire department, that you experienced substantial increase in your pay?

A: I experienced step raises, which the City promised, every year. We could go for like an evaluation and get supervised for the evaluation and you could receive nothing and if you done an excellent job, then you would receive compensation for the job and a bonus for the year coming and since that ... you could get a step increase like you said.

Q: And you were the recipient of those increases during the course of your career?

A: Correct. When I exceeded expectations, you know, the standards that were set.

Q: Were there any occasions that you recall where there were not cost of living increases given or even if there was meritorious work, there was no merit pay given or reduced merit pay given?

A: There was a ... there has been ... yeah, I can't remember the exact year, but there has been a year where a cost of living was not given. And there has been a year, I think ... it seems like I remember a year when a merit was not given either because of different things.

Q: Okay. Now, while you were working your way up the ladder, so to speak, in the fire department, were you ever involved in the budgeting aspect of the department?

A: No, sir.

Q: While you were employed with the fire department, did you ever seek employment in any other position?

A: I did check around. I applied with some insurance companies. I did have an offer or opportunity years ago with a company in Dallas, but you know, I had finished school, but I knew if I stayed with the City, and I talked with my supervisor, you know, and if I stayed with the City, I would be able to work up and I had and you can see I did work up and also I received the retirement. I wouldn't have had that any other way and the City promised that and they

were true to their word and they promised me insurance. And you know, I would have insurance and I would have a retirement, so my father also worked there. He retired from there.

Q: From the fire department?

A: From the fire department. I came in '73, he left in '73. And my dad was instrumental in talking me into coming to the fire department and when he retired, he received his retirement and he also received health insurance. He died in 2005, he also ... it was also provided to him until the day he died and I just counted the same thing as what my father received, I would receive. I want no more and no less.

Q: In terms of this particular insurance company, was that back in the 1980's that you explored that or do you remember what position?

A: That would be about eight years after I come here I explored it and I did have opportunities, but ...

Q: Okay. So that was probably when you were still an Engineer?

A: Yeah, right before I made Captain.

Q: When you were looking at that job, did you

way up to a very responsible position, is that fair?

A: Yeah. Yes, sir.

Q: Do you feel that you had a successful career with the fire department?

A: Yes, I do.

Q: One of the things that happens during the course of employment is that from time to time, there are policies or procedures that might change. Is that fair?

A: Yeah, policies and procedures do change.

(Defendant's Exhibit Number Two was marked for identification purposes.)

Q: Okay. I'm going to hand documents marked Exhibit Number One and ask you to take a look at that, please, sir. Do you ... actually, Exhibit Number Two, I believe. Exhibit Number Two. Is that your signature?

A: Yes.

Q: Okay.

A: We were required to sign these.

Q: And this indicates this was very early in your employment with the City, is that correct? Back in March of 1973? I believe you said you came on in February?

Q: And until July 1, 2009 you did not pay any premiums for single health insurance.
A: No, sir.
Q: As of July, 2009 you must pay $63.17 for similar coverage.
A: Yes.
Q: Now, that is the B plan, is that correct?
A: Yes, sir. I pay $63 and I think 17 cents or something per month and I think my deductible at the doctor is a little more, but I haven't got a bill and it must be similar coverage, I told you I'm not a genius on that.
Q: There is another level of coverage available at a lesser rate, is that correct?
A: Yes, sir.
Q: And of course, you could have looked for other insurance, through other insurance providers if you wanted as well, is that fair?
A: It would have, but then I already had the insurance. I worked for 35 years to get the insurance that was already promised to me, so I didn't need to do that.
Q: You said in Paragraph 48 of the complaint, or your attorney said for you that you were promised by the City that if you remained

employed for a certain period of time, you would be provided free health insurance for life, now the City can't speak, it would have to be some person speaking. Who, if anybody, personally made that promise?

A: I can tell you through the years my supervisors, like the Chiefs back then when I was coming up were saying, like Chief Anderson and Chief Boykin and they would always tell us, they would always say, Chief Stewart, Chief Williams, they'd say you've got a retirement here, you've got insurance. This is a great place it will settle. And they were right and they did it and they went through and I followed in their footsteps all the way and they were right and the City enjoyed a good reputation at that time. They honored what they said.

Q: Did you think that any of those former Chiefs were trying to fool you in any way or saying stuff that they didn't personally believe?

A: No, sir.

Q: And when they told you that the City would provide you an opportunity for a pension and an opportunity for health insurance, that was true

when they told you that, correct?
A: That was true.
Q: And the City continues to offer you health insurance, but it's requiring you to pay a portion of that now, is that true?
A: That's what they're saying.
Q: All right. So they haven't told you, Mr. Martin, thank you for 35 years, but we're not going to let you be in our insurance program anymore. They never said that, did they?
A: No, they haven't said I couldn't have insurance, I'd just have to pay for it.
Q: All right. Pay a portion of it?
A: Yeah. They haven't said anything in writing or anything that I would continue to have it paid and it up and up and up and retired on a fixed income now, and I wasn't counting on that. If they would have told me that, I probably would have stayed a little longer.
Q: What does your pension pay you per month now?
A: It's around $3,500.
Q: And you said that the health insurance you elected to have costs you $63.17 a month, is that correct?
A: Yes, sir. That gives me somewhat of a similar

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
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COUNTY OF RICHLAND) C/A #2009-CP-40-5680

Kirby L. Bishop; Herman G. Boney;
Richard H. Brown; Michael D. Catt;
Basilides F. Cruz; Robert B. Dozier;
Joseph A. Floyd, Sr.; Arthur C.
Gillam, III; Alma C. Hill;
Barry N. Martin; William J. Meyer;
Charles F. Morris, Sr.; and
Joseph A. Smith,

Plaintiffs,

v.

City of Columbia,

Defendant,

COPY

THE DEPOSITION OF

CHARLES F. MORRIS, SR.

****

Tuesday, May 25, 2010
9:29 a.m. - 10:23 a.m.

The deposition of Charles F. Morris, Sr., taken on behalf of the Defendant at the law offices of Nickles & Solomon, LLC, 1519 Richland Street, Columbia, South Carolina, on the 25th day of May, 2010 before Margaret S. Smith, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

first one is marked Exhibit Number One and I'll ask you to review that with me, please, sir.

(Defendant's Exhibit Number One was marked for identification purposes.)

A: (Witness does as instructed.)

Q: This is dated prepared January 11, 1977 and received in Accounting January 19, 1977. It is a new employee form which is an internal form for the City's payroll office. Just want to ask you a couple of questions about this. At that time, were you living at 1710 Faraway Drive in Columbia?

A: Yes, sir.

Q: And we're looking on this, salary for pay period, $321.90. Does that sound about right, what you would be getting every two weeks?

A: I suppose so.

Q: It indicates that the date you were employed was January 10th, 1977. Does that sound about right?

A: That's correct.

Q: Thank you. Looking on the second page of this exhibit, it has a number of boxes for deductions and this is just a form here and doesn't show ... I think that you were at that

City, did our job, they would take care of us. And I just ... I really don't expect to the City to have a lot of integrity, it never did, but if I can help them have some integrity, I'll help them.

Q: In terms of your particular health insurance currently, which plan did you select?

A: The best one. The highest.

Q: The highest cost. Does that mean your paying about $66?

A: Sixty-three dollars.

Q: Sixty-three dollars and some cents?

A: Uh-huh (affirmative response).

Q: Is that correct?

A: That's correct.

Q: And that is monthly, is that correct?

A: Correct.

Q: Are you receiving a pension?

A: I am.

Q: Do you know what your monthly benefit is under that pension?

A: Guessing ... I can tell you the net a lot easier.

Q: The net.

A: That would be $2,300.

Q: All right. That's the amount that's deposited in your account by the Police Officer's Retirement System?
A: Uh-huh (affirmative response). Right.
Q: And that's on a monthly basis, is that correct?
A: That's correct.
Q: And that is after any withholdings that may be made by the retirement fund itself, correct?
A: That's correct.
Q: Do you make any cash contributions to any organizations, Mr. Morris?
A: I pay ten dollars to the Columbia Fire Fighters Association a month and of course I tithe to church.
Q: Now, in making those cash contributions, you are not expecting to pay the whole amount necessary for those organizations to operate, it's a part of that, is that correct?
A: No, matter of fact, I never told them I would.
Q: Okay. Now, listen to my question. When you make a cash contribution, whether it's to your church or whether it's to Fire Fighter's organization, you understand that is toward the total cost of that organization or that mission, is that fair?

A: I understand that.
Q: All right, sir. And do you think it's generally understood that when someone says I'm making a cash contribution that it is toward the benefit of an organization, a mission or an individual? It's not presumed to be carrying the entire weight of that organization, mission or individual?
A: Are we talking about the contributions or the citizen's responsibility?
Q: I'm talking about the terms cash contribution.
A: Well, it depends on the context.
Q: And how would it depend on the context if I tell you I'm making a cash contribution towards the Columbia Police Officers or Columbia Fire Fighters organization and I change that from being $10 to being five dollars. I'm still making the cash contribution.
A: That's a voluntary thing. You wouldn't have a contract or you wouldn't have made a promise like the City. the City, I never heard them say cash contribution, but matter of fact, I can't even remember exactly what I read, but what I remember reading in the handbook said that when the city employee retired at 10 and

20 years, the City would pay their insurance. Now, I heard the City Manager say in one of our men had to have a heart replacement, he said we've got ... his name was Smokey Utsey, he said we can't afford over a million dollars for every person, we go cut it off at a million dollars, but if you stay 20 years, you still get your free insurance. And, you know, that wasn't a contribution toward our health insurance, he said we would still get out health insurance up to a million dollars. And that's a difference to me.

Q: When he said that, do you have any reason to believe he was not telling the truth?

A: Not at all. He was the only City Manager that ever seemed to care about being honest.

Q: So, when anybody told you, while you were employed, that the City was going to pay the entire cost of your health insurance, that was accurate at the time, wasn't it?

A: Yeah, of my health insurance, not my family.

Q: Correct.

A: Yes, sir.

Q: So, are you sitting here today saying that any of these people, whether it is your former

colleagues, whether it's any former City Manager or anybody, tried to fool you by intentionally lying to you?

A: Well, I would not assume that they would intentionally lie to me by saying the City's covering all your insurance, I believe they could, but I don't think they knew they were lying. You know, the City has an integrity problem. You know, I've been there 25 years. There's an arrogance about the City. You know, Gray Olive told that Burle to take a job when the City flooded his farm land down there on the swamp. The City was supposed to maintain the dykes and Burle said well, pay me half a million for my seeds and we'll call it even and Olive told him to go take a bath in the swamp and so the City pays him ten million dollars because the City just don't live up to it's responsibility. Just be responsible and do what you say. We'd have a lot of money still if we did that.

Q: Okay.

A: And the City is a little arrogant in handling money responsibilities.

Q: Tell me everybody that told you that you would

have free health insurance for the rest of your life.

A: Well, I would say probably ... the one I remember best is Miles Hadley because he was so open about it.

Q: Do you remember about when that was? Was he City Manager at the time?

A: He was City Manager and he had City Manager meetings with the employees about every quarter. Maybe every six months and he talked about issues and he came across and he didn't give us a lot of stuff, but he was always honest and told us how things were and he tried to help employees and I believe he accomplished a lot for the City because he got the employees on the City's side. But he's the one I remember the most.

Q: Was that back in the 1990's?

A: Probably was and probably in the early '90's. And then I had different officers. I believe Claude Stewart was a big one. He was a Battalion Chief at Eau Claire station back in the early days as a fire fighter. Howard Leaderfind was another one that talked about it a good bit and then Kirby Bishop. He talked a

A: Yes.
Q: Do you remember what that was?
A: I believe it was from five percent ... it may have been two and a half percent. It may have been less than two and a half percent for a step.
Q: And do you remember when that was?
A: Not really. I would say mid '90's. Or maybe even sooner than that.
Q: When you were employed, were you ever involved in the budgeting issues within the fire department?
A: Huh-uh (negative response).
Q: Did you attend City Council meetings where the annual budget for the City was being discussed?
A: No, sir.
Q: As a retiree, do you try to keep your spending within your means?
A: Yes, I do.
Q: And is it responsible for government to try to keep it's spending within it's means?
A: Very much so.
Q: In the form of government that the City of Columbia has adopted, is it your understanding that the City Council is responsible for

establishing the budget?
A: Yes, I do.
Q: And then the City Manager and others must operate within that budget operated by Council?
A: I understand, yes.
Q: So, in this case what you are doing is challenging the action of City Council that directed that there be some premium charged to retirees for their health insurance cost, is that correct?
A: If that's who directed the increase. The City ... you've got a City Council, that's true, but there's responsibility and like you asked me do I live within a budget? Yes, I live within a budget. Matter of fact, there's several things I have chosen not to purchase because I can't afford it in my budget. I know what my budget is and matter of fact, I'm not spending a lot to pay off some bills that I've let accumulate. I'm trying to be responsible with my budget. The City has been totally irresponsible with it's budget for the last ten years, at least. Not even having audits. Anytime they need a park, they'll throw up a water park. They didn't even keep up with their expenses. They

Q: Just a couple of questions. In terms of these changes, in the eligibility for retirement health insurance, you were employed when several of these changes were made, right?
A: Uh-huh (affirmative response).
Q: Correct?
A: Yes.
Q: And those changes applied to you, did they not?
A: Sure.
Q: And there were beneficial changes made during your employment as well, weren't there?
A: Some.
Q: Well, when you first came to the City, fire fighters weren't in the state pension system, were they?
A: No.
Q: And that was a change that happened while you were employed, correct?
A: That's correct.
Q: And the City had to pay out some money as did the pension fund, correct?
A: That's correct.
Q: And throughout your employment, the City made substantial contributions on your behalf to your pension, correct?

A: That's correct.
Q: As well as you made contributions, correct?
A: Uh-huh (affirmative response). Yes.
Q: Without the City's contributions to your pension funs, you would not have that income strain now, would you?
A: That's correct.
Q: While you were employed with the City, you were employed under the same terms as all other fire fighters, isn't that correct?
A: That's correct.
Q: And if the statutes said that you were an at will employee, you didn't have any particular contract with the City to dispute that, did you?
A: I'm not following your question.
Q: Well, let's say you were a municipal employee, correct?
A: Correct.
Q: You didn't have a special deal with the Fire Department?
A: No.
Q: So you had the same rights, benefits as other employees of the fire department, correct?
A: Correct.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
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COUNTY OF RICHLAND) C/A #2009-CP-40-5680

Kirby L. Bishop; Herman G. Boney; Richard H. Brown; Michael D. Catt; Basilides F. Cruz; Robert B. Dozier; Joseph A. Floyd, Sr.; Arthur C. Gillam, III; Alma C. Hill; Barry N. Martin; William J. Meyer; Charles F. Morris, Sr.; and Joseph A. Smith;

Plaintiffs,

v.

City of Columbia,

Defendant,

COPY

THE DEPOSITION OF

JOSEPH A. SMITH

****

Tuesday, May 25, 2010
10:27 a.m. - 11:25 a.m.

The deposition of Joseph A. Smith, taken on behalf of the ~~Defendant at the law~~ offices of Nickles & Solomon, LLC, 1519 Richland Street, Columbia, South Carolina, on the 25th day of May, 2010 before Margaret S. Smith, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

organizations, clubs or associations?

A: If I remember correctly, the only one I'm a member of is the South Carolina Fireman's Association.

Q: When were you first employed with the City of Columbia?

A: April 4th, 1973.

Q: What was your position then?

A: Fire Fighter.

Q: Do you remember about what your pay was in that position?

A: If I remember, can't swear to it, but I believe it was around $9,000 a year.

Q: In 1973, was the City a member of the State Police Officer's Retirement System?

A: No, sir.

Q: Okay. Was there a Fireman's Pension Fund at that time?

A: We were under some kind of little retirement, but I don't remember exactly what it was called.

Q: At some point in time, the City elected to join the state retirement system, is that correct?

A: Correct, the Police Officer's Retirement System.

Q: At that point in time, were you required to make any lump sum payment to join that system?
A: You mean up front?
Q: Yes, sir.
A: I don't remember. Not that I can think of.
Q: When that system came into place, did you start making a bi-weekly contribution towards your retirement? Taken out of your paycheck?
A: I believe so.
Q: And the City also contributed?
A: I believe so, yes, sir.
Q: Ultimately, did you retire from employment with the City?
A: Yes.
Q: And do you recall what the date of your retirement was?
A: January 30th, 2006.
Q: How many years of service did you have to the City at that time?
A: Thirty-three and a half years. Something like that.
Q: Was that all in the fire department?
A: Yes.
Q: And what was your position at the time?
A: Assistant Chief.

may be generally familiar with, particularly the second page, that carries your signature, I believe. Is that correct? At the very bottom?

A: No, that's no my signature.

Q: Somebody signed that for you?

A: Evidently, yes.

Q: Does it indicate that you retired and gives the retirement date of June 30, 2006? See last day paid June 30, 2006 at the top of the page?

A: Oh, okay, 6/30/2006, yes, sir.

Q: Looking on the second page .... and the only reason I present this to you is to see if the annual salary at the time of your retirement is, to the best of your recollection about correct. It's going to be on the first page.

A: First page?

Q: Yes, sir. Annual salary, $78,019.11.

A: That's probably about right, yes.

Q: When you retired did you have any accumulated leave that also was paid out?

A: Yes, I had vacation and sick leave.

Q: And did that also go to at least part of it apply to your pension benefit?

A: I believe vacation did, yes.

Q: Can you tell me what your pension benefit is currently? If you just know the take home or the monthly?

A: Let's see. Before taxes, I believe it's 60, after taxes I think it drops down to about 48.

Q: Okay. And that would be per year?

A: Per year, correct.

Q: Forty-eight thousand per year?

A: Right.

Q: And $60,000 per year? Are you employed currently?

A: No, sir.

Q: Have you been employed since your retirement with the City?

A: For about a memorial day weekend and a labor day weekend. I work part-time.

Q: What do you do?

A: I was the security guard at the gate at Rock's Pond Campground on the weekends.

Q: How long did you do that?

A: Memorial weekend to Labor Day weekend, whatever that is.

Q: Okay. How many years did you do that?

A: One.

Q: One year. Was that the year that you retired

or . . .

A: No, that was . . . I'm thinking about 2008.

Q: Any other employment other than that?

A: Just a little part-time . . . just little odds and ends jobs every now and then.

Q: While you were employed with the City, did you seek positions outside the City of Columbia?

A: Yes.

Q: Can you tell me what the nature of those positions . . .

A: I applied for the Fire Chief job in Chester.

Q: Do you remember about when that was?

A: I'd say 2005.

Q: And were you offered that position?

A: No, sir.

Q: Did you turn down any jobs that were offered to you while you were working for the City? From other employers?

A: No, sir.

(Defendant's Exhibit Number Two was marked for identification purposes.)

Q: I'm going to hand you a document marked Exhibit Number Two. And ask you to take a look at it.

A: Yes, sir.

Q: Do you recognize your signature on this one?

would be whomever runs the City at that time, whether it be Council Members, whomever. All I know is, you know, this is what we were told. This is one of our benefits that we would get if we stayed there a set number of years and would retire.

Q: Now, when you were being told these things, did you go back and look at the group health contracts or any of those underlying documents?

A: I don't remember.

Q: And when you were employed, it was true that the City paid the whole cost of your health care insurance, correct?

A: Of mine, yes, sir.

Q: So, when people told you that that was the City's policy ...

MS. BLOODGOOD: Objection to the form. You can answer it anyway.

Q: I'll put it this way, if people told you that's the way things were done, at that time, to the best of your knowledge, they were telling you the truth, weren't they?

A: I would hope so, yes.

Q: You're not claiming in this lawsuit that anybody intentionally deceived you, are you?

A: No, I don't think nobody intentionally deceived me, no.
Q: I mean, you're not claiming somebody had a crystal ball and they knew that in 2009 there was going to be some change and they were trying to . . .
A: Oh, no.
Q: When you were working for the City, there were more benefits to your employment than just health insurance, weren't there?
A: As far as what?
Q: Well, you received a salary.
A: Okay. Yes.
Q: You received contributions toward a pension plan?
A: Yes.
Q: You had access to other City facilities during that time. When you were at the fire department, they had equipment and things like that you could use to stay in shape, things like that?
A: Yes.
Q: And you also had health insurance?
A: Yes.
Q: And you could acquire health insurance for your

made a positive contribution to the City?
A: I would hope I did, yes.
Q: Did you take satisfaction from your work apart from receiving your paycheck or receiving anything financial in return?
A: I loved my job. That's the reason I stayed there for 33 and a half years.
Q: In the course of your employment with the City, were there occasions when you were involved in some way in the termination of employees?
A: Yes, sir.
Q: And was it your understanding that subject to the City's grievance policy those individuals were at will employees with the City?
A: I guess I could say yes.
Q: In terms of being a fire fighter or a member of the fire department, although the challenges and the responsibilities of that job may be different from some of the other jobs in the City, were the health insurance benefits the same for fire fighters as they were for office workers and sanitation folks and everybody else?
A: I don't know. I can't answer that. I don't know.

this, but you know, basically, the City Manager is who I ultimately reported to.

Q: Now, the City Manager receives a budget from Council, correct?

A: Yes.

Q: And the City Manager makes all individual employment decisions?

A: Yes.

Q: Is it your understanding that the City Manager can defy Council when they make a decision about what applies to all employees?

A: No, I don't think he'd defy Council, no.

Q: And in this instance we're not talking about an individual's salary, are we? We're talking about the benefits available to the entire group?

A: The entire group, yes, sir.

Q: And it applies not only to active employees, but in your case to former employees, correct?

A: Correct.

Q: Have you, Mr. Smith, been in an analysis of what percentage of health care costs the City pays as opposed to the percentage of health care costs that are paid by the participants in the health program?

ATTACHMENT B

ARTICLE V. PROCUREMENT*

Sec. 2-201. Statutory authority; title; definitions.

The procurement procedures in this article and regulations authorized by this article are adopted pursuant to S.C. Code 1976, § 11-35-50, and may be cited as "The City Procurement Code." Terms used in this procurement code shall be defined in accordance with S.C. Code 1976, § 11-35-310.
(Code 1979, § 1-3040)

Cross reference—Definitions generally, § 1-2.

Sec. 2-202. Purchasing agent.

The city manager shall appoint a purchasing agent, who shall serve at his pleasure and subject to the finance director. The purchasing agent or a designated department head shall be responsible for procurement under the regulations promulgated by the city manager.
(Code 1979, § 1-3041)

Sec. 2-203. Compliance with federal requirements.

Where a procurement involves the expenditure of federal assistance or contract funds, the city shall also comply with such federal law and authorized regulations as are mandatorily applicable. Notwithstanding, where federal assistance or contract funds are used in a procurement, requirements of this Code and regulations that are more restrictive than federal requirements shall be followed.
(Code 1979, § 1-3043)

Sec. 2-204. Competitive sealed bidding required; exceptions.

All city contracts shall be awarded by competitive sealed bidding except the following as determined pursuant to definitions and standards set by regulations:

(1) Professional services where the person employed is customarily employed on a fee basis rather than by competitive bidding (examples: appraiser, architect-engineer, auditor, legal services, physician).

(2) Competitive sealed proposals.

(3) Negotiations after unsuccessful competitive sealed bidding.

(4) Small purchases.

(5) Sole source procurements.

(6) Emergency procurements.

*Cross references—Any ordinance promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bond of the city or any evidence of the city's indebtedness, or any contract or obligations assumed by the city saved from repeal, § 1-11(1); any ordinance making any appropriation saved from repeal, § 1-11(6).

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(7) Procurement of information technology.

(8) Leasing of real property for governmental use.

(9) When purchasing through state contracts.

(Code 1979, § 1-3044)

Sec. 2-205. Procurement methods.

Regulations promulgated by the city manager shall provide for a fair and equitable procurement system for the city through one or more of the following methods:

(1) Competitive sealed bidding.

(2) Competitive sealed proposals.

(3) Negotiations after unsuccessful competitive sealed bidding.

(4) Small purchases.

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(5) Sole source procurement.

(6) Emergency procurements.

(7) Negotiations for contracts exempted from competitive procurement.

(Code 1979, § 1-3045)

Sec. 2-206. Correction or withdrawal of bids; tie bids; cancellation of invitation for bids.

(a) *Withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids before bid opening, withdrawal of inadvertently erroneous bids after award, or cancellation of awards of contracts based on such bid mistakes may be permitted in accordance with regulations promulgated by the city manager. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination of appropriateness and shall be subject to approval by the city council when the amount involved exceeds $10,000.00.

(b) *Tie bids.* If two or more bidders are tied in price while otherwise meeting all of the required conditions, awards are determined as follows:

(1) Should there be a city firm tied with an out-of-city firm, the award shall be made automatically to the city firm.

(2) Tie bids involving only city firms or only out-of-city firms shall be resolved by the flip of a coin in the office of the procurement officer, witnessed by all interested parties.

(c) *Cancellation of invitation for bids or request for proposals.* An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the city.

(Code 1979, § 1-3046)

Sec. 2-207. Award of contracts.

The city manager may reject or approve bids and purchase agreements and award contracts in accordance with regulations, provided that contracts involving in excess of $10,000.00 shall be approved by the city council prior to award.

(Code 1979, § 1-3047)

Secs. 2-208—2-300. Reserved.

ARTICLE VI. LOBBYIST

Sec. 2-301. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

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ATTACHMENT C

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith, Plaintiffs, vs. City of Columbia, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL DISTRICT Civil Action File No.: 2009-CP-40-5680 AFFIDAVIT OF JACQUES GILLIAM

Jacques Gilliam, being first duly sworn, deposes and says:

1. I serve as Director of Human Resources for the City of Columbia. In that capacity, I am responsible for maintaining employment records.

2. As Director of Human Resources, I am also responsible for administration of the City's personnel policies and procedures. These include the City Handbook (Not a Contract) and the City's group health insurance plan.

3. Throughout my employment with the City, there have been numerous changes in the contents of the Handbook. In addition, there have been changes in the City's group health insurance plan. These changes, when effective, are provided to employees and group health plan participants.

4. At no time during my employment with the City has health coverage been offered to employees or retirees other than through the applicable group health plan. Employees and eligible retirees are offered the same access to health insurance coverage. Eligible retirees are not required to participate in any group health plan.

5. Prior to July 1, 2009, the City covered the entire cost of the employee and eligible retiree group health insurance administered by Blue Cross/Blue Shield of South Carolina. Effective July 1, 2009, plan participants are required to contribute $33.18 per month for "Plan A" and $63.17 for "Plan B." Plan participants eligible for Medicare are expected to enroll in Part A and B of the Medicare Plan. Plan participants 65 years of age and older are covered under a separate plan with United Health Care for which there is no premium charge for individual coverage. A schedule of benefits and benefit summary are provided as Attachment A.

6. Currently, there are 540 eligible retirees participating in the City's group health insurance plan.

7. The City's health insurance program covers more than 2,500 individuals. The cost of providing health insurance for the 2009-2010 fiscal year was $18,208,146.64.

8. As Director of Human Resources, I am responsible for administration of the City's classification and compensation plan. This is a plan approved by City Council that sets salary ranges for positions of employment within the City. All employees are required to be compensated within the salary ranges approved by Council.

9. Except for the City Manager, all employees of the City of Columbia are by statute at-will. No employee, apart from the City Manager, is under contract and no employee, apart from the City Manager, is authorized to enter a contract on behalf of the City.

Affiant further sayeth not.

Jacques Gilliam

Sworn to and subscribed before me
This 9 day of July, 2010.

Notary Public for South Carolina
My commission expires: ELIZABETH R. DUNCAN
Notary Public for the State of South Carolina
My Commission Expires April 11, 2015

ATTACHMENT A

SCHEDULE OF BENEFITS

Group Contract Number: 03-14580-00, 02 through 05, 11 through 12
Employer: City of Columbia
Plan of Benefits Effective Date: July 1, 2008

This Schedule of Benefits and the Benefits described herein are subject to all terms and conditions of the Plan of Benefits. In the event of a conflict between the Plan of Benefits and this Schedule of Benefits, the Schedule of Benefits shall control. Capitalized terms used in this Schedule of Benefits have the meaning given to such terms in the Plan of Benefits.

GENERAL PROVISIONS When a Benefit is listed below and has a dollar or percentage amount associated with it then the Benefit will be provided to Members subject to the terms of the Plan of Benefits. When a Benefit has a "Non-Covered" notation associated with it, the Benefit is not available to the Member. All Benefits are subject to the dollar or percentage amount limitation associated with each Benefit in this Schedule of Benefits.	
Probationary Period:	Coverage for new employees hired following the Effective Date of the Plan of Benefits will commence on the first monthly Effective Date following date of employment.
Pre-Existing Condition Period:	Each Member must serve a twelve-month Pre-Existing Condition Waiting Period, less any Creditable Coverage the Member can provide. Any member who is a Late Entrilee will serve an eighteen month Pre-Existing Condition Waiting Period. See Article II of the Plan of Benefits for information on qualifying for Special Enrollment.
Dependent Child, in addition to meeting the requirements contained in the Plan of Benefits, the maximum age limitation to qualify as a Dependent Child is:	A Child under the age of 19; or a Child who is over this age, but who has not reached the age of 25, and is enrolled in and is attending (with attendance qualifying such Child as a full-time student under the rules of the institution) one of the following: a. High school; or b. An accredited or licensed school commonly recognized as a vocational, technical or trade school; or c. An accredited college or university.
Incapacitated Child, in addition to meeting the requirements contained in the Plan of Benefits, to qualify as an Incapacitated Child the Child must:	a. Must be incapable of financial self-sufficiency by reason of mental or physical disability; and b. Be dependent on the Employee for at least 51% of his or her support or maintenance; and c. Be enrolled no later than 31 days after the Child's incapacitation; and d. Be incapacitated by maximum Dependent Child age.

Blue Cross Blue Shield of South Carolina
An Independent Licensee of the Blue Cross and Blue Shield Association

Benefits Summary

City of Columbia
2010 Preferred Blue Plan
www.southcarolinablues.com

The following Schedule of Benefits is only a brief, non-legal outline of benefits being offered. Please refer to the employee handbook your Human Resources Department. Benefits apply to $2,000,000 Lifetime Maximum.

Benefits	Core Plan (Option A)		Buy-up (Option B)	
	In Network	Out of Network	In Network	Out of Network
Deductible	$500 (x3)	$500 (x3)	$250 (x3)	$250 (x3)
Out of Pocket	$2,000 / $4,000	$2,500 / $5,000	$1,000 / $2,000	$2500 / $5,000
Co-Insurance	80%	60%	90%	70%
Physician Services Physician Charges for services in the office. (excluding Obstetrical Delivery, Psychiatric Care, Dialysis Treatment and Second Surgical Opinion).	$20 Primary Care, then 100% $30 Specialist, then 100% Primary Care = General, Family Doctor, Pediatrician, Internist, OB/GYN	Deductible, 60%	$15 Primary Care, then 100% $25 Specialist, then 100% Primary Care = General, Family Doctor, Pediatrician, Internist, OB/GYN	Deductible, 70%
Other Physician Services Inpatient/Outpatient Hospital / Allergy Injections / Diagnostic Lab / X-Ray / Anesthesia Services / Radiology / Pathology / Obstetrical Delivery / Initial New Born / Pediatric Exam / All other Outpatient - Office Services	Deductible, 80%	Deductible, 60%	Deductible, 90%	Deductible, 70%
Preventive Care (In Network coverage only) Mammograms (Must see a provider in Mammography Network and are age 35 and older) Pap Smear/Prostate Screening Well Child Physicals	100% 100% $20 Co-pay, then 100% 100%	N/A	100% 100% $15 Co-pay, then 100% 100%	N/A
Chiropractic Benefits limit to 5 visits including rated X-rays	Deductible, 80%	Deductible, 60%	Deductible, 80%	Deductible, 70%
Hospital / Skilled Nursing Facility Charges	Deductible, 80%	Deductible, 60%	Deductible, 90%	Deductible, 70%
Outpatient Facility Charges	Deductible, 80%	Deductible, 60%	Deductible, 90%	Deductible, 70%
Ambulance	Deductible, 80%	Deductible, 80%	Deductible, 90%	Deductible, 90%
Emergency Room	$150 copay, 80%	$150 copay, 60%	$150 copay, 90%	$150 copay, 70%
Other Services Home Health Physical Therapy ($1,000 Maximum) Mental Health* & Substance Abuse**	Deductible, 100% Deductible, 80%	Deductible, 60% Deductible, 60%	Deductible, 100% Deductible, 90%	Deductible, 70% Deductible, 70%
Prescriptions Retail (31 day supply) Mail Order (90 day supply)	$5 (Generic) / $25 (Preferred) / $40 (Non-Preferred) $12.50 (Generic) / $62.50 (Preferred) / $100 (Non-Preferred)		$5 (Generic) / $25 (Preferred) / $40 (Non-Preferred) $12.50 (Generic) / $62.50 (Preferred) / $100 (Non-Preferred)	

Deduction Chart	Plan A	Plan B
Employee Only Per paycheck	$33.18/mo $15.31	$63.17/mo $29.16
Employee + Spouse Per paycheck	$172.54/mo $79.63	$244.50/mo $112.85
Employee + Child Per paycheck	$82.95/mo $38.26	$127.93/mo $59.04
Family Per paycheck	$252.17/mo $116.39	$348.12/mo $160.67

*Mental Health:
Approved Mandated Diagnosis by the state of South Carolina is covered as any other medical condition when they are presented as a primary diagnosis. Mental Health and Substance Abuse Services must be Pre-Authorized by CBA prior to services being rendered.
1-800-868-1032.

**Mental Health & Substance Abuse:
Non-Approved diagnosis and Substance Abuse limited to 30 days inpatient and 20 days outpatient. Substance Abuse limited to $50,000 Lifetime Maximum.

Pre-Authorization:
The following outpatient procedures need pre-authorization: Chemotherapy or Radiation therapy (one time notification), Hysterectomy, Septoplasty, Sclerotherapy, all Cosmetic procedures, Investigational procedures performed in outpatient or office setting and Durable Medical Equipment over $500.00. All inpatient hospital or skilled nursing facility admissions, home health care, hospice care or inpatient physical rehabilitation, and services and supplies related to human organ and tissue transplants.

Columbia: 736-5290 Outside of Columbia: 1-800-327-3238 Out of State: 800-334-7287
Customer Service: 1-800-760-5290 (Medical) / 1-888-963-7290 (Prescription Drugs)

ATTACHMENT D

CITY OF COLUMBIA
CITY COUNCIL MEETING MINUTES
WEDNESDAY, MAY 6, 2009
9:00 A.M.
CITY COUNCIL CHAMBERS
1737 MAIN STREET

The Columbia City Council conducted a Regular Meeting on Wednesday, May 6, 2009 in the City Hall Council Chambers located at 1737 Main Street, Columbia, South Carolina. The Honorable Mayor Robert D. Coble called the meeting to order at 9:14 a.m. The following members of Council were present: The Honorable E.W. Cromartie, II, The Honorable Tameika Isaac Devine, The Honorable Daniel J. Rickenmann, The Honorable Kirkman Finlay III and The Honorable Belinda F. Gergel. The Honorable Sam Davis was absent. Also present were Mr. Steven A. Gantt, Interim City Manager and Ms. Erika D. Salley, City Clerk.

APPROVAL OF MINUTES

1. Minutes of October 15, 2008, January 28, 2009 and February 4, 2009 – *Approved as presented.*

Upon motion by Mr. Cromartie, seconded by Mr. Rickenmann, Council voted unanimously to approve the Minutes of October 15, 2008, January 28, 2009 and February 4, 2009 with a single motion as presented. Ms. Devine was not present for the vote.

FINANCIAL MATTERS

2. Community Promotions Monthly Funding Recommendations for May 2009 –The Honorable Judge Mildred McDuffie, Chair of the Community Promotions Advisory Committee

Upon motion by Mr. Cromartie, seconded by Ms. Devine, Council voted unanimously to approve the committee's recommendation to award $2,500 to the Greenview Elementary School for the Odyssey of the Minds World Finals from the Community Promotions Fund. *(Please refer to chart below.)*

Community Promotions Monthly Funding 2008-2009

Organization	Project Name	Request	Amount Funded
April			
Lewis Greenview Elementary	Odyssey of the Mind World Finals	5,000	2,500

Upon motion by Mr. Finlay, seconded by Ms. Devine, Council voted unanimously to carry forward any funds remaining in the Community Promotions Fund at the end of Fiscal Year 2008/2009 to Fiscal Year 2009/2010. The estimated remaining balance is $10,000.

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Erika D. Salley
CITY CLERK 11/20/2009

***Amendment to the Agenda*

3. Employee Benefits (Retiree) – The Honorable Daniel J. Rickenmann

Upon motion by Mr. Rickenmann, seconded by Dr. Gergel, Council voted unanimously to adopt the active employee benefits plan for retirees who are not eligible for Medicare; the retiree will be asked to contribute 10% for themselves and 30% for their dependents; a single retiree would pay $33.18, $172.54 for retiree and spouse, $82.95 for retiree and dependent child and $252.17 for a family; those retirees that are post-65 and/or Medicare/Medicaid eligible will receive a supplemental policy with a prescription card at no cost to the retiree, but the spouse will be asked to pay 30% or roughly $67 per month; these rates are guaranteed for 18 months; and to form a committee of seven (7) as follows: two (2) retirees, two (2) active employees, two (2) council members, one (1) representative from the Human Resources Department and an independent consultant to explore how we can continue to manage health care.

PRESENTATIONS

4. Introduction of the May 2009 Employee of the Month (Mr. Kristopher Kinard, Maintenance Tech III) – Mr. John Dooley, Jr., P.E. Director of Utilities and Engineering and Mr. Bud Summers, Superintendent

Mr. Bud Summers, Superintendent introduced Mr. Kristopher Kinard, Maintenance Technician III at the Canal Water Treatment Plant as the May 2009 Employee of the Month.

Mayor Coble presented Mr. Kinard with a Certificate of Excellence and Mr. Steven Gantt, Interim City Manager presented Mr. Kinard with a token of appreciation.

5. Introduction to Engineering Program – Ms. Lisa B. Muzekari, P.E., Senior Project Manager of BP Barber

Mayor Coble and the members of Council presented Certificates to the following students at W.G. Sanders Middle School for their participation in the Introduction to Engineering Program.

Jeremy Austin	Natasha Byers	William Campbell
DuQuan Clarke	Kenneth Hill	Shaireef Johnson
Shannin Johnson	David Lewis	Eldrick McCullough
Turquoise Williams	Michael Rankin	Alexandria Hamilton
Rickey Willis	Barron Hopkins	

6. Bike-to-Work Day Proclamation – Ms. Gerry Lynn Hall, Community Development and Mr. John Hall, *BikeColumbia* Evaluation/Planning Co-Team Leader

Mayor Coble and the members of Council proclaimed Friday, May 15, 2009 as Bike-To-Work Day in the City of Columbia.

7. National Public Garden Day Proclamation – Ms. Robin Waites, Executive Director of the Historic Columbia Foundation

Mayor Coble and the members of Council proclaimed Friday, May 8, 2009 as National Public Gardens Day in the City of Columbia.

PUBLIC HEARINGS

8. 2009 / 2010 Annual Action Plan for the Community Development Department – Mr. Tony Lawton, Director of Community Development and Ms. Dollie Bristow, Community Investment Manager

Council opened the Public Hearing at 10:29 a.m.

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***Amendment to the Agenda*

Ms. Regina Mills, Chair of the Citizens Advisory Committee appeared before the members of Council to address concerns related to the proposed projects for the Community Development Block Grant entitlement for fiscal year 2009/2010.

There was a consensus of Council to direct Mr. Tony Lawton, Director of Community Development to meet with Ms. Mills in an effort to help her better understand the recommendations and how those recommendations will be funded.

Upon motion by Mr. Rickenmann, seconded by Ms. Devine, Council voted unanimously to adjourn the Public Hearing at 10:46 a.m.

9. Justice Assistance Grant Program – Ms. Teresa Wilson Florence, Director of Governmental Affairs and Community Relations

- **Council opened the Public Hearing at 11:33 a.m.**

No one appeared in support of or in opposition to Item 9.

- **Council closed the Public Hearing at 11:33 a.m.**

Upon motion by Mr. Rickenmann, seconded by Ms. Devine, Council voted unanimously to approve the Columbia Police Department's application for the Edward Byrne Memorial Justice Assistance Grant Program in the amount of $597,483 for equipment and supplies.

9a. **2009 / 2010 Annual Action Plan for the Community Development Department – Mr. Tony Lawton, Director of Community Development

Upon motion by Mr. Cromartie, seconded by Mr. Rickenmann, Council voted unanimously to reconvene the Public Hearing at 11:33 a.m.

Ms. Regina Mills, Chair of the Citizens Advisory Committee asked the members of Council to approve the 2009/2010 Annual Action Plan for the Community Development Department.

- **Council adjourned the Public Hearing at 11:34 a.m.**

Upon motion by Mr. Cromartie, seconded by Ms. Devine, Council voted unanimously to approve the 2009/2010 Annual Action Plan for the Community Development Department.

- **Council recessed at 11:35 a.m.**
- **Council reconvened at 11:45 a.m.**

CITY COUNCIL DISCUSSION / ACTION

10. Front End Loader Collection Operation– Mr. Robert Anderson, Superintendent of Solid Waste

There was a consensus of Council to schedule a Public Hearing for citizen input on the proposal for Front End Loader Collection Operations on Wednesday, May 27, 2009 at 9:00 a.m.

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**Amendment to the Agenda

11. Annexation Urban Service Area – Mr. Marc Mylott, Director of Planning and Development Services / Zoning Administrator

Upon motion by Mr. Finlay, seconded by Dr. Gergel, Council voted unanimously to endorse the Urban Service Areas plan for annexing donut holes and primary areas and to schedule a strategic Work Session for continued discussions in August 2009.

CONSIDERATION OF BIDS, AGREEMENTS and CHANGE ORDERS

Upon motion by Mr. Finlay, seconded by Ms. Devine, Council voted unanimously to approve **Items 12.** through **20.** and **22.** through **24.** with a single motion. **Item 21.** was approved by a separate motion.

12. Council is asked to approve Project #SS7056(24); Price Increase for the Purchase of two (2) Flight Attachment Brackets for the Repair of two (2) DAF Top Flights at the Metro Wastewater Treatment Plant. Award to Siemen Water Technologies, as a Sole Source in the amount of $10,348.00. This vendor is located in Charlotte, NC. *Funding Source: Sewer Improvement Fund 5529999-SS705624-851200 – **Note:** On April 15, 2009, Council approved the purchase of material in the amount of $78,568.00. The amount requested is due to an unexpected price increase. - Approved*

13. Council is asked to approve the Purchase of Vetter Rescue Bags, as requested by the Fire Department. Award to Newton's Fire & Safety, the lowest bidder in the amount of $11,814.94. This vendor is located in Swepsonville, NC. *Funding Source: 2082306-627100 - Approved*

14. Council is asked to approve the Purchase of one (1) lot of Pharmaceuticals, as requested by the Homeland Security / EOC Department. Award to Cardinal Health Distribution, using the SC State Contract in the amount of $12,002.84. This vendor is located in Greensboro, NC. *Funding Source: MMRS Department of Homeland Security Sec 2007 EPA Grant 2549999-624900 9601000207-624900 - Approved*

15. Council is asked to approve the Purchase of Annual Safety Inspection Testing and Certification for Trucks / Equipment, as requested by the Fleet Service Division. Award to American Test Center, the lowest bidder in the amount of $14,701.80. This vendor is located in River Falls, WI. *Funding Source: 6308970-672800 - Approved*

16. Council is asked to approve Project #SS7056(23); Purchase of Wear Shoes and Bottom Sigma Flights in order to repair Primary Clarifier Basins at the Metro Wastewater Treatment Plant, as requested by Utilities and Engineering. Award to Siemens Water Technologies, as a Sole Source in the amount of $15,613.00. This vendor is located in Charlotte, NC. *Funding Source: Sewer Improvement Fund 5529999-SS705623-851200 **Note:** The purpose of primary clarifiers is to separate the settled and floating solids from the raw sewage. This reduces the organic loading on the aeration basins and the secondary clarifiers so they can operate more efficiently. Wear shoes keep the drive chain and flights from rubbing along the clarifier bottom. - Approved*

17. Council is asked to approve the Purchase of Updating of the Columbia, South Carolina Metropolitan Medical Response System (MMRS) Plans, as requested by The Emergency Operations Office. Award to University of South Carolina in the amount of $19,999.00. This vendor is located in Columbia, SC. *Funding Source: 2549999-636700 9601000207-636700 MMRS Department of Homeland Sec 2007 EPA Grant - Approved*

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18. Council is asked to approve the Purchase of Airbag Lifting System, as requested by the Fire Department. Award to Newton's Fire & Safety in the amount of $27,738.68. This vendor is located in Swepsonville, NC. *Funding Source: (1012303-657400 $22,713.96); (1012303-627100 $5,024.72) – **Note:** These are inflatable lifting bags for rescue work to help persons who are trapped in or under vehicles. - Approved*

19. Council is asked to approve the Purchase of Auto Charge Super Kits, as requested by the Fire Department. Award to Slagle Fire Equipment @ Supply in the amount of $34,309.37. This vendor is located in West Columbia, SC. *Funding Source: (1012303-627100 $16,782.77); (2082306-627100 $17,526.60) – **Note:** These are electrical power supplies to keep the new onboard computers running in the fire trucks while they are parked in the fire stations. The computers can receive dispatch information through the automatic vehicle location system (AVL) and transmit the trucks' locations. - Approved*

20. Council is asked to approve Project # SD8326; Agreement to Render Structural, Engineering Design and Construction Services in Connection with repair of Columbia Canal Water Treatment Plant Drainage Tunnels, as requested by Utilities and Engineering. Award to Chao and Associates, Inc., in the amount of $75,000.00. This vendor is located in Columbia, SC. *Funding Source: FY 2008 / 2009 Capital Improvement Program Budget. - Approved*

21. Council is asked to approve Purchase of Taser Weapons and Accessories, as requested by the Police Department. Award to Lawmen's, as a Sole Source in the amount of $116,352.41. This vendor is located in Columbia SC. *Funding Source: 2659999-6271000 9211000101-6271000 Gunshot Triangulation – US Justice Grant - Approved*

Upon motion by Mayor Coble, seconded by Ms. Devine, Council voted unanimously to approve the Purchase of Taser Weapons and Accessories, as requested by the Police Department. Award to Lawmen's, as a Sole Source in the amount of $116,352.41. This vendor is located in Columbia SC.

22. Council is asked to approve Project #SS7091; Emergency Sanitary Sewer Replacement Along Quail Lane between Lockewood and Wrenwood Lanes, as requested by Utilities and Engineering. Award to Shady Grove Construction Company, the lowest bidder in the amount of $283,171.00. This vendor is located in Irmo, SC. *Funding Source: Sewer Improvement Fund SS709101 851600 - Approved.*

23. Council is asked to approve Project #SD8059; Phase I of Northwood Hills / Delverton Drainage Channel Improvements, as requested by Utilities and Engineering. Award to L-J, Inc., the lowest bidder in the amount of $594,191.75. This vendor is located in Columbia, SC. *Funding Source: Storm Drain Funding Project #SS80591A-656200 – This is a Mentor Protégé Program Project - Approved*

24. Council is asked to approve Project #701702; Removal of Beavers and Beaver Dam Debris, as requested by Utilities and Engineering. Award to McClam & Associates in the amount of $992,013.05. This vendor is located in Little Mountain, SC. *Funding Source: Sanitary Sewer Funding Project #SS701702-851600 – This is a Mentor Protégé Program Project - Approved*

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ORDINANCES – SECOND READING

Upon motion by Mr. Cromartie, seconded by Ms. Devine, Council voted unanimously to give second reading approval to **Items 25. and 26.** with a single motion.

25. Ordinance No.: 2009-028 – Granting an encroachment to Zion Baptist Church for installation and maintenance of landscaping and an "L" shaped handicap ramp / walkway with guardrail and landings within the right of way area adjacent to 1324 Gadsden Street *(Mr. Chip Land, Long Range Planner: Recommends approval) – First reading approval was given on April 15, 2009. – Approved on second reading.*

26. Ordinance No.: 2009-031 – Granting encroachment to The Church of the Lord Jesus Christ of the Apostolic Faith, Inc. for a directional sign on the southwest corner of Miller Avenue and Main Street *(Mr. Chip Land, Long Range Planner: Recommends approval) – First reading approval was given on April 15, 2009. – Approved on second reading.*

ORDINANCES – FIRST READING

Upon motion by Mr. Cromartie, seconded by Mr. Rickenmann, Council voted unanimously to give first reading approval to **Items 27. through 29.** with a single motion.

27. Ordinance No.: 2009-037 – Granting a 30' Easement Along a Portion of City Property Identified as the Piney Grove Water Tank Site to Lexington County for Steward Drive Paving and Improvements Project; Lexington County TMS #002898-04-006 (Portion); CF #250-270 – *Approved on first reading.*

28. Ordinance No: 2009-039 – Annexing 745 Hazelwood Road and 7755 Garners Ferry Road Richland County TMS #19102-02-04 and 19102-02-05 *(Mr. Marc Mylott, Director of Planning and Development Services: Recommends approval) – Approved on first reading.*

29. Ordinance No.: 2009-044 – Repealing Ordinance No.: 2008-065 authorizing a property tax credit to taxpayers within the corporate limits of the City of Columbia for installation of fire sprinkler systems in compliance with S.C. Code Ann. §12-6-3622 – *Approved on first reading.*

30. Ordinance No.: 2009-046 – Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 19, Solid Waste Management, Article II, Collection and Disposal, Sec. 19-31 Definitions; Bulk container; Sec. 19-40 Frequency of collection; limitations on quantity of waste; Sec. 19-41 Restrictions on collection, (g) Bulk containers for multiple dwelling units and (h) Bulk containers for commercial and industrial users; and Sec. 19-43 Service fees to delete (3) Property exempt from ad valorem tax, (4) Commercial refuse collection and (5) Taxable nonresidential properties and to renumber (6) Building material collection – *First reading consideration was deferred.*

30a. **Ordinance No.: 2009-048 – Amending the 1998 Code of Ordinance of the City of Columbia, South Carolina, Chapter 12, Motor Vehicles and Traffic, Article I, General, Sec. 12-13 through trucks prohibited on certain streets – *First reading consideration was deferred.*

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***Amendment to the Agenda*

APPEARANCE OF PUBLIC HAVING BUSINESS WITH CITY COUNCIL

Ms. Carolyn Taylor appeared before the Council to inform them of the Attorney General's opinion as it relates to the City of Columbia not having authority to tag vehicles on private property. If a vehicle is parked on private property with the consent of the owner or the person in control of the property the City doesn't have the authority to tag it; it's not abandoned and even it were junk it could not be taken away from that property. She reminded Mr. Rickenmann that the last time she was here he told her to give her questions to Mr. Gantt and the answers would be supplied in written form, but she hasn't received any answers.

Councilor Devine stated that she spoke with the City Attorney and the Director of Planning and Development Services about this and we are in litigation with Ms. Taylor and because of that they have not answered her questions in writing. She would need to take that up with the Legal Department.

Ms. Carolyn Taylor argued that they are not in litigation about abandoned vehicles. No one informed me of this. She provided supporting documentation to the Council from the SC Code of Laws.

Mr. Keith Seymour, Carolina Panorama appeared before the Council to express his concerns about Council considering the availability of public transportation when annexing property.

BUDGET WORK SESSION

I. Fiscal Year 2009 / 2010 Budget Review – The Honorable Kirkman Finlay III - *The Budget Work Session was rescheduled to May 13, 2009.*

EXECUTIVE SESSION

Upon motion by Mr. Cromartie, seconded by Ms. Devine, Council voted unanimously to go into Executive Session at 1:19 p.m. for the discussion of **Items J.** through **M.** as amended.

J. **Discussion of compensation of an employee
This item was discussed in Executive Session. No action was taken.

K. **Receipt of legal advice which relate to matters covered by attorney-client privilege
- Prohibition of Trucks

Items were discussed in Executive Session. No action was taken.

L. **Discussion of negotiations incident to proposed contractual arrangements
- Richland County School District One.
- Fire Services
- Benedict College

Items were discussed in Executive Session. No action was taken.

M. ** Receipt of legal advice which relate to pending, threatened or potential claims
Items were discussed in Executive Session. No action was taken.

- **Council adjourned the meeting at 4:15 p.m.**

Respectfully submitted by:

Erika D. Salley
City Clerk

CERTIFIED
A TRUE COPY
Erika D. Salley
CITY CLERK 11/20/2009

***Amendment to the Agenda*

ATTACHMENT E

Blue Cross Blue Shield of South Carolina
An Independent Licensee of the Blue Cross and Blue Shield Association

Benefits Summary

City of Columbia
2010 Preferred Blue Plan
www.southcarolinablues.com

The following Schedule of Benefits is only a brief, non-legal outline of benefits being offered. Please refer to the employee handbook your Human Resources Department. Benefits apply to $2,000,000 Lifetime Maximum.

Benefits	Core Plan (Option A)		Buy-up (Option B)	
	In Network	Out of Network	In Network	Out of Network
Deductible	$500 (x3)	$500 (x3)	$250 (x3)	$250 (x3)
Out of Pocket	$2,000/ $4,000	$2500/ $5,000	$1,000 /$2,000	$2500/ $5,000
Co-Insurance	80%	60%	90%	70%
Physician Services Physician Charges for services in the office. (excluding Obstetrical Delivery, Psychiatric Care, Dialysis Treatment and Second Surgical Opinion):	$20 Primary Care, then 100% $30 Specialist, then 100% Primary Care = General, Family Doctor, Pediatrician, Internist, OB/GYN	Deductible, 60%	$15 Primary Care, then 100% $25 Specialist, then 100% Primary Care = General, Family Doctor, Pediatrician, Internist, OB/GYN	Deductible, 70%
Other Physician Services Inpatient/Outpatient Hospital / Allergy Injections / Diagnostic Lab / X-Ray / Anesthesia Services / Radiology / Pathology / Obstetrical Delivery / Initial New Born / Pediatric Exam / All other Outpatient – Office Services	Deductible, 80%	Deductible, 60%	Deductible, 90%	Deductible, 70%
Preventive Care (In Network coverage only) Mammograms (Must see a provider in Mammography Network and are age 35 and older) Pap Smear/Prostate Screening Well Child Physicals	100% 100% $20 Co-pay, then 100% 100%	N/A	100% 100% $15 Co-pay, then 100% 100%	N/A
Chiropractic Benefits limit to 5 visits including rated x-rays	Deductible, 80%	Deductible, 60%	Deductible, 80%	Deductible, 70%
Hospital / Skilled Nursing Facility Charges	Deductible, 80%	Deductible, 60%	Deductible, 90%	Deductible, 70%
Outpatient Facility Charges	Deductible, 80%	Deductible, 60%	Deductible, 90%	Deductible, 70%
Ambulance	Deductible, 80%	Deductible, 80%	Deductible, 90%	Deductible, 90%
Emergency Room	$150 copay, 80%	$150 copay, 60%	$150 copay, 90%	$150 copay, 70%
Other Services Home Health Physical Therapy ($1,000 Maximum) Mental Health* & Substance Abuse**	Deductible, 100% Deductible, 80%	Deductible, 60% Deductible, 60%	Deductible, 100% Deductible, 90%	Deductible, 70% Deductible, 70%
Prescriptions Retail (31 day supply) Mail Order (90 day supply)	$5 (Generic) / $25 (Preferred) / $40 (Non-Preferred) $12.50 (Generic) / $62.50 (Preferred) / $100 (Non-Preferred)		$5 (Generic) / $25 (Preferred) / $40 (Non-Preferred) $12.50 (Generic) / $62.50 (Preferred) / $100 (Non-Preferred)	

Deduction Chart	Plan A	Plan B
Employee Only Per paycheck	$33.18/mo $15.31	$63.17/mo $29.16
Employee + Spouse Per paycheck	$172.54/mo $79.63	$244.50/mo $112.85
Employee + Child Per paycheck	$82.95/mo $38.28	$123.23/mo $56.04
Family Per paycheck	$252.17/mo $116.39	$348.12/mo $160.67

Mental Health:
Approved Mandated Diagnosis by the state of South Carolina is covered as any other medical condition when they are presented as a primary diagnosis. Mental Health and Substance Abuse Services must be Pre-Authorized by CBA prior to services being rendered.
1-800-868-1032.

****Mental Health & Substance Abuse:**
Non-Approved diagnosis and Substance Abuse limited to 30 days inpatient and 20 days outpatient. Substance Abuse limited to $50,000 Lifetime Maximum.

Pre-Authorization:
The following outpatient procedures need pre-authorization: Chemotherapy or Radiation Therapy (one time notification), Hysterectomy, Septoplasty, Sclerotherapy, all Cosmetic procedures, Investigational procedures performed in outpatient or office setting and Durable Medical Equipment over $500.00. All inpatient hospital or skilled nursing facility admissions, home health care, hospice care of inpatient physical rehabilitation, and services and supplies related to human organ and tissue transplants.

Columbia: 736-5930. Outside of Columbia: 1-800-327-3238. Out of State: 800-334-7287.
Customer Service: 1-800-760-9290 (Medical) / 1-888-963-7290 (Prescription Drugs)

ATTACHMENT F

ENROLLMENT APPLICATION

LUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA
OMPANION LIFE INSURANCE COMPANY

ACTION

(1) Check "ACTION" Needed:	REQUIRED BLOCKS
☐ a. New Add	1 Through 22
☐ b. Change Coverage	2, 3, 6, 9, 12, 15, 21, 22
☐ c. Transfer Within Your Group (ie., Main Group to Sub-Group)	2, 3, 6, 9, 12, 15, 21, 22
☐ d. Left Employment — No Conversion: Deceased? ☐ YES ☐ NO	2, 6, 9, 15
☐ e. Left Employment — Wants Conversion or Medicare Complementary Info.	2, 6, 9, 15
☐ f. Name Change (From:) To: ➤	2, 6, 9, 22
☒ g. Address Change	2, 4, 6, 9, 22
☐ h. Department Number Change	2, 6, 9, 10, 21, 22
☐ i. Beneficiary Change Spouse Exclusion	2, 6, 9, 15, 14 or 20, 22
☐ J. I. D. Card Request	2, 6, 9
☐ k. Social Security No. Change ➤ From / To	
☐ l. Other	2, 6

INSTRUCTIONS

1.) Blocks NOT shaded are to be completed by the applicant, only as indicated by 'ACTION' NEEDED.

2.) Blocks shaded gray are to be completed by the Employer.

3.) Blocks shaded in blue are to be used by Blue Cross only.

IDENTIFICATION

(2) Check One ☒ Male ☐ Female — Employee - Last Name: Craig — First: Barbara — Initial: Frank

(3) If "New Add" enter the date of hire (full time). If "Change in Coverage" enter the date of the event which cause the change in coverage. Check event: ☐ Death ☐ Birth ☐ Marriage ☐ Other ☐ Divorce — Mo. / Da. / Yr.

(4) Mailing Address — Street or P. O. Box: 2528 Banner Hill Rd

(City): Cola — (State): SC — (Zip Code): 29209

(6) Social Security No.: 247-04-8607

(7) Your Birthdate Mo. / Yr.

(8) Spouse's Birthdate (Check here ☐ if NONE) Mo. / Yr.

HEALTH

(12) Type of Membership
- ☐ Employee Only
- ☐ Family
- ☐ Employee and Spouse
- ☐ Employee and Children
- ☐ Life Only
- ☐ Dental Only

(13) Additional Health Coverage Desired
- ☐ Major Medical
- ☐ Drug
- ☐ Dental: ☐ Employee Only ☐ Family ☐ Employee & Spouse ☐ Employee & Children
- ☐ Other

(14) Spouse Exclusion: Enter name of (divorced separated, etc.) Spouse not to be covered.
Name:

FOR BLUE CROSS AND BLUE SHIELD USE ONLY

Dept. Code	Emp. Code	I.D. Code

(16) MANDATORY SECTION - For Dependents to get Coverage
List Spouse for whom coverage is desired: Last Name — First — Init. — Sex ☐ Male ☐ Female

List All Dependent Children for whom coverage is desired (for additional space, use back of form.)

Last Name	First	Init.	Birthdate Mo. Da. Yr.	Sex	Last Name	First	Init	Birthdate Mo. Da. Yr.	Sex
			/ /	☐ Male ☐ Female				/ /	☐ Male ☐ Female
			/ /	☐ Male ☐ Female				/ /	☐ Male ☐ Female

LIFE

(17) Types and amount of Companion Life Insurance Coverage
- ☐ Life
- ☐ Accidental Death and Dismemberment
- ☐ Dependent Life
- ☐ Short-Term Disability
- ☐ Long-Term Disability

(18) Premium — Check One ☐ Monthly ☐ Quarterly ☐ Annually — Amount

(19) Life Class

(20) Beneficiary — Last Name — First — Init. — Relationship

JOB

(21) Job Description (Describe the duties and functions of your job:

(22) I make this certification to induce the insurance company to grant insurance. I understand this group insurance is effective only so long as my full-time employment, as defined by the Group Application, with this employer continues, unless the group contract or statutory law of South Carolina otherwise provides for conversion or continuation of my policy and such has been done. It is further understood that the acceptance of my premium by the insurance company at any time shall not operate as a waiver or estoppel with respect to any provisions of the group contract, including the provisions concerning my eligibility.

I authorize release of Medicare Part A and Part B claims information to Blue Cross and Blue Shield of South Carolina for the purpose of processing my complementary claims. This authorizes the release of Medicare Part A and Part B claims information from the termination of my coverage.

I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION.

Date 2/24/87 — Signature [signature]

ENROLLMENT APPLICATION

LUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA
OMPANION LIFE INSURANCE COMPANY

ACTION

(1) Check "ACTION" Needed:	REQUIRED BLOCKS
☐ a. New Add	1 Through 22
☐ b. Change Coverage	2, 3, 6, 9, 12, 15, 21, 22
☐ c. Transfer Within Your Group (ie., Main Group to Sub-Group)	2, 3, 6, 9, 12, 15, 22
☐ d. Left Employment – No Conversion: Deceased? ☐ Yes ☐ No	2, 6, 9, 15
☐ e. Left Employment - Wants Conversion or Medicare Complementary Info.	2, 6, 9, 15
☐ f. Name Change (From:) To: ➤	2, 6, 9, 22
☐ g. Address Change	2, 4, 6, 9, 22
☐ h. Department Number Change	2, 6, 9, 10, 22
☐ i. Beneficiary Change ☐ Spouse Exclusion	2, 6, 9, 15, 22
☐ j. I.D. Card Request	2, 6, 9
☐ k. Social Security No. Change ➤ From / To	
☐ l. Other	2, 6

INSTRUCTIONS

1.) Blocks NOT shaded are to be completed by the applicant, only as indicated by 'ACTION' NEEDED.

2.) Blocks shaded gray are to be completed by the Employer.

3.) Blocks shaded in blue are to be used by Blue Cross only.

IDENTIFICATION

(2) Check One ☐ Male ☐ Female — Employee - Last Name — First — Initial

(3) Enter DATE HIRED (full-time).... If "NEW ADD", or Enter DATE OF EVENT.....causing "CHANGE COVERAGE" — Check event: ☐ Marriage ☐ Divorce ☐ Death ☐ Birth ☐ Other — Mo. / Da. / Yr.

(4) Mailing Address — Street or P. O. Box

(City) — (State) — (Zip Code)

(5) Group Name

(6) Social Security No. — (7) Your Birthdate Mo. / Yr. — (8) Spouse's Birthdate (Check here ☐ if NONE) Mo. / Yr.

(9) Group Number — (10) Dept. No. — (11) Payroll No.

HEALTH

(12) Type of Membership
☐ Employee Only
☐ Family
☐ Employee and Spouse
☐ Employee and Children
☐ Life Only
☐ Dental Only

(13) Additional Health Coverage Desired
☐ Major Medical
☐ Drug
☐ Dental: ☐ Employee Only ☐ Family ☐ Employee & Spouse ☐ Employee & Children
☐ Other

(14) Spouse Exclusion: Enter name of (divorced separated, etc.) Spouse not to be covered.
Name:

(15) EFFECTIVE DATE ➤ Mo. / Da. / Yr.

FOR BLUE CROSS AND BLUE SHIELD USE ONLY

Dept. Code	Emp. Code	I.D. Code

(16) List Only Dependent Children With Different Last Name

Last Name	First	Init.	Birthdate	Sex	Last Name	First	Init	Birthdate	Sex
				☐ Male ☐ Female					☐ Male ☐ Female
				☐ Male ☐ Female					☐ Male ☐ Female

LIFE

(17) Types and amount of Companion Life Insurance Coverage
☐ Life
☐ Accidental Death and Dismemberment
☐ Dependent Life
☐ Short-Term Disability
☐ Long-Term Disability

(18) Earnings (Check One) ☐ Hourly ☐ Weekly ☐ Bi-weekly ☐ Monthly ☐ Annually — (Amount)

(19) Class

(20) Beneficiary – Last Name — First — Init. — Relationship

OTHER

(21) OTHER HEALTH INSURANCE INFORMATION you can help keep your insurance premiums down by completing the questions that follow:
A) Are you or any member of your family covered by any other Group Health Insurance? ☐ YES ☐ NO
B) Does any member of your family have Medicare? ☐ YES ☐ NO

(22)

I make this certification to induce the insurance company to grant insurance. I understand this group insurance is effective only so long as my full-time employment, as defined by the Group Application, with this employer continues, unless the group contract or statutory law of South Carolina otherwise provides for conversion or continuation of my policy and such has been done. It is further understood that the acceptance of my premium by the insurance company at any time shall not operate as a waiver or estoppel with respect to any provisions of the group contract, including the provisions concerning my eligibility.

I authorize release of Medicare Part A and Part B claims information to Blue Cross and Blue Shield of South Carolina for the purpose of processing my complementary claims. This authorizes the release of Medicare Part A and Part B claims informati[illegible] my coverage until termination of my coverage.

I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION.

MEMBERSHIP APPLICATION

BLUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA, An Independent licensee of the Blue Cross and Blue Shield Association • COMPANION HEALTHCARE, A wholly-owned subsidiary of Blue Cross and Blue Shield of South Carolina, An independent licensee of the Blue Cross and Blue Shield Association • COMPANION LIFE INSURANCE COMPANY, A wholly-owned subsidiary of Blue Cross and Blue Shield of South Carolina • PREFERRED HEALTH SYSTEMS, INC., A subsidiary of Blue Cross and Blue Shield of South Carolina. Both are independent licensees of the Blue Cross and Blue Shield Association.

1. Please Indicate reason for Application: ☐ New Subscriber(s) ☐ Coverage Change ☐ Cancel ☐ Miscellaneous
☐ COBRA: ☐ 18-mo. ☐ 29-mo. ☐ 36-mo. (Block 22 must be completed.) ☐ Life Coverage ☐ Yes ☐ No ☒ Transfer Within Your Group From 5000
☐ Left Employment: ☐ No Conversion ☐ Wants Conversion or Medicare Complementary Info ☐ Deceased ☐ Name Change
☐ Department/Payroll Number Change ☐ Address Change ☐ Beneficiary Change ☐ Social Security Number Change From
☐ ID Card Request ☐ Add Dependents ☐ Return From Layoff/Medical Leave ☐ Physician Change ☐ Other

2. EFFECTIVE DATE OF ACTION REQUESTED: MONTH 10 DAY 1 YEAR 07 — DATE OF HIRE: MONTH DAY YEAR — ELIGIBILITY DATE: MONTH DAY YEAR

3. Type Contract: ☐ Preferred Blue ☐ Preferred Blue Select ☐ HMO Blue ☐ BLUE PLUS ☐ CHOICES ☐ Comprehensive ☐ Blue Choice ☐ CHC ☐ Other

IDENTIFICATION

4. Employee — Last Name	First	Initial	Home Telephone No.	5. Social Security No.
Cruz Jr.	Basilides	Frank		247-04-8607

6. Mailing Address (Street or P.O. Box)	(City)	(State)	(Zip Code)	(County Code - see back)
108 Country Pines Ct	Blythewood	SC	29016	

7. Name of Employer	8. Blue Cross Group Number	9. Dept. No.	10. Payroll No.
	☐☐-☐☐☐☐☐-☐☐-☐	Fire	06325

REASON FOR COVERAGE CHANGE

11. Check appropriate reason; give occurrence date in Block 13:
A ☐ Birth or Adoption
B ☐ Death (Name:)
C ☐ Divorce
D ☐ Marriage
E ☐ Other – Explain: Ret 25 yrs
F ☐ Attained Reduction Age

12. Name of spouse to be excluded from coverage if applicable:

13. Occurrence Date or Left Employment Date: Mo. Day Yr. 5-31-07

TYPE MEMBERSHIP AND COVERAGE INFORMATION

14. Check type membership for each coverage desired. (Indicate life coverage desired, if applicable, in blocks 15 through 19.)

	a. HEALTH	b. DENTAL
S – Single	☒	☐
F – Family	☐	☐
F – Employee/Children	☐	☐
S – Employee/Spouse	☐	☐

c. REFUSAL OF HEALTH COVERAGE
01 ☐ Other insurance with BCBS of SC
02 ☐ Insurance with another company
03 ☐ US military coverage
04 ☐ Federally qualified HMO
07 ☐ My spouse's coverage with this group
09 ☐ Other third-party administrator
10 ☐ Planned Administrative
11 ☐ Non-federally qualified HMO
12 ☐ Covered by Medicare
13 ☐ Covered by CHAMPUS
05 ☐ Other – Explain:

RECEIVED JUN 8 2007 HUMAN RESOURCES

15. If Sponsored Membership, give Sponsor's Social Security No.

16. Types and Amounts of Life Insurance Coverage Desired
☐ Life ☐ Supplemental:
☐ AD&D ☐ Life
☐ Dep. Life ☐ AD&D
☐ STD ☐ Dep. Life
☐ LTD

17. Earnings $ (Amount) (Check One) ☐ Hourly ☐ Weekly ☐ Biweekly ☐ Monthly ☐ Annually

18. Life Class

19. Full Name (Last Name, First, Init.): Relationship
Primary Beneficiary(ies):
Contingent Beneficiary(ies):
SEE INSTRUCTIONS ON BACK FOR MULTIPLE BENEFICIARY DESIGNATION

20. Job title or description:

21. List All Family Members Covered or Affected By a Change — For Contracts That Require Primary Care Physician Selection

Last Name	First	Initial	Sex	Birthdate Mo. Day Yr.	Primary Care Physician Name	Provider Number	Was This Your Regular Physician?
YOURSELF:	BCRUZ Basilides	Frank	male	9-9-51			Yes No
Spouse							Yes No
Social Security No.							
Child					BC/Retirement Office: ✓		Yes No
Social Security No.					Retiree log in book:		
Child					Keyed to computer: ✓		Yes No
Social Security No.							
Child							Yes No
Social Security No.							

OTHER INSURANCE INFORMATION

22. Do you or does any member of your family have other health, dental or drug coverage, Federal Employees' Program (FEP) or Medicare? ☐ YES ☐ NO
If Yes: MEDICARE A ☐ Effective Date MEDICARE B ☐ Effective Date
A. Family Member's Name and Social Security No.
B. Name of Insurance Co. Policy No. Effective Date
C. Family Member's Employer
D. List Names of Covered Persons 1. 2. 3. 4.
E. Please circle each type of service covered by this policy: Hospital, Physician/Medical, Prescription Drugs, Dental, Vision

EMPLOYEE CERTIFICATION

23. Employee Certification – Read back for certification statement. Check box if health statement is attached. ☐
I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION.

Date: 6-06-07 Signature: Basilides F. Cruz

19

ENROLLMENT APPLICATION

BLUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA
COMPANION LIFE INSURANCE COMPANY

ACTION

(1) Check "ACTION" Needed:	REQUIRED BLOCKS
☐ a. New Add	1 Through 22
☐ b. Change Coverage	2, 3, 6, 9, 12, 15, 21, 22
☐ c. Transfer Within Your Group (ie., Main Group to Sub-Group)	2, 3, 6, 9, 12, 15, 22
☐ d. Left Employment – No Conversion: Deceased? ☐ Yes ☐ No	2, 6, 9, 15
☐ e. Left Employment - Wants Conversion or Medicare Complementary Info.	2, 6, 9, 15
☐ f. Name Change (From:)To: ➤	2, 6, 9, 22
☐ g. Address Change	2, 4, 6, 9, 22
☐ h. Department Number Change	2, 6, 9, 10, 22
☐ i. Beneficiary Change ☐ Spouse Exclusion	2, 6, 9, 15, 22
☐ j. I.D. Card Request	2, 6, 9
☐ k. Social Security No. Change ➤ From / To	
☐ l. Other	2, 6

INSTRUCTIONS

1.) Blocks NOT shaded are to be completed by the applicant, only as indicated by 'ACTION' NEEDED.

2.) Blocks shaded gray are to be completed by the Employer.

3.) Blocks shaded in blue are to be used by Blue Cross only.

IDENTIFICATION

(2) Check One: ☐ Male ☐ Female — Employee - Last Name: Floyd — First: Joseph — Initial: A.

(3) Enter DATE HIRED (full-time). . . . If "NEW ADD", or Enter DATE OF EVENT .....causing "CHANGE COVERAGE" — Check event: ☐ Death ☐ Marriage ☐ Birth ☐ Divorce ☒ Other Separation — Mo. 04 / Da. 25 / Yr.

(4) Mailing Address — Street or P.O. Box: 111 Park Lane

(City): West Columbia — (State): S.C. — (Zip Code): 29169

(5) Group Name: [illegible]

(6) Social Security No.

(7) Your Birthdate

(8) Spouse's Birthdate (Check here ☐ if NONE) Mo. / Yr.

(9) Group Number: [illegible] — (10) Dept. No. — (11) Payroll No.

HEALTH

(12) Type of Membership
- ☐ Employee Only
- ☐ Family
- ☐ Employee and Spouse
- ☒ Employee and Children
- ☐ Life Only
- ☐ Dental Only

(13) Additional Health Coverage Desired
- ☒ Major Medical
- ☐ Drug
- ☐ Dental: ☐ Employee Only ☐ Family ☐ Employee & Spouse ☐ Employee & Children
- ☐ Other

(14) Spouse Exclusion: Enter name of (divorced, separated, etc.) Spouse not to be covered.
Name:

(15) EFFECTIVE DATE ➤ Mo. / Da. /

FOR BLUE CROSS AND BLUE SHIELD USE ONLY
Dept. Code | Emp. Code | I.D. Code

(16) List Only Dependent Children With Different Last Name

Last Name	First	Init.	Birthdate	Sex	Last Name	First	Init.	Birthdate	Sex
				☐ Male ☐ Female					☐ Male ☐ Female
				☐ Male ☐ Female					☐ Male ☐ Female

LIFE

(17) Types and amount of Companion Life Insurance Coverage
- ☐ Life
- ☐ Accidental Death and Dismemberment
- ☐ Dependent Life
- ☐ Short-Term Disability
- ☐ Long-Term Disability

(18) Earnings Amount — (Check One) ☐ Year ☐ Month ☐ Week ☐ Bi-Weekly ☐ Monthly ☐ Annually — (19) Life Class

(20) Beneficiary – Last Name — First — Init. — Relationship

OTHER

(21) OTHER HEALTH INSURANCE INFORMATION you can help keep your insurance premiums down by completing the questions that follow:
A) Are you or any member of your family covered by any other Group Health Insurance? ☐ YES ☒ NO
B) Does any member of your family have Medicare? ☐ YES ☐ NO

(22) 5

I make this certification to induce the insurance company to grant insurance. I understand this group insurance is effective only so long as my full-time employment, as defined by the Group Application, with this employer continues, unless the group contract or statutory law of South Carolina otherwise provides for conversion or continuation of my policy and such has been done. It is further understood that the acceptance of my premium by the insurance company at any time shall not operate as a waiver or estoppel with respect to any provisions of the group contract, including the provisions concerning my eligibility.

I authorize release of Medicare Part A and Part B claims information to Blue Cross and Blue Shield of South Carolina for the purpose of processing my complementary claims. This authorizes the release of Medicare Part A and Part B claims information from the effective date of my coverage until termination of my coverage.

I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION

10-28

BLUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA, An independent licensee of the Blue Cross and Blue Shield Association • COMPANION HEALTHCARE, A wholly-owned subsidiary of Blue Cross a Blue Shield of South Carolina, An independent licensee of the Blue Cross and Blue Shield Association • COMPANION LIFE INSURANCE COMPANY, A wholly-owned subsidiary of Blue Cross and Blue Shie South Carolina • PREFERRED HEALTH SYSTEMS, INC., A subsidiary of Blue Cross and Blue Shield of South Carolina. Both are independent licensees of the Blue Cross and Blue Shield Association.

1. Please indicate reason for Application: ☐ New Subscriber(s) ☐ Coverage Change ☐ Cancel ☐ Miscellaneous
☐ COBRA: ☐ 18-mo. ☐ 29-mo. ☐ 36-mo. (Block 22 must be completed.) ☐ Life Coverage ☐ Yes ☐ No ☒ Transfer Within Your Group From 502
☐ Left Employment: ☐ No Conversion ☐ Wants Conversion or Medicare Complementary Info ☐ Deceased ☐ Name Change
☐ Department/Payroll Number Change ☐ Address Change ☐ Beneficiary Change ☐ Social Security Number Change From
☐ ID Card Request ☐ Add Dependents ☐ Return From Layoff/Medical Leave ☐ Physician Change ☐ Other

2. EFFECTIVE DATE OF ACTION REQUESTED: MONTH 10 DAY 1 YEAR 05 | DATE OF HIRE: MONTH DAY YEAR | ELIGIBILITY DATE: MONTH DAY YEAR

3. Type Contract: ☐ Preferred Blue ☐ Preferred Blue Select ☐ HMO Blue ☐ BLUE PLUS ☐ CHOICES ☐ Comprehensive ☐ Blue Choice ☐ CHG ☐ Other

IDENTIFICATION

4. Employee — Last Name	First	Initial	Home Telephone No.	5. Social Security No.
Floyd	Joseph	A		

6. Mailing Address (Street or P.O. Box): 100 Genesee Valley Rd (City): Cola (State): SC (Zip Code): 29223 (County Code - see back)

7. Name of Employer

8. Blue Cross Group Number: 5001

9. Dept. No.: Fire | 10. Payroll No.: 4221

REASON FOR COVERAGE CHANGE

11. Check appropriate reason; give occurrence date in Block 13:
A ☐ Birth or Adoption
B ☐ Death (Name:)
C ☐ Divorce
D ☐ Marriage
E ☐ Other – Explain: 28 years
F ☐ Attained Reduction Age

12. Name of spouse to be excluded from coverage if applicable

13. Occurrence Date of Left Employment D: Mo. 9 Day 2-0

TYPE MEMBERSHIP AND COVERAGE INFORMATION

14. Check type membership for each coverage desired. (Indicate life coverage desired, if applicable, in blocks 15 through 19.)

	a. HEALTH	b. DENTAL
S – Single	☑	☑
F – Family	☐	☐
E – Employee/Children	☐	☐
S – Employee/Spouse	☐	☐

c. REFUSAL OF HEALTH COVERAGE
01 ☐ Other Insurance with BCBS of SC
02 ☐ Insurance with another company
03 ☐ US military coverage
04 ☐ Federally qualified HMO
07 ☐ My spouse's coverage with this group
09 ☐ Other third-party administrator
10 ☐ Planned Administrators Inc.
11 ☐ Non-federally qualified HMO
12 ☐ Covered by Medicare
13 ☐ Covered by CHAMPUS
05 ☐ Other – Explain:

15. If Sponsored Membership, give Sponsor's Social Security No.

16. Types and Amounts of Life Insurance Coverage Desired
☐ Life ☐ Supplemental:
☐ AD&D ☐ Life
☐ Dep. Life ☐ AD&D
☐ STD ☐ Dep. Life
☐ LTD

17. Earnings $ (Amount) (Check One) ☐ Hourly ☐ Weekly ☐ Biweekly ☐ Monthly ☐ Annually

18. Life Class

19. Full Name (Last Name, First, Init.): Relationship
Primary Beneficiary(ies):
Contingent Beneficiary(ies):
SEE INSTRUCTIONS ON BACK FOR MULTIPLE BENEFICIARY DESIGNATION

20. Job title or description:

21. List All Family Members Covered or Affected By a Change

Last Name	First	Initial	Sex	Birthdate Mo. Day Yr.	Primary Care Physician Name (For Contracts That Require Primary Care Physician Selection)	Provider Number	Was You Requ Physic
YOURSELF: Floyd	Joseph	A	M				Yes
Spouse							Yes
Social Security No.							
Child							Yes
Social Security No.							
Child							Yes
Social Security No.							
Child							Yes
Social Security No.							

BC/Retirement Office: ✓
Retiree log in book:
Keyed to computer: ✓

RECEIVED
OCT 21 2005
HUMAN RESOURCES

OTHER INSURANCE INFORMATION

22. Do you or does any member of your family have other health, dental or drug coverage, Federal Employees' Program (FEP) or Medicare? ☐ YES ☐ NO
If Yes: MEDICARE A ☐ Effective Date MEDICARE B ☐ Effective Date
A. Family Member's Name and Social Security No.
B. Name of Insurance Co. Policy No. Effective Date
C. Family Member's Employer
D. List Names of Covered Persons 1 2 3 4
E. Please circle each type of service covered by this policy: Hospital, Physician/Medical, Prescription Drugs, Dental, Vision

EMPLOYEE CERTIFICATION

23. Employee Certification – Read back for certification statement. Check box if health statement is attached. ☐
I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION.
10-11-05 Signature: Joseph A. Floyd

15

EMPLOYMENT RECORD (Continued) Page 2 of 2

Name, Address of Employer: K.A. Clark Co. 1003 Geronis St Ft. Sc. (2nd job)

Position & Chief Duties: Mgr. ... 2 yrs of alum. bldgs, sales, supp

Salary Per Week: STARTING ... FINAL ... Employed From: 1st '75 To: Aug 79 Supervisor: Ted Clarkson

Reason For Leaving: —

Name, Address of Employer: SC Hd. ... 1-92-81

Position & Chief Duties: ... to help open this SC ... operations

Salary Per Week: STARTING ... FINAL ... Employed From: June 74 To: Jan 75 Supervisor: John Wiethe

Reason For Leaving: ...

RECORD OF EDUCATION

TYPE OF SCHOOL	NAME & ADDRESS	NO. YEARS ATTENDED	MAJOR	GRADUATED		DEGREE AND YR. GRAD.
GRAMMAR/GRADE	St. Daniel Cath School Ft.	2				
HIGH SCHOOL	George Marshall Falls Church, Va.	2		~~YES~~ NO		
	Carlisle Military Academy, SC	2				
COLLEGE	USC Coll - SC	1	Gen Ed	YES ~~NO~~		
POST GRADUATE				YES NO		
BUSINESS/TRADE	Mid Tech Keffire Colu-SC	2	Auto Mech	~~YES~~ NO	3.0(avg)	
OTHER				YES NO		

MILITARY SERVICE RECORD

Were you a member of the U.S. Armed Forces? ☐ YES ☐ ~~NO~~ If yes, what branch? —

Dates of Duty: From ... (Mo/Yr) To ... (Mo/Yr). Rank at Discharge: ...

List duties in the service, including special training: ...

REFERENCES: List three personal references other than former employers or relatives:

Name & Occupation	Address	Phone Number
Fred Kinard Ret Director SC Criminal Justice Academy	Ret. Columbia SC. (Please Verify)	
George P Crumbie Fireman	Camelot Apt. Colu, SC	2
Edna Van retired	4121 Forest Dr.	

I hereby certify that the facts set forth in the above employment application are true and complete to the best of my knowledge. I understand that if employed, falsified statements on this application shall be considered sufficient cause for dismissal. You are hereby authorized to make any investigation of my personal employment, financial or medical history and any other related matters as may be necessary in arriving at an employment decision. I hereby release employers, schools or persons from all liability in responding to inquiries in connection with my application.

CHANGE APPLICATION

BLUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA • COMPANION LIFE INSURANCE COMPANY • COMPANION HEALTHCARE

1. Please indicate action(s) needed. See back for types of action and required fields to be completed. Action needed _____

2. EFFECTIVE DATE OF ACTION REQUESTED: MONTH ____ DAY ____ YEAR ____

3. Type Contract ▶ Check One and Send Form to Location(s) Indicated:
☐ Blue Cross Member (send form to Blue Cross only) ☐ Companion HealthCare Member 08 (send original to CHC, send copy to Blue Cross) ☐ Other (Send form to Blue Cross only)

IDENTIFICATION

4. Employee – Last Name Williams III | First Arthur | Initial C | Home Telephone # | 5. Social Security No.

6. Mailing Address (Street or P.O. Box) | (City) | (State) | (Zip Code)

7. Name of Employer | 8. Blue Cross Group Number | 9. Dept. No. 310 | 10. Payroll No. 5958

REASON FOR COVERAGE CHANGE

11. Check appropriate reason; give occurrence date in Block 13:
A ☐ Birth or Adoption
B ☐ Death (Name: _____)
C ☐ Transfer Within Your Group
D ☐ Divorce
E ☐ Marriage
F ☐ Other-Explain: _____
G ☐ Attained Reduction Age

12. Name of spouse to be excluded from coverage if applicable _____

13. Occurrence Date or Left Employment Date Mo. Day Yr. _____

TYPE MEMBERSHIP AND COVERAGE INFORMATION

14. Check type membership for each coverage desired (Indicate life coverage desired, if applicable, in blocks 15 through 19)

	a. BC/BS	b. CHC
S-Single	☒	☐
F-Family	☐	☐
F-Employee/Children	☐	☐
S-Employee/Spouse	☐	☐

c. REFUSAL OF HEALTH COVERAGE
01 ☐ Other insurance with BCBS of SC
02 ☐ Insurance with another company
03 ☐ US military coverage
04 ☐ Federally Qualified HMO
07 ☐ My spouse's coverage with this group
09 ☐ Other 3rd party administrator
10 ☐ Planned Administrators Inc.
11 ☐ Non-Federally Qualified HMO
12 ☐ Covered by Medicare
13 ☐ Covered by CHAMPUS
05 ☐ Other-Explain: _____

d. OPTIONAL COVERAGE
STAND ALONE DRUG ☐ OTHER ☐ Specify: _____
STAND ALONE DENTAL: (Check One) S - ☒ F - ☐ E/C - ☐ E/S - ☐

15. If Sponsored Membership give Sponsor's Social Security # _____

16. Types and Amount of Life Insurance Coverage Desired
☐ Life _____ Supplemental
☐ AD&D _____ ☐ Life _____
☐ Dep. Life _____ ☐ AD&D _____
☐ STD _____ ☐ Dep. Life _____
☐ LTD _____

17. Earnings $ _____ (Amount) (Check One) ☐ Hourly ☐ Weekly ☐ Bi-weekly ☐ Monthly ☐ Annually

18. Life Class

19. Full Name Of: (Last Name, First, Init.) Relationship
Primary Beneficiary(ies): _____
Contingent Beneficiary(ies): _____
SEE INSTRUCTIONS ON BACK FOR MULTIPLE BENEFICIARY DESIGNATION

20. Job title or description: _____

21. Only List Members Affected By This Change

Last Name	First	Initial	Sex	Birthdate Mo. Day Yr.	For Companion HealthCare Members Only: Primary Care Physician Name (from Directory)	PCP Code Only	Was This Your Regular Physician?
YOURSELF:							Yes / No
Spouse: (If None, Check Here ☐):							Yes / No
Spouse Social Security # (Required) and Employer if Employed:							
Children: 1)							Yes / No
2)							Yes / No
3)							Yes / No

RECEIVED JUN 1992 PERSONNEL

OTHER INSURANCE INFORMATION

22. Do you or does any member of your family have other group health coverage, Federal Employees' Program (FEP) or Medicare?
☐ NO ☐ YES If Yes: MEDICARE A ☐ Effective Date _____ MEDICARE B ☐ Effective Date _____
A. Family Member's Name _____ and Social Security # _____
B. Name of Insurance Co. _____ Policy # _____ Effective Date _____
C. Family Member's Employer _____
D. List Names of Covered Persons 1 _____ 2 _____ 3 _____ 4 _____

EMPLOYEE CERTIFICATION

23. Employee Certification – Read back for certification statement. Check box if health statement is attached. ☐

I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION.

Date 6/15/92 Signature X _____

6

BLUE CROSS USE ONLY

DEP.	EMPS	DR.	CERT.	BWEMP	UVAREAS

8-2

MEMBERSHIP APPLICATION

BLUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA, An independent licensee of the Blue Cross and Blue Shield Association • COMPANION HEALTHCARE, A wholly-owned subsidiary of Blue Cross and Blue Shield of South Carolina, An independent licensee of the Blue Cross and Blue Shield Association • COMPANION LIFE INSURANCE COMPANY, A wholly-owned subsidiary of Blue Cross and Blue Shield of South Carolina • PREFERRED HEALTH SYSTEMS, INC., A subsidiary of Blue Cross and Blue Shield of South Carolina. Both are independent licensees of the Blue Cross and Blue Shield Association.

1. Please indicate reason for Application: ☐ New Subscriber(s) ☐ Coverage Change ☐ Cancel ☐ Miscellaneous
☐ COBRA: ☐ 18-mo. ☐ 29-mo. ☐ 36-mo. (Block 22 must be completed.) ☐ Life Coverage ☐ Yes ☐ No ☒ Transfer Within Your Group From 5000
☐ Left Employment: ☐ No Conversion ☐ Wants Conversion or Medicare Complementary Info ☐ Deceased ☐ Name Change
☐ Department/Payroll Number Change ☐ Address Change ☐ Beneficiary Change ☐ Social Security Number Change From _____
☐ ID Card Request ☐ Add Dependents ☐ Return From Layoff/Medical Leave ☐ Physician Change ☐ Other _____

2. EFFECTIVE DATE OF ACTION REQUESTED: MONTH 7 DAY 1 YEAR 07 — DATE OF HIRE: MONTH 6 DAY 1 YEAR 81 — ELIGIBILITY DATE: MONTH _____ DAY _____ YEAR _____

3. Type Contract: ☐ Preferred Blue ☐ Preferred Blue Select ☐ HMO Blue ☐ BLUE PLUS ☐ CHOICES ☐ Comprehensive ☐ Blue Choice ☐ CHC ☐ Other _____

IDENTIFICATION

4. Employee — Last Name	First	Initial	Home Telephone No.	5. Social Security No.
Gillam III	Arthur	Cameron		

6. Mailing Address (Street or P.O. Box)	(City)	(State)	(Zip Code)	(County Code - see back)
107 Bishopgate Rd	Cola	SC	29204	5001

7. Name of Employer	8. Blue Cross Group Number	9. Dept. No.	10. Payroll No.
	☐☐-☐☐☐☐☐-☐☐-☐	Fire	05958

REASON FOR COVERAGE CHANGE

11. Check appropriate reason; give occurrence date in Block 13:
A ☐ Birth or Adoption — C ☐ Divorce — F ☐ Attained Reduction Age
B ☐ Death (Name: _____) — D ☐ Marriage
E ☐ Other – Explain: _____

12. Name of spouse to be excluded from coverage if applicable: _____

13. Occurrence Date or Left Employment Date: Mo. Day Yr. 6-29-07

TYPE MEMBERSHIP AND COVERAGE INFORMATION

14. Check type membership for each coverage desired. (Indicate life coverage desired, if applicable, in blocks 15 through 19.)

	a. HEALTH	b. DENTAL
S – Single	☒	☐
F – Family	☐	☐
F – Employee/Children	☐	☐
S – Employee/Spouse	☐	☐

c. REFUSAL OF HEALTH COVERAGE
01 ☐ Other insurance with BCBS of SC
02 ☐ Insurance with another company
03 ☐ US military coverage
04 ☐ Federally qualified HMO
07 ☐ My spouse's coverage with this group
09 ☐ Other third-party administrator
10 ☐ Planned Administrators Inc.
11 ☐ Non-federally qualified HMO
12 ☐ Covered by Medicare
13 ☐ Covered by CHAMPUS
05 ☐ Other – Explain: _____

15. If Sponsored Membership, give Sponsor's Social Security No. _____

16. Types and Amounts of Life Insurance Coverage Desired
☐ Life _____ Supplemental:
☐ AD&D _____ ☐ Life _____
☐ Dep. Life _____ ☐ AD&D _____
☐ STD _____ ☐ Dep. Life _____
☐ LTD _____

17. Earnings $ _____ (Amount) (Check One) ☐ Hourly ☐ Weekly ☐ Biweekly ☐ Monthly ☐ Annually

18. Life Class

19. Full Name (Last Name, First, Init.): Relationship
Primary Beneficiary(ies): _____
Contingent Beneficiary(ies): _____
SEE INSTRUCTIONS ON BACK FOR MULTIPLE BENEFICIARY DESIGNATION

20. Job title or description:

21. List All Family Members Covered or Affected By a Change — For Contracts That Require Primary Care Physician Selection

Last Name	First	Initial	Sex	Birthdate Mo. Day Yr.	Primary Care Physician Name	Provider Number	Was This Your Regular Physician?	
YOURSELF:					eff 6-15-81		Yes	No
Spouse							Yes	No
Social Security No.								
Child							Yes	No
Social Security No.								
Child							Yes	No
Social Security No.								
Child							Yes	No
Social Security No.								

BC Retirement Group
Retiree log in book:
Keyed to computer:

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JUL 10 2007
HUMAN RESOURCES

OTHER INSURANCE INFORMATION

22. Do you or does any member of your family have other health, dental or drug coverage, Federal Employees' Program (FEP) or Medicare? ☐ YES ☐ NO
If Yes: MEDICARE A ☐ Effective Date _____ MEDICARE B ☐ Effective Date _____
A. Family Member's Name _____ and Social Security No. _____
B. Name of Insurance Co. _____ Policy No. _____ Effective Date _____
C. Family Member's Employer _____
D. List Names of Covered Persons 1. _____ 2. _____ 3. _____ 4. _____
E. Please circle each type of service covered by this policy: Hospital, Physician/Medical, Prescription Drugs, Dental, Vision

EMPLOYEE CERTIFICATION

23. Employee Certification – Read back for certification statement. Check box if health statement is attached. ☐
I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION

13

ENROLLMENT APPLICATION

LUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA
OMPANION LIFE INSURANCE COMPANY

ACTION

(1) Check "ACTION" Needed:	REQUIRED BLOCKS
☐ a. New Add	1 Through 22
☒ b. Change Coverage	2, 3, 6, 9, 12, 15, 21, 22
☐ c. Transfer Within Your Group (ie., Main Group to Sub-Group)	2, 3, 6, 9, 12, 15, 22
☐ d. Left Employment – No Conversion: Deceased? ☐ YES ☐ NO	2, 6, 9, 15
☐ e. Left Employment – Wants Conversion or Medicare Complementary Info.	2, 6, 9, 15
☐ f. Name Change (From:) To: ➤	2, 6, 9, 22
☐ g. Address Change	2, 4, 6, 9, 22
☐ h. Department Number Change	2, 6, 9, 10, 22
☐ i. Beneficiary Change Spouse Exclusion	2, 6, 9, 15, 22
☐ J. I. D. Card Request	2, 6, 9
☐ k. Social Security No. Change ➤ From / To	
☐ l. Other	2, 6

INSTRUCTIONS

1.) Blocks NOT shaded are to be completed by the applicant, only as indicated by 'ACTION' NEEDED.

2.) Blocks shaded gray are to be completed by the Employer.

3.) Blocks shaded in blue are to be used by Blue Cross only.

IDENTIFICATION

(2) Check One: ☒ Male ☐ Female
Employee - Last Name: Hill
First: Alma
Initial: Carson

(3) Enter DATE HIRED (full-time)..., If "NEW ADD", or Enter DATE OF EVENT .....causing "CHANGE COVERAGE"
Check event: ☐ Death ☐ Marriage ☒ Birth ☐ Divorce ☐ Other
Mo. 09 Da. 17 Yr. 84

(4) Mailing Address: Street or P. O. Box: 162 Norman Drive

(City): West Columbia,
(State): S.C.
(Zip Code): 29169

(6) [illegible]
(7) Your Birthdate Mo. , Yr.
(8) Spouse's Birthdate (Check here ☐ if NONE) Mo. 08 Yr. 62

HEALTH

(12) Type of Membership
☐ Employee Only
☐ Family
☐ Employee and Spouse
☐ Employee and Children
☐ Life Only
☐ Dental Only

(13) Additional Health Coverage Desired
☒ Major Medical
☐ Drug
☐ Dental: ☐ Employee Only ☐ Family ☐ Employee & Spouse ☐ Employee & Children
☐ Other

(14) Spouse Exclusion: Enter name of (divorced separated, etc.) Spouse not to be covered.
Name:

FOR BLUE CROSS AND BLUE SHIELD USE ONLY

Dept. Code | Emp. Code | Ind. Code

(16) MANDATORY SECTION - For Dependants to get Coverage
List Spouse for whom coverage is desired:

Last Name	First	Init.	Sex
Hill	Beverly	D	☐ Male ☒ Female

List All Dependant Children for whom coverage is desired (for additional space, use back of form.)

Last Name	First	Init.	Birthdate Mo. Da. Yr.	Sex
Hill	Casey	Denise	/ /	☐ Male ☒ Female
			/ /	☐ Male ☐ Female
			/ /	☐ Male ☐ Female

LIFE

(17) Types and amount of Companion Life Insurance Coverage
☐ Life
☐ Accidental Death and Dismemberment
☐ Dependent Life
☐ Short-Term Disability
☐ Long-Term Disability

(20) Beneficiary – Last Name | First | Init. | Relationship

OTHER

(21) OTHER HEALTH INSURANCE INFORMATION you can help keep your insurance premiums down by completing the questions that follow:

A) Are you or any member of your family covered by any other Group Health Insurance? ☐ YES ☒ NO

B) Does any member of your family have Medicare? ☐ YES ☒ NO

4

(22) I make this certification to induce the insurance company to grant insurance. I understand this group insurance is effective only so long as my full-time employment, as defined by the Group Application, with this employer continues, unless the group contract or statutory law of South Carolina otherwise provides for conversion or continuation of my policy and such has been done. It is further understood that the acceptance of my premium by the insurance company at any time shall not operate as a waiver or estoppel with respect to any provisions of the group contract, including the provisions concerning my eligibility.

I authorize release of Medicare Part A and Part B claims information to Blue Cross and Blue Shield of South Carolina for the purpose of processing my complementary claims. This authorizes the release of Medicare Part A and Part B claims information from the effective date of my coverage until termination of my coverage.

I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION.

Date: January 3, 1985 Signature: Alma C. Hill

BBD Keyed 11-7-96

MEMBERSHIP APPLICATION

BLUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA, An Independent Licensee of the Blue Cross and Blue Shield Association
COMPANION LIFE INSURANCE COMPANY - COMPANION HEALTHCARE

1. Please Indicate reason for Application: ☐ New Subscriber(s) ☒ Coverage Change ☐ Cancel ☐ Miscellaneous
☐ COBRA: ☐ 18-mo ☐ 29-mo ☐ 36-mo. ☐ Life Coverage ☐ Yes ☐ No ☐ Transfer Within Your Group From _____
☐ Left Employment: ☐ No Conversion ☐ Wants Conversion or Medicare Complementary Info ☐ Deceased ☐ Name Change
☐ Department/Payroll Number Change ☐ Address Change ☐ Beneficiary Change ☐ Social Security Number Change From _____
☐ ID Card Request ☐ Add Dependents ☐ Return From Lay-off/Medical Leave ☐ Other _____

2. EFFECTIVE DATE OF ACTION REQUESTED: MONTH 10 DAY 1 YEAR 96 | DATE OF HIRE: MONTH ____ DAY ____ YEAR ____ | ELIGIBILITY DATE: MONTH ____ DAY ____ YEAR ____

3. Type Contract Check One and Send Form to Appropriate Location ☐ Blue Cross Member 08 ☐ Companion HealthCare Member ☐ Other

IDENTIFICATION

4. Employee — Last Name	First	Initial	Home Telephone #	5. Social Security No.
Hill	Alma	C		

6. Mailing Address (Street or P.O. Box)	(City)	(State)	(Zip Code)

7. Name of Employer	8. Blue Cross Group Number	9. Dept. No.	10. Payroll No.
City of Columbia		Fire	6383

REASON FOR COVERAGE CHANGE

11. Check appropriate reason; give occurrence date in Block 13:
A ☐ Birth or Adoption
B ☐ Death (Name: _____)
C ☒ Divorce
D ☐ Marriage
E ☐ Other-Explain: Drop Spouse
F ☐ Attained Reduction Age

12. Name of spouse to be excluded from coverage if applicable: _____

13. Occurrence Date or Left Employment Date Mo. Day Yr.: _____

TYPE MEMBERSHIP AND COVERAGE INFORMATION

14. Check type membership for each coverage desired (indicate life coverage desired, if applicable, in blocks 15 through 19)

	a. BC/BS	b. CHC	c. DENTAL
S-Single	☐	☐	☐
F-Family	☐	☐	☐
F-Employee/Children	☒	☐	☒
S-Employee/Spouse	☐	☐	☐

d. REFUSAL OF HEALTH COVERAGE
01 ☐ Other insurance with BCBS of SC
02 ☐ Insurance with another company
03 ☐ US military coverage
04 ☐ Federally Qualified HMO
07 ☐ My spouse's coverage with this group
09 ☐ Other 3rd party administrator
10 ☐ Planned Administrators Inc.
11 ☐ Non-Federally Qualified HMO
12 ☐ Covered by Medicare
13 ☐ Covered by CHAMPUS
05 ☐ Other-Explain: _____

15. If Sponsored Membership give Sponsor's Social Security # _____

16. Types and Amount of Life Insurance Coverage Desired
☐ Life _____ Supplemental
☐ AD&D _____ ☐ Life _____
☐ Dep. Life _____ ☐ AD&D _____
☐ STD _____ ☐ Dep. Life _____
☐ LTD _____

17. Earnings $ _____ (Amount) (Check One) ☐ Hourly ☐ Weekly ☐ Bi-weekly ☐ Monthly ☐ Annually

18. Life Class

19. Full Name Of: (Last Name, First, Init.) Relationship
Primary Beneficiary(ies): _____
Contingent Beneficiary(ies): _____
SEE INSTRUCTIONS ON BACK FOR MULTIPLE BENEFICIARY DESIGNATION

20. Job title or description: _____

21. List All Family Members Covered or Affected By This Change

Last Name First Initial	Sex	Birthdate Mo. Day Yr.	For Companion HealthCare Members: Primary Care Physician Name (from Directory)	CHC Use Only	Was This Your Regular Physician?
YOURSELF:					Yes / No
Spouse: Hill, Beverly D.	F				Yes / No
Social Security #					Yes / No
Child					Yes / No
Social Security #					Yes / No
Child					Yes / No
Social Security #					Yes / No
Child					Yes / No
Social Security #					Yes / No

OTHER INSURANCE INFORMATION

22. Do you or does any member of your family have other group health, dental or drug coverage, Federal Employees' Program (FEP) or Medicare? ☐ YES ☒ NO
If Yes: MEDICARE A ☐ Effective Date _____ MEDICARE B ☐ Effective Date _____
A. Family Member's Name Beverly D. Hill and Social Security # 250-35-1288
B. Name of Insurance Co. Prudential Policy # E8161037Y Effective Date 09/01/96
C. Family Member's Employer JKB & B Inc. P.O. Box 1425, Irmo, SC 29063
D. List Names of Covered Persons 1 Beverly D. Hill 2 _____ 3 _____ 4 _____
E. Please circle each type of service covered by this policy: Hospital, Physician/Medical, Prescription Drugs, Dental, Vision

EMPLOYEE CERTIFICATION

23. Employee Certification – Read back for certification statement. Check box if health statement is attached. ☐
I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION.

Alma C Hill

MEMBERSHIP APPLICATION Add Spouse and Sponsor RDD 12-6-05

BLUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA, An Independent Licensee of the Blue Cross and Blue Shield Association • COMPANION HEALTHCARE, A wholly-owned subsidiary of Blue Cross and Blue Shield of South Carolina, An Independent Licensee of the Blue Cross and Blue Shield Association • COMPANION LIFE INSURANCE COMPANY, A wholly-owned subsidiary of Blue Cross and Blue Shield of South Carolina • PREFERRED HEALTH SYSTEMS, INC., A subsidiary of Blue Cross and Blue Shield of South Carolina. Both are Independent Licensees of the Blue Cross and Blue Shield Association.

1. Please Indicate reason for Application: ☐ New Subscriber(s) ☒ Coverage Change ☐ Cancel ☐ Miscellaneous
☐ COBRA ☐ 18-mo. ☐ 29-mo. ☐ 36-mo. (Block 22 must be completed.) ☐ Life Coverage ☐ Yes ☐ No ☐ Transfer Within Your Group From _____
☐ Left Employment: ☐ No Conversion ☐ Wants Conversion or Medicare Complementary Info ☐ Deceased ☐ Name Change
☐ Department/Payroll Number Change ☐ Address Change ☐ Beneficiary Change ☐ Social Security Number Change From _____
☐ ID Card Request ☒ Add Dependents ☐ Return From Layoff/Medical Leave ☐ Physician Change ☐ Other _____

2. EFFECTIVE DATE OF ACTION REQUESTED: MONTH 12 DAY 01 YEAR 05 DATE OF HIRE: MONTH ____ DAY ____ YEAR ____ ELIGIBILITY DATE: MONTH ____ DAY ____ YEAR ____

3. Type Contract: ☐ Preferred Blue ☐ Preferred Blue Select ☐ HMO Blue ☐ BLUE PLUS ☐ CHOICES ☐ Comprehensive ☐ Blue Choice ☐ CHC ☐ Other _____

IDENTIFICATION

4. Employee — Last Name	First	Initial	Home Telephone No.	5. Social Security No.
Hill	Alma	C		

6. Mailing Address (Street or P.O. Box)	(City)	(State)	(Zip Code)	(County Code - see back)
7012 Edmund Hwy	Pelion,	S.C.	29123	32

7. Name of Employer	8. Blue Cross Group Number	9. Dept. No.	10. Payroll No.
City of Columbia	☐☐-☐☐☐☐☐-☐☐-☐	Fire	6383

REASON FOR COVERAGE CHANGE

11. Check appropriate reason; give occurrence date in Block 13:
A ☐ Birth or Adoption
B ☐ Death (Name: _____)
C ☐ Divorce
D ☒ Marriage
E ☐ Other – Explain: _____
F ☐ Attained Reduction Age

12. Name of spouse to be excluded from coverage if applicable: _____

13. Occurrence Date or Left Employment Date Mo. Day Yr.: _____

TYPE MEMBERSHIP AND COVERAGE INFORMATION

14. Check type membership for each coverage desired. (Indicate life coverage desired, if applicable, in blocks 15 through 19.)

	a. HEALTH	b. DENTAL
S – Single	☐	☐
F – Family	☒	☒
F – Employee/Children	☐	☐
S – Employee/Spouse	☐	☐

c. REFUSAL OF HEALTH COVERAGE
01 ☐ Other Insurance with BCBS of SC
02 ☐ Insurance with another company
03 ☐ US military coverage
04 ☐ Federally qualified HMO
07 ☐ My spouse's coverage with this group
09 ☐ Other third-party administrator
10 ☐ Planned Administrators Inc.
11 ☐ Non-federally qualified HMO
12 ☐ Covered by Medicare
13 ☐ Covered by CHAMPUS
05 ☐ Other – Explain: _____

15. If Sponsored Membership, give Sponsor's Social Security No.: _____

16. Types and Amounts of Life Insurance Coverage Desired
☐ Life _____ Supplemental:
☐ AD&D _____ ☐ Life _____
☐ Dep. Life _____ ☐ AD&D _____
☐ STD _____ ☐ Dep. Life _____
☐ LTD _____

17. Earnings $ _____ (Amount) (Check One) ☐ Hourly ☐ Weekly ☐ Biweekly ☐ Monthly ☐ Annually

18. Life Class: _____

19. Full Name (Last Name, First, Init.): Relationship
Primary Beneficiary(ies): _____
Contingent Beneficiary(ies): _____
SEE INSTRUCTIONS ON BACK FOR MULTIPLE BENEFICIARY DESIGNATION

20. Job title or description: _____

21. List All Family Members Covered or Affected By a Change — For Contracts That Require Primary Care Physician Selection

Last Name First Initial	Sex	Birthdate Mo. Day Yr.	Primary Care Physician Name	Provider Number	Was This Your Regular Physician?
YOURSELF:					Yes No
Spouse: Sandra Gail Hill	F				Yes No
Social Security No.					
Child: Travis Trent Teffeteller					Yes No
Social Security No.					
Child					Yes No
Social Security No.					
Child					Yes No
Social Security No.					

OTHER INSURANCE INFORMATION

22. Do you or does any member of your family have other health, dental or drug coverage, Federal Employees' Program (FEP) or Medicare? ☐ YES ☒ NO
If Yes: MEDICARE A ☐ Effective Date _____ MEDICARE B ☐ Effective Date _____
A. Family Member's Name _____ and Social Security No. _____
B. Name of Insurance Co. _____ Policy No. _____ Effective Date _____
C. Family Member's Employer _____
D. List Names of Covered Persons 1. _____ 2. _____ 3. _____ 4. _____
E. Please circle each type of service covered by this policy: Hospital, Physician/Medical, Prescription Drugs, Dental, Vision

EMPLOYEE CERTIFICATION

23. Employee Certification – Read back for certification statement. Check box if health statement is attached. ☐
I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION.

9

PDD 8-30

MEMBERSHIP APPLICATION

BLUE CROSS® AND BLUE SHIELD® OF SOUTH CAROLINA, An Independent licensee of the Blue Cross and Blue Shield Association
BLUECHOICE HEALTHPLAN OF SOUTH CAROLINA, A wholly-owned subsidiary of Blue Cross and Blue Shield of South Carolina, An Independent licensee of the Blue Cross and Blue Shield Association
COMPANION LIFE INSURANCE COMPANY, A wholly-owned subsidiary of Blue Cross and Blue Shield of South Carolina.

1. Please indicate reason for Application: ☐ New Subscriber(s) ☒ Coverage Change ☐ Cancel ☐ Miscellaneous
☐ COBRA: ☐ 18-mo. ☐ 29-mo. ☐ 36-mo. (Block 22 must be completed.) ☐ Life Coverage ☒ Yes ☐ No ☐ Transfer Within Your Group From _____
☐ Left Employment ☐ No Conversion ☐ Wants Conversion or Medicare Complementary Info ☐ Deceased ☐ Name Change
☐ Department/Payroll Number Change ☐ Address Change ☐ Beneficiary Change ☐ Social Security Number Change From _____
☐ ID Card Request ☒ Add Dependents ☐ Return From Layoff/Medical Leave ☐ Physician Change ☐ Other Add Spouse

2. EFFECTIVE DATE OF ACTION REQUESTED: MONTH 9 DAY 1 YEAR 06 DATE OF HIRE: MONTH ____ DAY ____ YEAR ____ ELIGIBILITY DATE: MONTH ____ DAY ____ YEAR ____

3. Type Contract: ☐ Preferred Blue ☐ Comprehensive ☐ BlueChoice HealthPlan ☒ HSA ☐ HRA

IDENTIFICATION

4. Employee – Last Name	First	Initial	Home Telephone No.	5. Social Security No.
Hill	Alma	C	. . . 5	. . . - . . - . . . .

6. Mailing Address (Street or P.O. Box)	(City)	(State)	(Zip Code)	(County Code - see back)
7012 Edmund Hwy	Pelion	S.C.	29123	

7. Name of Employer	8. Blue Cross Group Number	9. Dept. No.	10. Payroll No.
	☐☐-☐☐☐☐-☐☐-☐		6383

REASON FOR COVERAGE CHANGE

11. Check appropriate reason; give occurrance date in Block 13:
A ☐ Birth or Adoption C ☐ Divorce F ☐ Attained Reduction Age
B ☐ Death (Name: _____) D ☐ Marriage
E ☒ Other – Explain: Add Spouse

12. Name of spouse to be excluded from coverage if applicable: _____

13. Occurrance Date or Left Employment Date: Mo. _____ Day _____ Yr. _____

TYPE MEMBERSHIP AND COVERAGE INFORMATION

14. Check type membership for each coverage desired. (Indicate life coverage desired, if applicable, in blocks 15 through 19.)

	a. HEALTH	b. DENTAL
S – Single	☐	☐
F – Family	☑	☑
F – Employee/Children	☐	☐
S – Employee/Spouse	☒	☒

c. REFUSAL OF HEALTH COVERAGE
01 ☐ Other insurance with BCBS of SC
02 ☐ Insurance with another company
03 ☐ US military coverage
04 ☐ Federally qualified HMO
07 ☐ My spouse's coverage with this group
09 ☐ Other third-party administrator
10 ☐ Planned Administrators Inc.
11 ☐ Non-federally qualified HMO
12 ☐ Covered by Medicare
13 ☐ Covered by CHAMPUS
05 ☐ Other – Explain: _____

15. If Sponsored Membership, give Sponsor's Social Security No. _____

16. Types and Amounts of Life Insurance Coverage Desired
☐ Life _____ Supplemental:
☐ AD&D _____ ☐ Life _____
☐ Dep. Life _____ ☐ AD&D _____
☐ STD _____ ☐ Dep. Life _____
☐ LTD _____

17. Earnings $ _____ (Amount) (Check One) ☐ Hourly ☐ Weekly ☐ Biweekly ☐ Monthly ☐ Annually

18. Life Class: _____

19. Full Name (Last Name, First, Init.): Relationship
Primary Beneficiary(ies): _____
Contingent Beneficiary(ies): _____
SEE INSTRUCTIONS ON BACK FOR MULTIPLE BENEFICIARY DESIGNATION

20. Job title or description: _____

21. List All Family Members Covered or Affected By a Change — For Contracts That Require Primary Care Physician Selection

Last Name	First	Initial	Sex	Birthdate Mo. Day Yr.	Primary Care Physician Name	Provider Number	Was This Your Regular Physician?	
YOURSELF: Hill	Alma	C.			Dr. J Ford		Yes	No
Spouse Hill	Sandra	G			Dr. Lobel	TN	Yes	No
Social Security No.								
Child Shannon							Yes	No
Social Security No.								
Child Brandy							Yes	No
Social Security No.								
Child Travis							Yes	No
Social Security No.								

OTHER INSURANCE INFORMATION

22. Do you or does any member of your family have other health, dental or drug coverage, Federal Employees' Program (FEP) or Medicare? ☐ YES ☒ NO
If Yes: MEDICARE A ☐ Effective Date _____ MEDICARE B ☐ Effective Date _____
A: Family Member's Name _____ and Social Security No. _____
B: Name of Insurance Co. _____ Policy No. _____ Effective Date _____
C: Family Member's Employer _____
D: List Names of Covered Persons 1. _____ 2. _____ 3. _____ 4. _____
E: Please circle each type of service covered by this policy: Hospital, Physician/Medical, Prescription Drugs, Dental, Vision

EMPLOYEE CERTIFICATION

23. Employee Certification – Read back for certification statement. Check box if health statement is attached. ☐
I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION.
Date: 8-30-06 Signature: Alma C Hill

12

(11575) REV. 7/05 DISTRIBUTION: White - Blue Cross Yellow - Employer Pink - Employee

8-4

MEMBERSHIP APPLICATION

BLUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA, An Independent licensee of the Blue Cross and Blue Shield Association • COMPANION HEALTHCARE, A wholly-owned subsidiary of Blue Cross and Blue Shield of South Carolina, An Independent licensee of the Blue Cross and Blue Shield Association • COMPANION LIFE INSURANCE COMPANY, A wholly-owned subsidiary of Blue Cross and Blue Shield of South Carolina • PREFERRED HEALTH SYSTEMS, INC., A subsidiary of Blue Cross and Blue Shield of South Carolina. Both are independent licensees of the Blue Cross and Blue Shield Association.

1. Please indicate reason for Application: ☐ New Subscriber(s) ☐ Coverage Change ☐ Cancel ☐ Miscellaneous
☐ COBRA: ☐ 18-mo. ☐ 29-mo. ☐ 36-mo. (Block 22 must be completed.) ☐ Life Coverage ☐ Yes ☐ No ☒ Transfer Within Your Group From 609
☐ Left Employment: ☐ No Conversion ☐ Wants Conversion or Medicare Complementary Info. ☐ Deceased ☐ Name Change
☐ Department/Payroll Number Change ☐ Address Change ☐ Beneficiary Change ☐ Social Security Number Change From
☐ ID Card Request ☐ Add Dependents ☐ Return From Layoff/Medical Leave ☐ Physician Change ☐ Other

2. EFFECTIVE DATE OF ACTION REQUESTED: MONTH 9 DAY 1 YEAR 01 — DATE OF HIRE: MONTH ___ DAY ___ YEAR ___ — ELIGIBILITY DATE: MONTH ___ DAY ___ YEAR ___

3. Type Contract: ☐ Preferred Blue ☐ Preferred Blue Select ☐ HMO Blue ☐ BLUE PLUS ☐ CHOICES ☐ Comprehensive ☐ Blue Choice ☐ CHC ☐ Other ___

IDENTIFICATION

4. Employee — Last Name	First	Initial	Home Telephone No.	5. Social Security No.
Morris	Charles	F		- -

6. Mailing Address (Street or P.O. Box)	(City)	(State)	(Zip Code)	(County Code - see back)
734 Elm St	Cola	SC	29205	

7. Name of Employer	8. Blue Cross Group Number	9. Dept. No.	10. Payroll No.
	[1]-[ ][ ][ ][ ]-[02]-[7]	Fire	3964

REASON FOR COVERAGE CHANGE

11. Check appropriate reason; give occurrence date in Block 13:
A ☐ Birth or Adoption
B ☐ Death (Name: ___)
C ☐ Divorce
D ☐ Marriage
E ☐ Other - Explain: Retiring 24½ yrs
F ☐ Attained Reduction Age

12. Name of spouse to be excluded from coverage if applicable:

13. Occurrence Date or Left Employment Date: Mo. 8 Day 30 Yr. 01

TYPE MEMBERSHIP AND COVERAGE INFORMATION

14. Check type membership for each coverage desired. (Indicate life coverage desired, if applicable, in blocks 15 through 19.)

	a. HEALTH	b. DENTAL
S – Single	☒	☐
F – Family	☐	☐
E – Employee/Children	☐	☐
S – Employee/Spouse	☐	☐

c. REFUSAL OF HEALTH COVERAGE
01 ☐ Other insurance with BCBS of SC
02 ☐ Insurance with another company
03 ☐ US military coverage
04 ☐ Federally qualified HMO
07 ☐ My spouse's coverage with this group
09 ☐ Other third-party administrator
10 ☐ Planned Administrators Inc.
11 ☐ Non-federally qualified HMO
12 ☐ Covered by Medicare
13 ☐ Covered by CHAMPUS
05 ☐ Other – Explain: ___

15. If Sponsored Membership, give Sponsor's Social Security No. ___

16. Types and Amounts of Life Insurance Coverage Desired
☐ Life ___ Supplemental
☐ AD&D ___ ☐ Life ___
☐ Dep. Life ___ ☐ AD&D ___
☐ STD ___ ☐ Dep. Life ___
☐ LTD ___

17. Earnings $ ___ (Amount) (Check One) ☐ Hourly ☒ Weekly ☐ Biweekly ☐ Monthly ☐ Annually

18. Life Class

19. Full Name (Last Name, First, Init.): Relationship
Primary Beneficiary(ies):
Contingent Beneficiary(ies):
SEE INSTRUCTIONS ON BACK FOR MULTIPLE BENEFICIARY DESIGNATION

20. Job title or description:

21. List All Family Members Covered or Affected By a Change

Last Name	First	Initial	Sex	Birthdate Mo. Day Yr.	For Contracts That Require Primary Care Physician Selection: Primary Care Physician Name	Provider Number	Was This Your Regular Physician?
YOURSELF							Yes / No
Spouse							Yes / No
Social Security No.					BC/Retirement Office: ✓		
Child					Retiree log in book:		Yes / No
Social Security No.					Keyed to computer: ✓		
Child							Yes / No
Social Security No.							
Child							Yes / No
Social Security No.							

OTHER INSURANCE INFORMATION

22. Do you or does any member of your family have other health, dental or drug coverage, Federal Employees' Program (FEP) or Medicare? ☐ YES ☐ NO
If Yes: MEDICARE A ☐ Effective Date ___ MEDICARE B ☐ Effective Date ___
A. Family Member's Name ___ and Social Security No. ___
B. Name of Insurance Co. ___ Policy No. ___ Effective Date ___
C. Family Member's Employer ___
D. List Names of Covered Persons 1. ___ 2. ___ 3. ___ 4. ___
E. Please circle each type of service covered by this policy: Hospital, Physician/Medical, Prescription Drugs, Dental, Vision

EMPLOYEE CERTIFICATION

23. Employee Certification – Read back for certification statement. Check box if health statement is attached. ☐
I HAVE READ AND UNDERSTAND EACH AND EVERY PART OF THIS ENROLLMENT APPLICATION.

EMPLOYEE CERTIFICATION STATEMENT

I understand that upon acceptance of this application by the insurance company, and so long as I meet the eligibility requirements of the contract with this employer, I will be provided with coverage as specified by the group contract made between my employer and the Corporation. I further understand that I am bound by all elements of the contract with regard to my eligibility for this coverage. I authorize release to the company of my past and future medical records and Medicare Part A and B claims information for claims processing purposes.

If refusing coverage, I understand that if I later wish to enroll in the group plan offered by my employer and I am not with a federally qualified HMO, I must provide satisfactory evidence of insurability.

If enrolling in the HMO, I also agree to the conditions listed below. I also understand that I am required to select a personal physician from the physicians associated with the Corporation for HMO coverage and that I am required to have my physician provide or arrange, in advance, for all the medical services I need except for life-threatening emergencies. I also authorize my employer/group to deduct from my pay and remit the prevailing employee's portion that may be required for the cost of said coverage. I represent that the information on this form is true, correct and complete.

INSTRUCTIONS FOR MULTIPLE BENEFICIARY DESIGNATIONS

A. If a married woman is to be named as beneficiary, indicate her full given name (example: Mary R. Doe, not Mrs. John Doe).

B. If two or more beneficiaries are designated, the proceeds will be distributed equally, unless shares are indicated differently by the insured.

C. When a minor or mentally incompetent person is designated as beneficiary, it will be necessary for a legal guardian to be court appointed before the proceeds can be distributed.

D. If no beneficiary is designated, or there is no living beneficiary at the time of the insured's death, the proceeds will become payable to the estate of the insured.

E. Primary Beneficiary – the person to receive life proceeds, if living, at the time of the insured's death. Contingent Beneficiary – the person to receive life proceeds if no primary beneficiary is living at the time of the insured's death.

For Subscribers That Must Select A Primary Care Physician

THE INFORMATION SUPPLIED ON THE FACE OF THIS FORM AND THE FOLLOWING CONDITIONS FORM PART OF MY CONTRACT WITH THE CORPORATION

- I understand that as a subscriber I am applying for myself and eligible members of my family for healthcare coverage.
- I understand that by enrolling in BLUE PLUS, I am automatically entitled to HMO benefits from Preferred Health Systems, Inc. and medical insurance benefits from Blue Cross and Blue Shield of South Carolina or that by enrolling in CHOICES, I am automatically entitled to HMO benefits from Companion HealthCare and medical insurance benefits from Blue Cross and Blue Shield of South Carolina.
- I may enroll my unmarried children residing in the HMO service area. For purposes of this contract children are defined as my natural or adopted children or children of my spouse by a previous marriage (required by court order) or children residing with me under a legal guardianship. Such children can be covered to age 19 (23, if full-time students) unless my employer has modified this provision or purchased the available extended dependent coverage.
- TO BE ENTITLED TO BENEFITS, MY FAMILY AND I AGREE TO SEEK ALL HEALTHCARE SERVICES THROUGH OUR CHOSEN PRIMARY CARE PHYSICIANS OR FROM OTHER PROVIDERS SPECIFICALLY AUTHORIZED IN ADVANCE BY OUR CHOSEN PRIMARY CARE PHYSICIANS WITH THE EXCEPTION OF GENUINE EMERGENCY SERVICES WHEN IT IS NOT POSSIBLE OR PRACTICAL TO CONTACT OUR CHOSEN PRIMARY CARE PHYSICIANS.
- I authorize the Corporation to obtain from providers of service and hospitals claims information, medical records, or other information relating to my family members and me which are necessary in the administration of my contract. I authorize and consent that the Corporation may disclose any claims information, medical records or other information to any of the Corporation's contractors or any such other third parties as the Corporation deems appropriate.
- I agree that the Corporation has the right of financial recovery at its own expense from any person or organization responsible for injuries to myself or my covered dependents for benefits paid or cost incurred for treatment of such injury. This includes, but is not limited to any benefits payable under Workers' Compensation laws and uninsured motorists benefits. I further agree to cooperate in all matters to secure this right of subrogation.

NOTE: YOU MUST SELECT A PRIMARY CARE PHYSICIAN AT THE TIME OF ENROLLMENT.

15

South Carolina County Codes

01 Abbeville	08 Berkeley	15 Colleton	22 Georgetown	29 Lancaster	36 Newberry	43 Sumter
02 Aiken	09 Calhoun	16 Darlington	23 Greenville	30 Laurens	37 Oconee	44 Union
03 Allendale	10 Charleston	17 Dillon	24 Greenwood	31 Lee	38 Orangeburg	45 Williamsburg
04 Anderson	11 Cherokee	18 Dorchester	25 Hampton	32 Lexington	39 Pickens	46 York
05 Bamberg	12 Chester	19 Edgefield	26 Horry	33 Marion	40 Richland	99 Out-of-state
06 Barnwell	13 Chesterfield	20 Fairfield	27 Jasper	34 Marlboro	41 Saluda	

ATTACHMENT G

CITY OF COLUMBIA

SOUTH CAROLINA

June 1, 2007

Basilides F. Cruz Jr
108 Country Pines Ct
Blythewood SC 29016

Dear Mr. Cruz:

Congratulations on your retirement. According to our records you will be retiring effective 5/21/07. Please be sure the SC Retirement System has counseled you prior to your retirement date. Also, you may be eligible for the City Retirement Bonus. See your department for details.

You have the option of continuing your health insurance under the City of Columbia's Retiree Health Insurance. If you wish to do so, please complete the highlighted sections of the enclosed change application. To avoid health coverage cancellation, the application must be completed and returned within 31 days of the above date in the return envelope.

Under the current policy, the City pays retirees portion of the health premium. Therefore, no monthly payments are necessary. You need only to complete and return the enclosed form to continue your health coverage. Currently, retirees are not eligible for the dental plan. Your dental coverage will end 6/1/07. You may enroll for Dental under COBRA. Blue Cross will notify you.

When you become eligible for Medicare you are expected to take out part A and Part B. It will not be necessary for you to participate in Medicare Part D, the drug coverage, since ours has been shown to be as good or better at no extra cost to you.

Please contact me if you have any questions at 545-3007.

Sincerely,

Mona Holliday

Mona Holliday
Benefits Administrator

retsngl.cov

City of Columbia

SOUTH CAROLINA

October 14, 2005

Joseph A. Floyd
100 Genessee Valley Road
Columbia SC 29223

Dear Mr. Floyd:

Congratulations on your retirement. According to our records you will be retiring effective 9/2/05. Please be sure the SC Retirement System has counseled you prior to your retirement date. Also, you may be eligible for the City Retirement Bonus. See your department for details.

You have the option of continuing your health insurance under the City of Columbia's Retiree Health Insurance. If you wish to do so, please complete the highlighted sections of the enclosed change application. To avoid health coverage cancellation, the application must be completed and returned within 31 days of the above date in the return envelope.

Under the current policy, the City pays retirees' portion of the health premium. Therefore, no monthly payments are necessary. You need only to complete and return the enclosed form to continue your health coverage. Currently, retirees are not eligible for the dental plan. Your dental coverage will end 9/30/05. You may enroll for Dental under COBRA. Blue Cross will notify you.

When you become eligible for Medicare you are expected to take out part A and Part B. Please contact me if you have any questions at 545-3007.

Sincerely,

Mona Holliday

Mona Holliday
Benefits Administrator

retsngl.cov

January 23, 2009

Alma Hill
7012 Edmund Hwy
Pelion, SC 29123

CITY OF COLUMBIA

SOUTH CAROLINA

Dear Mr. Hill:

Congratulations on your retirement. According to our records you will be retiring effective 1/08/09. If you have worked 25 consecutive years you are eligible for the retirement bonus. See your department for details.

You have the option of continuing your health coverage under the City of Columbia Retiree Health Insurance. If you wish to do so, please complete the highlighted sections of the enclosed membership application. To avoid health coverage cancellation, the application must be completed and returned, within 31 days of the above date, in the return envelope.

Under the current policy, the City only pays single coverage health premiums. Therefore, you must make a monthly payment to continue your dependent health coverage. The monthly rate for the health insurance you had while an employee is $73.30. Currently, retirees are not eligible for the dental plan. Your dental coverage will end 2/01/09. You may continue your Dental coverage under COBRA. Blue Cross will notify you of that opportunity.

Blue Cross/Blue Shield collects all retiree payments. You should receive an invoice from Blue Cross indicating the amount due. Your first payment will be due February 1, 2009.

Please remember your dependent coverage is subject to cancellation without notice if premiums are not paid.

When you become eligible for Medicare, you are expected to enroll in part A and Part B. It will not be necessary for you to participate in Medicare Part D, the drug coverage, since the City Health plan has been shown to be as good or better at no extra cost to you. When you become eligible for Medicare the premium amount will be reduced. But you must call our office when you become eligible and send us a copy of your Medicare card so that we may reduce your rate.

Please contact me at 545-3007 if you have any questions.

Sincerely,

Natasha Taylor
Human Resources Benefits Administrator
RETFAM.COV

June 14, 2006

Dear Mr. Smith:

Congratulations on your retirement. According to our records you will be retiring effective 6/30/06 . Please be sure the SC Retirement System has counseled you prior to your retirement date. Also, if you have worked 25 consecutive years you are eligible for the retirement bonus. See your department for details.

You have the option of continuing your health coverage under the City of Columbia's Retiree Health Insurance. If you wish to do so, please complete the highlighted sections of the enclosed membership application. To avoid health coverage cancellation, the application must be completed and returned, within 31 days of the above date, in the return envelope.

Under the current policy, the City only pays single coverage health premiums. Therefore, you must make a monthly payment to continue your dependent health coverage. The monthly rate for the health insurance you had while an employee is $177.30. Currently, retirees are not eligible for the dental plan. Your dental coverage will end 6/30/06 . You may continue your Dental coverage under COBRA. Blue Cross will notify you of that opportunity.

Blue Cross/Blue Shield collects all retiree payments. You should receive a monthly invoice from Blue Cross indicating the amount due. Your first payment will be for the month of August 2006.

Please remember your dependent coverage is subject to cancellation without notice if premiums are not paid.

When you become eligible for Medicare, you are expected to take out part A and Part B. It will not be necessary for you to participate in Medicare Part D, the drug coverage, since ours has been shown to be a good or better at no extra cost to you. At that time your premium amount will be reduced. But you must call our office when you become eligible so that we may reduce your rate.

Please contact me at 545-3007 if you have any questions.

Sincerely,

Mona Holliday
Benefits Administrator
RETFAM.COV

ATTACHMENT H

Record 250

CITY OF COLUMBIA
SOUTH CAROLINA

The "Employee Handbook" will aquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received By:

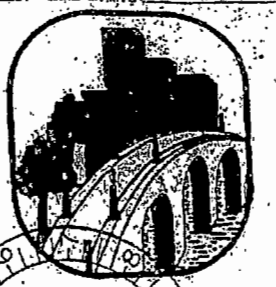
Frank Cruz
Please Print Name

Frank K Cruz
Signature

[redacted]

COLUMBIA

A Capital Place To Work



RECEIVED
JUL 18 1996
FIRE ADMIN.
City of Columbia

The "Employee Handbook" will acquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received by:

Frank Cruz
Please Print Name

Frank Cruz
Signature

The City of Columbia Handbook is not a Contract.

[redacted]

CERTIFICATE OF RECEIPT

Employee Alcohol/Drug Use and Testing Policy

I hereby certify that my employer, the City of Columbia, has given me educational and informational materials with respect to alcohol/drug use and testing requirements adopted by the City of Columbia and contained in part 382 of the Federal Motor Carrier Safety Regulations. I further certify that I have received information explaining my employer's policies with respect to alcohol/drug use and testing requirements.

7-15-96
DATE

Basilides F Cruz
Name (Please Print)

Basilides F. Cruz
Signature

[redacted]

11/16/94 12:53 343-8719 PAGE 02

COLUMBIA

A Capital Place To Be

The "Employee Handbook" will acquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received by:

Frank Cruz
Please Print Name

11-26-94
Date

Frank R Cruz
Signature

The City of Columbia Handbook is not a Contract.

[redacted]

COLUMBIA

A Capital Place To Be

This employee handbook serves as a guideline containing various rules, policies, and procedures relating to your employment. Please sign and return this form to the Human Resources Department.

Received By:

B. Frank Cruz

Please Print Your Name On This Line

B. Frank Cruz

Please Sign Here

1-18-01

Date Signed

The City of Columbia Handbook is not a contract.

EMPLOYEE ACKNOWLEDGMENT FORM

This will acknowledge that I have received my copy of the City of Columbia Employee Handbook and I understand that the City adheres to the Federal Drug-Free Workplace Act of 1988. Since the information, policies, and benefits described herein are subject to change, I acknowledge that revisions to the Employee Handbook may occur. All such changes will be communicated through internal office notices, and I understand that revised information may supersede, modify, or eliminate existing policies.

I understand that my employment status is at-will which means that I, or the City of Columbia can terminate my employment with or without cause, and with or without notice, at any time for any reason. Employees are free to quit at any time and for any reason and the City of Columbia has the same right to terminate the employment relationship. Any statements contrary to this provision do not have any force or effect unless they are in writing and approved by the City Manager.

RECEIVED BY:

B. Frank Cruz
Please Sign on the Above Line

4-17-03
Date Received

310 FIRE: FIGHTING/SUPPRESSION
1035 FIRE BATTALION CHIEF
6325 CRUZ, BASILIDES F

RETURN THE ORIGINAL OF THIS SIGNED FORM TO THE HUMAN RESOURCES DEPARTMENT

City of Columbia
Human Resources Dept.

Memo

To: All City Employees

From: Jacques Gilliam, Human Resources Director

Date: 9/23/2003

Re: Revisions to Employee Handbook

Please read and attach the enclosed Employee Handbook revisions to your Employee Handbook for future reference.

There have been a few small changes to the E-mail Policy – the first paragraph on page 7; on page 20 "Termination of Employee During Initial Introductory Period"; and at the bottom of page 62, there has been a small change to the "Discharge" policy.

Below, please carefully print your name in the space provided, sign and date this and give to your supervisor to return to Human Resources.

Thank you.

B. Frank Cruz

Please PRINT Name

B. Frank Cruz

Signature

10-2-03

Today's Date

CITY OF COLUMBIA

DISCLAIMER: EMPLOYMENT-AT-WILL

NOTHING IN ANY OF THE CITY'S PERSONNEL POLICIES SHALL BE DEEMED TO CONSTITUTE A CONTRACT OF EMPLOYMENT AND ALL EMPLOYEES OF THE CITY ARE EMPLOYEES-AT-WILL WHO MAY QUIT AT ANY TIME FOR ANY REASON AND WHO MAY BE TERMINATED AT ANY TIME FOR ANY OR NO REASON. NO ORAL OR WRITTEN PROMISES OR REPRESENTATION BY A DEPARTMENT DIRECTOR, DIVISION HEAD, SUPERVISOR WILL CHANGE THE AT-WILL STATUS OF AN EMPLOYEE. ONLY THE CITY MANAGER HAS AUTHORITY TO ENTER INTO CONTRACTS OF EMPLOYMENT AND ANY SUCH CONTRACTS MUST BE IN WRITING AND SIGNED BY THE CITY MANAGER.

EMPLOYMENT WITH THE CITY OF COLUMBIA IS ENTERED INTO VOLUNTARILY AND THE EMPLOYEE IS FREE TO TERMINATE HIS EMPLOYMENT, AT-WILL AT ANY TIME, WITH OR WITHOUT NOTICE OR CAUSE. THE CITY MAY TERMINATE THE EMPLOYMENT RELATIONSHIP WITH THE EMPLOYEE, AT-WILL AT ANY TIME, WITH OR WITHOUT NOTICE OR CAUSE.

THE CITY RESERVES THE RIGHT TO REVISE, SUPPLEMENT, OR RESCIND ANY POLICIES OR PORTION OF THE EMPLOYEE HANDBOOK, FROM TIME TO TIME, AS IT DEEMS APPROPRIATE, IN ITS SOLE AND ABSOLUTE DISCRETION.

B. Frank Cruz
EMPLOYEE NAME (PLEASE PRINT)

B. Frank Cruz
EMPLOYEE SIGNATURE

4-20-04
DATE

CITY OF COLUMBIA

DISCLAIMER: EMPLOYMENT-AT-WILL

NOTHING IN THIS HANDBOOK OR ANY OF THE CITY'S PERSONNEL POLICIES SHALL BE DEEMED TO CONSTITUTE A CONTRACT OF EMPLOYMENT AND ALL EMPLOYEES OF THE CITY ARE EMPLOYEES-AT-WILL WHO MAY QUIT AT ANY TIME FOR ANY REASON AND WHO MAY BE TERMINATED AT ANY TIME FOR ANY OR NO REASON. NO ORAL OR WRITTEN PROMISES OR REPRESENTATION BY A DEPARTMENT DIRECTOR, DIVISION HEAD SUPERVISOR WILL CHANGE THE AT-WILL STATUS OF AN EMPLOYEE. ONLY THE CITY MANAGER HAS AUTHORITY TO ENTER INTO CONTRACTS OF EMPLOYMENT AND ANY SUCH CONTRACTS MUST BE IN WRITING AND SIGNED BY THE CITY MANAGER.

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Frank Cruz
EMPLOYEE NAME (PLEASE PRINT)

Frank Cruz
EMPLOYEE SIGNATURE

12-10-04
DATE

CITY OF COLUMBIA

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B. Frank CRUZ
EMPLOYEE NAME (PLEASE PRINT)

Basilio F. Cruz
EMPLOYEE SIGNATURE

June 14, 2004
DATE

923

PAYROLL REDUCTION AUTHORIZATION

ENTERED MAR 3 0 1998

C8820 — Payroll Center / Code

Sub-Entity / Code

Effective Date 4-5-98 (Pay Period Ending Date)

4221/2

Social Security No.

Name Joseph (First) A (Initial) Floyd (Last)

STATE OF SOUTH CAROLINA
DEFERRED COMPENSATION PLAN

	Amount of Deferral	Mode
401(k)	$	☐ Weekly
457	$ 110.00	☐ Biweekly
403(b)	$	☑ Semi-monthly
Total Deferral:	$ 110.00	☐ Monthly
		☐ Other

I authorize the State of South Carolina or its political subdivisions to reduce my salary by the above amount for credit to my deferred account in the South Carolina Public Employees Deferred Compensation Program. This reduction will be made AFTER employee contributions to the S.C. Retirement System and Social Security Administration. This reduction will begin on the pay period specified above and will continue until otherwise notified as authorized by the Deferred Compensation Program.

3/19/98 — Date

Employee Signature

SC-PRA 195

Authorized Agency Signature

CITY OF COLUMBIA
SOUTH CAROLINA

TO: Joseph A. Floyd

DIVISION: Fire Department

DATE: July 15, 1977

This booklet will aquaint you with City of Columbia employee benefits and employment policies.

Questions you may have regarding the material in this booklet should be discussed with your supervisior. If he cannot answer your questions, he will get a reply for you.

Please sign the bottom part of this letter and return this letter to the Employment Office.

TO: City Hall Employment Office

3

Booklet "YOUR CAREER WITH THE CITY OF COLUMBIA" has been received.

A. L. Floyd

PAYROLL REDUCTION AUTHORIZATION 310-4001

City Columbia C8820
Department Name — Code

Fire Department — Code — Effective Date (Pay Period Ending Date) 10-11-81
Division (Agency)

Social Security No. _____

Name Joseph — A — Floyd
First — Initial — Last

REDUCTION ACTION REQUESTED (✓)	
☑ INITIATE	☐ INCREASE
☐ CANCEL	☐ DECREASE

State of South Carolina Deferred Compensation Plan

OLD $
NEW $ 17.00

☐ The above current deduction amount indicates a "Balloon" that will decrease to _____

☑ Biweekly
☐ Monthly
☐ Semi-Monthly
☐ Weekly
☐ Other

I authorize the State of South Carolina or its political subdivisions to reduce my salary by the above amount for credit to my deferred account in the South Carolina Public Employees Deferred Compensation Plan. This reduction will be made AFTER employee contributions to the S. C. Retirement System and Social Security Administration. This reduction will begin on the pay period specified above and will continue until otherwise notified as authorized by the Deferred Compensation Plan.

9-1-81
Date

Joseph A. Floyd
Employee Signature

Authorized Agency Signature

SC-003

0310 04221 0

FLOYD JOSEPH A
1005 D AVENUE
WEST COLUMBIA S C

DATE: SEP 11 1981

Attached is the revised 1981 Employee Handbook. Please sign below indicating receipt of your copy.

Joseph A. Floyd
(Signed)

Please return this receipt to the Personnel Office.

[redacted]

CITY OF COLUMBIA
SOUTH CAROLINA

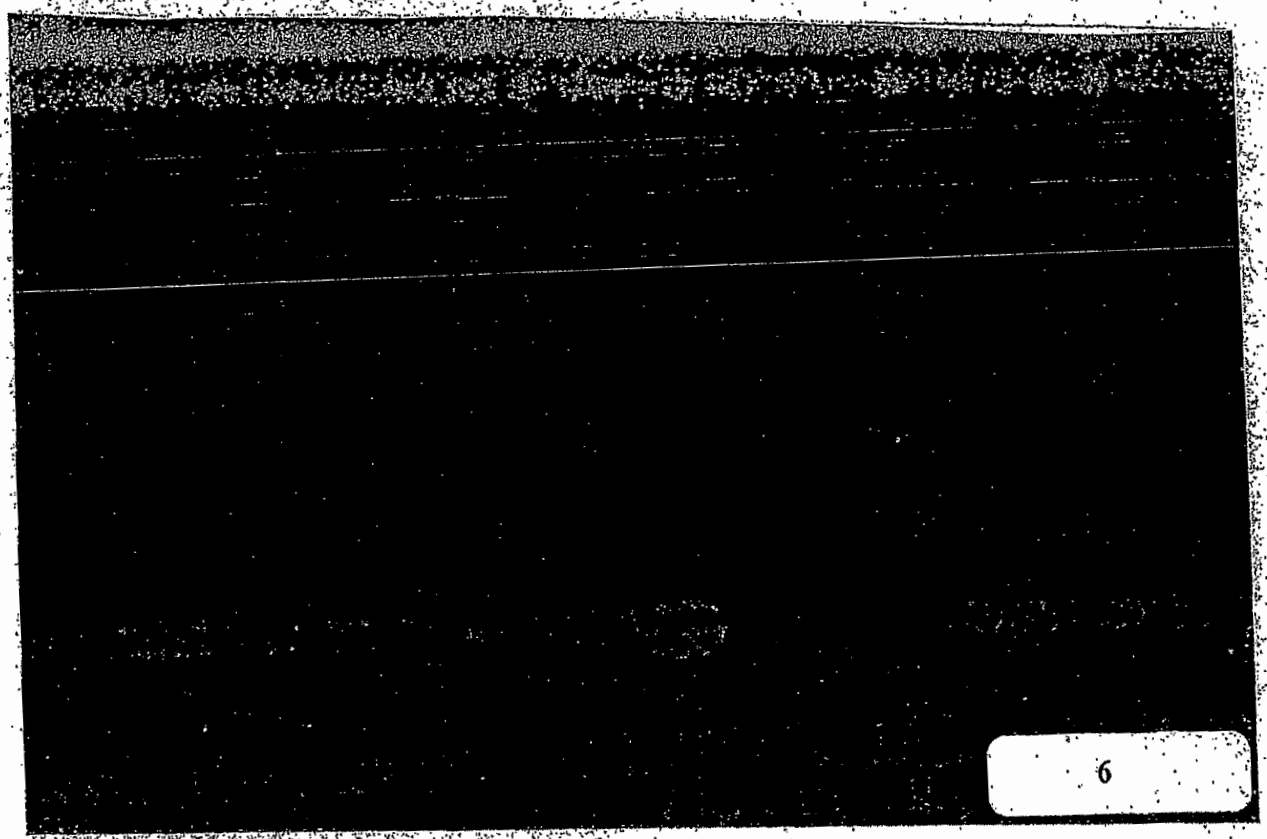
The "Employee Handbook" will aquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received By:

Joseph B. Floyd — Joseph B. Floyd

Please Print Name — Signature

MAY 1988 RECEIVED



COLUMBIA

A Capital Place To Work

RECEIVED
JUL - - 1991
FIRE ADMN.

The "Employee Handbook" will acquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received by:

Joseph A. Floyd
Please Print Name

Joseph A. Floyd
Signature

The City of Columbia Handbook is not a Contract.

COLUMBIA

A Capital Place To Be

The "Employee Handbook" will acquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received by:

Joseph A. Floyd Sr — 25 Nov 95

Please Print Name — Date

Joseph A. Floyd Sr.

Signature

The City of Columbia Handbook is not a Contract.

DATE: October 21, 1985

Attached is the revised 1985 Employee Handbook. Please sign below indicating receipt of your copy.

0310 04221 0

FLOYD JOSEPH A
7916 TEAGUE ROAD
COLUMBIA S C

Joseph A. Floyd
(Signed)

Please return this receipt to the Personnel Office.

COLUMBIA

A Capital Place To Be

This employee handbook serves as a guideline containing various rules, policies, and procedures relating to your employment. Please sign and return this form to the Human Resources Department.

Received By:

Joseph A. Floyd, Sr

Please Print Your Name On This Line

Joseph A Floyd

Please Sign Here

1-17-07

Date Signed

The City of Columbia Handbook is not a contract.

Rev. 2/10-01-2002 | Employee Acknowledgement Form | NOT A CONTRACT

EMPLOYEE ACKNOWLEDGMENT FORM

This will acknowledge that I have received my copy of the City of Columbia Employee Handbook and I understand that the City adheres to the Federal Drug-Free Workplace Act of 1988. Since the information, policies, and benefits described herein are subject to change, I acknowledge that revisions to the Employee Handbook may occur. All such changes will be communicated through internal office notices, and I understand that revised information may supersede, modify, or eliminate existing policies.

I understand that my employment status is at-will which means that I, or the City of Columbia can terminate my employment with or without cause, and with or without notice, at any time for any reason. Employees are free to quit at any time and for any reason and the City of Columbia has the same right to terminate the employment relationship. Any statements contrary to this provision do not have any force or effect unless they are in writing and approved by the City Manager.

RECEIVED BY:

Please Sign on the Above Line

4-4-03
Date Received

300 FIRE: ADMINISTRATION
1047 ASST FIRE CHIEF/ADMIN
4221 FLOYD, JOSEPH A

RETURN THE ORIGINAL OF THIS SIGNED FORM TO THE HUMAN RESOURCES DEPARTMENT

City of Columbia
Human Resources Dept.

Memo

To: All City Employees

From: Jacques Gilliam, Human Resources Director

Date: 9/23/2003

Re: Revisions to Employee Handbook

Please read and attach the enclosed Employee Handbook revisions to your Employee Handbook for future reference.

There have been a few small changes to the E-mail Policy – the first paragraph on page 7; on page 20 "Termination of Employee During Initial Introductory Period"; and at the bottom of page 62, there has been a small change to the "Discharge" policy.

Below, please carefully print your name in the space provided; sign and date this and give to your supervisor to return to Human Resources.

Thank you.

Joseph A. Flynn

Please PRINT Name

Joseph A Flynn

Signature

10-30-03

Today's Date

Record 267

CITY OF COLUMBIA
SOUTH CAROLINA

The "Employee Handbook" will aquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received By:

Arthur C. Gilliam III
Please Print Name

Arthur C. Gilliam III
Signature

COLUMBIA

A Capital Place To Work

RECEIVED
JUN 28 1991
FIRE ADMIN

The "Employee Handbook" will acquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received by:

A C Gillam III — Please Print Name

Signature

The City of Columbia Handbook is not a Contract.

54

EMPLOYEE ACKNOWLEDGEMENT OF DRUG FREE WORKPLACE ACT

I have received a copy of a statement that the unlawful manufacture, use, distribution or possession of drugs or other controlled substances in the workplace is absolutely prohibited. I further understand and agree that I must notify the City if I am convicted in a criminal court of violating any drug laws where such a violation occurred in the workplace. This notification must be given no more than five days after the conviction. I agree that my compliance with these terms of my employment is required as long as I work for the City of Columbia. My failure to comply will result in discipline up to and including discharge.

0310 05958 0

3/24/89
Date

Signature

GILLAM ARTHUR C
2722 GLENWOOD ROAD
DDDDDDDDDDDDDDDDDDD
COLUMBIA S C

New Hires Emp. No. _____

COLUMBIA

A Capital Place To Work

Received
JUN 28 1991
FIRE ADMIN

The "Employee Handbook" will acquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received by:

A.C. Gillam

Please Print Name

Signature

PAYROLL REDUCTION AUTHORIZATION

310-5958 12-1-4

Cola. Fire. Dept. (Payroll Center) C8820 (Code)

12/7/92 as

(Sub Entity) (Code) Effective Date (Pay Period Ending Date) 12-27-92

Social Security No. _____

Name Arthur (First) C. (Initial) Gillam III (Last)

STATE OF SOUTH CAROLINA
DEFERRED COMPENSATION PLAN

	Amount of Deferral
401(k)	$ 0
457	$ 125.00
403(b)	$ 0
Total Deferral:	$ 125.00

Mode
- ☐ Weekly
- ☒ Biweekly
- ☐ Semi-monthly
- ☐ Monthly
- ☐ Other _____

I authorize the State of South Carolina or its political subdivisions to reduce my salary by the above amount for credit to my deferred account in the South Carolina Public Employees Deferred Compensation Program. This reduction will be made AFTER employee contributions to the S. C. Retirement System and Social Security Administration. This reduction will begin on the pay period specified above and will continue until otherwise notified as authorized by the Deferred Compensation Program.

11-30-92 (Date) per reg. (Employee Signature)

(Authorized Agency Signature)

SC-PRA195 (1-87)

11/16/94 12:53 343-8719 PAGE 02

COLUMBIA
A Capital Place To Be

The "Employee Handbook" will acquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received by:

Arthur C Gillam III
Please Print Name

11/23/94
Date

Arthur C Gillam III
Signature

COLUMBIA

A Capital Place To Be

This employee handbook serves as a guideline containing various rules, policies, and procedures relating to your employment. Please sign and return this form to the Human Resources Department.

Received By:

Arthur C. Gilliam III

Please Print Your Name On This Line

Cam Gilliam

Please Sign Here

1/17/01

Date Signed

The City of Columbia Handbook is not a contract.

Rev. 2/10-01-2002 | Employee Acknowledgement Form | NOT A CONTRACT

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RECEIVED BY:

Please Sign on the Above Line ↑ | Date Received ↑ 4/16/03

300 FIRE: ADMINISTRATION
1036 FIRE BATTALION CHIEF/ADM
595B GILLAM, ARTHUR C

The City of Columbia Employee Handbook is Not a Contract.

RETURN THE ORIGINAL OF THIS SIGNED FORM TO THE HUMAN RESOURCES DEPARTMENT

City of Columbia
Human Resources Dept.

Memo

To: All City Employees

From: Jacques Gilliam, Human Resources Director

Date: 9/23/2003

Re: Revisions to Employee Handbook

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There have been a few small changes to the E-mail Policy – the first paragraph on page 7; on page 20 "Termination of Employee During Initial Introductory Period"; and at the bottom of page 62, there has been a small change to the "Discharge" policy.

Below, please carefully print your name in the space provided, sign and date this and give to your supervisor to return to Human Resources.

Thank you.

Arthur C Gilliam III

Please PRINT Name

Signature

9/30/03

Today's Date

COLUMBIA

A Capital Place To Be

This employee handbook serves as a guideline containing various rules, policies, and procedures relating to your employment. Please sign and return this form to the Human Resources Department.

Received By:

Alma C. Hill

Please Print Your Name On This Line

Alma C. Hill

Please Sign Here

1-24-2001

Date Signed

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CITY OF COLUMBIA

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Alma C. Hill

EMPLOYEE NAME (PLEASE PRINT)

John C. Hill

EMPLOYEE SIGNATURE

6-15-04

DATE

[redacted]

CITY OF COLUMBIA
SOUTH CAROLINA

TO: Barry N. Martin

DIVISION: Public Safety Fire - Fire Fighting DATE: 3-13-73

This booklet will aquaint you with City of Columbia employee benefits and employment policies.

Questions you may have regarding the material in this booklet should be discussed with your supervisior. If he cannot answer your questions, he will get a reply for you.

Please sign the bottom part of this letter and return this letter to the Employment Office.

TO: City Hall Employment Office

Booklet "YOUR CAREER WITH THE CITY OF COLUMBIA" has been received.

Barry N. Martin
(signed)

[redacted]

[redacted]

CITY OF COLUMBIA
SOUTH CAROLINA

The "Employee Handbook" will aquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received By:

Barry Martin
Please Print Name

Barry S. Martin
Signature

[redacted]

Record 278

[redacted]

DATE: SEP 11 1981

Attached is the revised 1981 Employee Handbook. Please sign below indicating receipt of your copy.

B.N. [illegible]
(Signed)

Please return this receipt to the Personnel Office.

3

CITY OF COLUMBIA
SOUTH CAROLINA

TO: Charles F. Morris

DIVISION: Fire Department DATE: January 17, 1977

This booklet will aquaint you with City of Columbia employee benefits and employment policies.

Questions you may have regarding the material in this booklet should be discussed with your supervisior. If he cannot answer your questions, he will get a reply for you.

Please sign the bottom part of this letter and return this letter to the Employment Office.

TO: City Hall Employment Office

Booklet "YOUR CAREER WITH THE CITY OF COLUMBIA" has been received.

Charles F. Morris
(signed)

0310 03964 0

MORRIS CHARLES F
182 S MARION ST
COLUMBIA S C

DATE: SEP 1 1 1981

Attached is the revised 1981 Employee Handbook. Please sign below indicating receipt of your copy.

C F Morris
(Signed)

Please return this receipt to the Personnel Office.

CITY OF COLUMBIA
SOUTH CAROLINA

The "Employee Handbook" will aquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

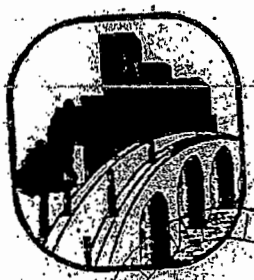
Received By:

Charles F. Morris — Please Print Name

Charles F. Morris — Signature

COLUMBIA

A Capital Place To Work



RECEIVED
JUL - 1991
FIRE ADMN.

The "Employee Handbook" will acquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received by:

C F Morris
Please Print Name

C F Morris
Signature

The City of Columbia Handbook is not a Contract.

COLUMBIA

A Capital Place To Be

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Received by:

C F Morris
Please Print Name

2-15-95
Date

C F Morris
Signature

The City of Columbia Handbook is not a Contract.

COLUMBIA

A Capital Place To Be

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Received by:

_____
Please Print Name

_____
Date

_____
Signature

The City of Columbia Handbook is not a Contract.

(CUT HERE)

COLUMBIA
A Capital Place To Be

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Received by:

Charles F. Morris
Please Print Name

C F Morris
Signature

4/3/98
Date

The City of Columbia Handbook is *not* a contract.

[redacted]

DATE: SEP 11 1981

Attached is the revised 1981 Employee Handbook. Please sign below indicating receipt of your copy.

Joseph A Smith
(Signed)

Please return this receipt to the Personnel Office.

[redacted]

[redacted]

Joseph A.

CITY OF COLUMBIA
SOUTH CAROLINA

The "Employee Handbook" will aquaint you with the City of Columbia employee benefits and employment policies. Questions you may have regarding material in this booklet should be discussed with your supervisor. Please sign and return this form to the Personnel Department.

Received By:

JOSEPH Smith — Joseph Smith

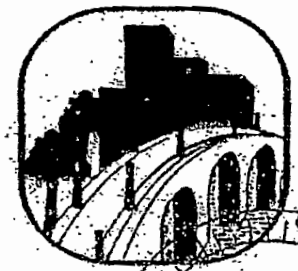
Please Print Name — Signature

[redacted]

Record 287

COLUMBIA

A Capital Place To Work



RECEIVED
JUL 26 1991
FIRE ADMN.
CITY OF COLUMBIA

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Received by:

JOSEPH SMITH
Please Print Name

Joseph Smith
Signature

The City of Columbia Handbook is not a Contract.

[redacted]

COLUMBIA

A Capital Place To Be

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Received by:

JOSEPH SMITH
Please Print Name

Nov 22, 1994
Date

Joseph A Smith
Signature

The City of Columbia Handbook is not a Contract.

[redacted]

(CUT HERE)

COLUMBIA
A Capital Place To Be

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Received by:

JOSEPH A SMITH
Please Print Name

Signature

4/8/98
Date

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EMPLOYEE ACKNOWLEDGMENT FORM

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RECEIVED BY:

Please Sign on the Above Line

4/7/07
Date Received

323 FIRE: COUNTY FIRE ADMIN
047 ASST FIRE CHIEF/ADMIN
734 SMITH, JOSEPH A

RETURN THE ORIGINAL OF THIS SIGNED FORM TO THE HUMAN RESOURCES DEPARTMENT

CITY OF COLUMBIA

DISCLAIMER: EMPLOYMENT-AT-WILL

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Joseph A Smith

EMPLOYEE NAME (PLEASE PRINT)

EMPLOYEE SIGNATURE

4/20/04

DATE

CITY OF COLUMBIA

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Joseph A Smith

EMPLOYEE NAME (PLEASE PRINT)

EMPLOYEE SIGNATURE

6/12/2011

DATE

ATTACHMENT I

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4005097

Larry Strickland
Derilous L Dimery
PLAINTIFF(S)

City Of Columbia
DEFENDANT(S)

Submitted by: _____ Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

RICHLAND COUNTY FILED 2016 AUG -4 AM 10:38 JEANETTE W. McBRIDE C.C.C. & R.M.C.

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code 2756 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of August, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

William E. Applegate IV
Nancy Bloodgood
W. Allen Nickles III
Lucy Clark Sanders

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCANNED

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL DISTRICT
Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith, Plaintiffs, v. City of Columbia, Defendant.	Civil Action File No.: 2009-CP-40-05680
Larry Strickland, Denious L. Dimery and Bailey G. McClinton, Plaintiffs, vs. City of Columbia, Defendant.	Civil Action File No.: 2013-CP-40-05097

RICHLAND COUNTY
FILED
2016 AUG -2 PM 3:5
JEANNETTE W. McBRIDE
C.C.P. & G.S.

ORDER DENYING CLASS CERTIFICATION

Strickland Plaintiffs seek class certification. Having considered the arguments and materials presented by both parties, for the following reasons I find that Plaintiffs cannot establish the commonality and typicality elements necessary to pursue class claims. Accordingly, the motion to certify is denied and the Strickland case is confined to individual claims.

PROCEDURAL BACKGROUND

The Bishop case originally involved fourteen individuals who retired from employment

1075 JAG

SCANNED

with the City of Columbia ("City") prior to July 1, 2009. These retirees brought a number of claims against the City seeking reinstatement of free health insurance coverage and compensation for any payments made for health insurance. The Honorable James R. Barber, III granted summary judgment in favor of the City on all claims. Seven of the fourteen plaintiffs filed an appeal from this decision. The South Carolina Court of Appeals upheld summary judgment on all causes of action with the limited exceptions of promissory estoppel and equitable estoppel based upon alleged verbal "promises and representations made by City employees." The Court of Appeals found that the seven retirees had provided a "scintilla of evidence" that they reasonably relied upon promises of free health insurance to their detriment. The Court ruled that there remains "a question of fact" as to whether the alleged representations to these retirees were authorized and reasonably relied upon to their detriment. This issue alone was remanded to the Court of Common Pleas for further review. See, Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013)

The Strickland case was filed by three retired City firefighters seeking equitable relief individually and on behalf of two categories of former employees. Putative "Class A" is defined as former employees over the age of sixty-five receiving Medicare. Putative "Class B" is defined as former employees who have not yet reached the age of sixty-five.[1] The Bishop and Strickland cases have been consolidated for trial. This order renders discovery complete as to both cases.

LEGAL ANALYSIS

Our Supreme Court summarized the elements necessary to obtain class certification in Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 20-21, 577 S.E.2d 190, 200 (2003) The requirements to certify a class under Rule 23(a) SCRP are: (1) the class must be "so numerous that joinder of all members is impracticable;" (2) there must be "questions of law or fact

[1] Plaintiffs voluntarily withdrew claims on behalf of "Class B."

2 of 5

SCANNED

common to the class;" (3) the "claims or defenses of the representative parties [must be] typical of the claims or defenses of the class;" (4) the representative parties [must] fairly and adequately protect the interests of the class; and (5) "the amount in controversy [must] exceed one hundred dollars for each member of the class." Rule 23(a), SCRCP.

Failure to satisfy even one pre-requisite is fatal to class certification.[2] As noted in Gardner, "in practical terms," the commonality criteria requires the class proponent to "articulate the existence of significant common legal or factual issues which bind the proposed class together." Id. at 21, 577 S.E.2d at 200 (internal quotes omitted) Accordingly, "[a] representative class cannot exist where the court must investigate each plaintiff's prejudice claim where it is one of the two predominant issues in the case." Id. at 22, 577 S.E.2d at 201; see also Comcast Corp. v. Behrend, ___ U.S. ___, 133 S. Ct. 1426 (2013); Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011) (reversing class certifications because the plaintiffs were obligated to demonstrate individualized grounds for relief)

Like their counterparts in Bishop, Plaintiffs here must offer individual proof that representations were made, the representations were authorized, they relied upon the representations, reliance was reasonable, they acted in reliance, their actions were reasonable and they were injured. See generally, Barnes v. Johnson, 402 S.C. 458, 474-475, 742 S.E.2d 6, 14-15 (Ct. App. 2013); Craft v. South Carolina Commission for the Blind, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009). In Craft, the Court of Appeals found that the Commission for the Blind, through its agents, made unambiguous promises, Craft reasonably relied upon the promises and the Commission expected Craft to rely upon the promises. Craft's estoppel claim failed, however, because he could not demonstrate that an injury resulted from his reliance. Specifically, Craft could not show that he lost a better opportunity based upon his reliance on the

[2] The City does not challenge numerosity, adequacy of representation or amount in controversy.

SCANNED

Commission's promise.

To recover under Plaintiffs' theories, each affected retiree would be required to demonstrate that he actually received and relied upon an authorized representation. In addition, each claimant would need to demonstrate how he was prejudiced or how his position was made worse in reliance on a promise by the City. Shared circumstance is insufficient to support class where the issue of "prejudice" must be determined individually. See Gardner at 21-22, 577 S.E.2d at 201; see also, Amchem Products, Inc. v. Windsor, 521 U.S. 591 (1997) (rejecting settlement class certification due to predominant questions affecting individual members)

Plaintiffs' deposition testimony demonstrates the injuries alleged are not common and there is no "typical" plaintiff. For example, Plaintiff Dimery did not apply for any other positions while serving as a City firefighter. Dimery further admitted that his schedule as a firefighter allowed him to "moonlight at home," to be with his family and to "make up the difference" in his salary. Plaintiff McClinton worked part time for a construction company during his employment as a City firefighter. He also acted as a general contractor. Like Dimery, McClinton did not seek any other public employment and offered no testimony of declining more favorable employment. McClinton conceded that he has no "personal knowledge" concerning detrimental reliance on free health insurance by other firefighters. Plaintiff Strickland operated a boarding stable and performed floor covering and countertop work while employed by the City as a firefighter. Strickland testified that he was "more or less" offered a position in the 1970s with Southern Railroad by his brother-in-law. Strickland did not examine any pension or health plan offered by Southern Railroad and never pursued any other alternative employment. Like McClinton, Strickland has no personal knowledge that other employees rejected offers to leave the City's employment for better pay or benefits in reliance on permanent

475 jrg

SCANNED

free health insurance.

As illustrated by their deposition testimony, Plaintiffs' individual claims cannot be advanced by information relating to alleged actual or detrimental reliance on promises made to others. While consolidation of the Bishop and Strickland cases may result in judicial economy, treating individual claims as a class action is incompatible with the rigors of Rule 23. Moreover, the individualized examination that will be required as to both the claims and defenses presented negates any benefit afforded by class treatment. See, O'Quinn v. Beach Assocs., 272 S.C. 95, 104, 249 S.E.2d 374, 378 (1978) (the purpose of class action is to avoid the necessity of requiring each member of the class to prove the elements of the cause of action)

CONCLUSION AND ORDER

Each Plaintiff in this proceeding must prove all elements necessary to obtain relief under the doctrines of promissory and equitable estoppel. These individual requirements render class certification inappropriate. Plaintiffs' motion to certify class therefor is denied.

AND IT IS SO ORDERED.

Tanya A. Gee

Tanya A. Gee, Judge
Fifth Judicial Circuit

August 2, 2016
Columbia, South Carolina

SCANNED

ATTACHMENT J

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4005097

Larry Strickland
Denlous L Dimery
PLAINTIFF(S)

City Of Columbia
DEFENDANT(S)

Submitted by: _____ Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

RICHLAND COUNTY FILED 2017 APR 25 PM 2:25

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge: _____ Judge Code 1768 Date: _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 26 day of April, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

William E. Applegate IV.
Lucy Clark Sanders

Nancy Bloodgood

W. Allen Nickles III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL DISTRICT
COUNTY OF RICHLAND	)	
Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles E. Morris, Sr., and Joseph A. Smith,	)	Civil Action File No.: 2009-CP-40-05680
Plaintiffs,	)	
v.	)	
City of Columbia,	)	
Defendant.	)	
Larry Strickland, Denious L. Dimery and Bailey G. McClinton,	)	Civil Action File No.: 2013-CP-40-05097
Plaintiffs,	)	
vs.	)	
City of Columbia,	)	
Defendant.	)	

RICHLAND COUNTY FILED
2017 APR 25 PM 1:25
JEANETTE W. GRANT
CLERK OF COURT

ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND CLASS CERTIFICATION ORDER

By motion dated August 16, 2016, Plaintiffs moved to alter or amend the order denying class certification issued by the Honorable Tanya A. Gee on August 4, 2016. Plaintiffs argue that Judge Gee erred in holding that they do not meet the commonality and typicality requirements for class certification.

STANDARD OF REVIEW

To alter or amend a judgment requires demonstration that the court misapprehended controlling law or that a "previous argument" requires attention. In this instance, Plaintiffs have identified no controlling authority overlooked or misapprehended in the order denying class

certification.

CONCLUSION AND ORDER

Counsel for the parties appeared before me on March 21, 2017. Having considered the memoranda, orders and argument relating to this motion, I find denial of class certification is consistent with the controlling law of this State that individualized examinations necessary to address the detrimental reliance (injury) element of Plaintiffs' estoppel claims negate the benefit of class treatment. See, Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003); O'Quinn v. Beach Assocs., 272 S.C. 95, 104, 249 S.E.2d 374, 378 (1978); Benjamin v. S.C. National Bank of Charleston, 269 S.C. 250, 253-254, 237 S.E.2d 72, 73-74 (1977). Accordingly, Plaintiffs' motion to alter or amend the order denying class certification is denied.

AND IT IS SO ORDERED.

Jean H. Toal
Special Circuit Court Judge

March 19, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Paula Bregovi, the undersigned employee of Nickles Law Firm, LLC, attorneys for the Defendant, hereby certify that I have served the foregoing Defendant's Memorandum in Support of Motion for Summary Judgment as to Bishop, et al. by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

Nancy Bloodgood, Esquire
Lucy C. Sanders, Esquire
Bloodgood & Sanders, LLC
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464

William E. Applegate, IV, Esquire
Douglas E. Jennings, Esquire
Yarborough Applegate, LLC
291 East Bay Street, Floor 2
Charleston, SC 29401

RICHLAND COU
FILED
2017 DEC 27 PM 12:14
CLERK OF COURT

This 27th day of December, 2017.

Paula Bregovi

Columbia, South Carolina

NICKLES LAW FIRM, LLC
- ATTORNEYS AT LAW -
1122 Lady Street, Suite 610
Columbia, South Carolina 29201

W. Allen Nickles, III

Telephone: (803) 779-8080
Facsimile: (803) 256-1816
Email: wanickles@nickleslaw.com

December 27, 2017

Via Hand Delivery
The Hon. Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, South Carolina 29201

Re: Kirby L. Bishop, et al. v. City of Columbia
Civil Action No.: 2009-CP-40-5680;

Larry Strickland, et al. v. City of Columbia
Civil Action No.: 2013-CP-40-05097

Dear Ms. McBride:

Enclosed for filing, please find Defendant's Memorandum in Support of Motion for Summary Judgment in each of the above-referenced cases. Please file the originals and return the extra, clocked-in copies with the bearer. Thank you for your cooperation in this matter.

Sincerely,

W. Allen Nickles, III

WAN/pfb
Enclosures
cc: Nancy Bloodgood, Esquire
William E. Applegate, IV, Esquire
File #: 15-205

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ~~RICHLAND~~ SUMTER)

Larry Strickland, Denious L. Dimery, and Bailey G. McClinton,
Plaintiff(s)

vs.

City of Columbia,
Defendant(s)

RECORDED IN ERROR
2013 OCT 17 PM 3:22
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CIVIL ACTION COVERSHEET
2013-CP-43-1026

2013CP4005097

Submitted By: William E. Applegate IV
Address: Yarborough Applegate LLC
291 East Bay Street, Floor 2, Charleston, SC 29401

SC Bar #: 70544
Telephone #: 843-972-0150
Fax #: 843-277-6691
Other:
E-mail: william@yarboroughapplegate.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

RICHLAND COUNTY FILED
2013 AUG 27 AM 10:22
JEANETTE W. BRIDGE
C.C.P. & G.S.

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☒ Other (199)

promissory estoppel

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-CP-___-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts - Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** 6/13/13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

RECORDED
2013 JUN 17 PM 3:22
UNLOCKED IN ERROR
JEANETTE W. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND) Case No.: 13-CP-43-1026

LARRY STRICKLAND, DENISE DIMERY, and BAILEY G. McCLINTON,

PLAINTIFFS,

vs.

CITY OF COLUMBIA,

DEFENDANT.

SUMMONS

RICHLAND COUNTY
FILED
2013 AUG 27 AM 10:22
JEANETTE W. McBRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber(s) at their office at 291 East Bay Street, Floor 2, Charleston, South Carolina 29401 within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to appear and defend by filing an answer to the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Signature page to follow

YARBOROUGH APPLEGATE LLC
291 East Bay Street, Floor 2
Charleston, SC 29401
843-972-0150 office
843-277-6691 fax
william@yarboroughapplegate.com
douglas@yarboroughapplegate.com

William E. Applegate IV, Esquire
Douglas E. Jennings, Esquire

6-13, 2013
Charleston, South Carolina

And

FOSTER LAW FIRM, LLC
Nancy Bloodgood, Esquire
Lucy C. Sanders, Esquire
895 Island Park Drive, Suite 202
Charleston, SC 29492
843-972-0313 office
888-519-0934 fax
nbloodgood@fosterfoster.com
lsanders@fosterfoster.com
Attorneys for the Plaintiff

RECORDED
2013 JUN 07
CLOCKED IN BOOK
DANIEL D. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND) Case No.: 13-CP- 43 - 1026
)
LARRY STRICKLAND, DENIOUS L. DIMERY, and BAILEY G. McCLINTON,)
)
PLAINTIFFS,)
)
vs.) **COMPLAINT**
) **(JURY TRIAL REQUESTED)**
CITY OF COLUMBIA,)
)
DEFENDANT.)

RICHLAND COUNTY
FILED
2013 AUG 27 AM 10: 22
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiffs, by and through their undersigned counsel of record, individually and on behalf of all others similarly situated, makes this complaint for monetary damages and injunctive relief against the City of Columbia.

JURISDICTION AND VENUE

1. Plaintiffs are citizens and residents of various counties in the State of South Carolina. All Plaintiffs are retired City of Columbia employees who were promised they would be provided lifetime health insurance by the City of Columbia during retirement.

2. Plaintiff Larry Strickland is a resident of Lexington County, South Carolina, and was formerly employed by the City of Columbia.

3. Plaintiff Denious L. Dimery is a resident of Lexington County, South Carolina, and was formerly employed by the City of Columbia.

4. Plaintiff Bailey G. McClinton is a resident of Lexington County, South Carolina, and was formerly employed by the City of Columbia.

5. Defendant City of Columbia ("City of Columbia") is a municipal corporation organized and existing pursuant to the laws of the State of South Carolina which owns property and does business in the County of Richland in South Carolina.

6. All actions pertinent to the allegations in this Complaint took place in Richland County, State of South Carolina.

7. Jurisdiction and venue is proper in this Court.

COMMON FACTS FOR ALL PLAINTIFFS

8. The Plaintiffs in this action are retired employees of the City of Columbia throughout their careers until they reached retirement.

9. When Plaintiffs were hired, throughout their employment, at the City's Human Resource seminars conducted for retirement, in conversations with City personnel department representatives, in public statements by City Councilmember(s), and through the verbal and written communications by the City towards retirees and their family members, Plaintiffs were repeatedly promised free single coverage health insurance for life if they worked for the City for a specified number of years[1].

10. Additionally, in multiple *Inside Columbia* newsletters provided to all City employees, including Plaintiffs, the City of Columbia repeatedly stated retiree health insurance was "free."

11. Plaintiffs who worked in law enforcement (police officers) and Plaintiffs who performed emergency services jobs (fire fighters) were exposed to dangerous situations during the decades they worked for the City, yet they continued to work in these dangerous situations to earn the free promised retiree health insurance.

[1] Depending on the year that employee was hired, the required time worked to obtain lifetime health insurance ranged between five and twenty years.

12. Plaintiffs made long-term financial decisions for themselves and their families based on the City's promises to Plaintiffs.

13. Based on the City's promises, some Plaintiffs failed to procure other health insurance from other sources when they had the opportunity to do so.

14. During their years of employment, Plaintiffs accepted lesser salaries and bonuses than their peers employed elsewhere, in exchange for the City's promised retirement benefits.

15. Plaintiffs could have left employment with the City of Columbia while employed but the promise of free single coverage health insurance for life by the City of Columbia induced them to stay employed with the City of Columbia.

16. All Plaintiffs met the requirements to retire and receive free single health coverage insurance for life.

17. The majority of these Plaintiffs are in their 70's and 80's and have been retired from the City of Columbia for several decades.

18. Until January of 2013, the City of Columbia paid the full cost of the single coverage health insurance for all Plaintiffs since the date of their retirement.

19. Three (3) years ago, the City of Columbia began requiring its retirees under the age of 65 and/or retirees who were not Medicare beneficiaries to pay part of the cost of their single coverage health insurance. At the time, the City of Columbia continued to pay the entire cost of single coverage health insurance for retirees over the age of 65 and/or retirees who were Medicare beneficiaries; specifically, the City of Columbia continued to pay the entire cost of single coverage health insurance for these Plaintiffs.

20. In January of 2013, the City of Columbia stopped paying the entire cost of single coverage health insurance and started requiring these Plaintiffs to start paying a portion of the cost of their single coverage health insurance.

21. Based on the City of Columbia's verbal and written promises and representations, Plaintiffs had no reason to believe that their promised free single coverage retiree health insurance would be subject to change.

CLASS ALLEGATIONS

22. Plaintiffs reincorporates paragraphs 1 through 21 above as if fully set forth verbatim herein.

23. Plaintiffs brings this action pursuant to Rule 23, SCRCP, on behalf of themselves and two classes (collectively, "the Classes") of similarly situated persons.

24. Class A ("Class A") is defined as:

> Any former employee of the City of Columbia who is over the age of 65 years old and/or receiving Medicare who was promised that he or she would receive lifetime health insurance, who was receiving lifetime health insurance and then was forced to begin paying part of the cost of their single coverage health care, or for whom the Defendant stopped paying the entire cost of their single coverage health care.

25. Class B ("Class B") is defined as:

> Any former employee of the City of Columbia who has not yet reached the age of 65 years old, who was promised that he or she would receive lifetime health insurance, who is receiving lifetime health insurance and has been notified that they will have to begin paying part of the cost of their single coverage health care when they turn 65, or for whom the Defendant will stop paying the entire cost of their single coverage health care.

26. The proposed classes are so numerous that joinder of all members is impracticable.

27. There are questions of law and fact common to the Classes which predominate over any questions affecting only individual members of the class.

28. Plaintiffs' claims are typical of the claims of the Classes and Plaintiffs do not have interests adverse to other members of either class.

29. The defenses of the Defendant to the named Plaintiffs' claims are typical of the defenses available against each member of the proposed classes.

30. The representative named Plaintiffs will fairly and adequately protect the interests of the proposed classes.

31. The amount in controversy exceeds One Hundred and 00/100 ($100.00) Dollars for each member of the proposed classes.

32. A class action is superior to other available methods for the fair and efficient adjudication of the issues in dispute.

33. Plaintiffs have retained counsel who are experienced in class action litigation and Plaintiffs will fairly and adequately protect the interests of the Classes.

34. Given the size of the individual Plaintiffs' claims, many class members of each or both Classes may not be able to afford to seek legal redress individually for the wrongs committed by Defendant.

35. The prosecution of separate actions by individual members of the class would create the risk of inconsistent adjudications.

36. Plaintiffs seek certification of the action as a class action so that the liability of the Defendant may be adjudicated.

37. Certification of the Classes as requested herein will result in an orderly and expeditious administration of class claims, economy of time, effort and expense, and uniformity of decisions will be insured.

38. Plaintiffs ask this Court to issue its Order, as soon as practicable, pursuant to SCRCP 23(d)(1), allowing this action to be maintained on behalf of all persons as a class as described above.

39. Plaintiffs request that this Court, pursuant to SCRCP 23(d)(2), direct that notice be given to the members of the proposed classes in the best manner practicable under the circumstances, including individual notice to all members who can be identified through reasonable efforts:

a. that the Court will exclude the members from the classes if the member so requests by a specified date; and

b. that the judgment, whether favorable or not, will bind and include all members of the classes who do not request exclusion.

FIRST CAUSE OF ACTION
(PROMISSORY AND EQUITABLE ESTOPPEL)

40. Plaintiffs incorporate all prior allegations, where not inconsistent, as if fully set forth herein.

41. At various times, the City of Columbia has made specific verbal and written representations and promises to Plaintiffs.

42. Plaintiffs relied on the City of Columbia's promises and continued to work for the City when they might have obtained other job positions, in order to obtain free health insurance for life.

43. Plaintiffs' reliance was reasonable based on the City of Columbia's explicit promises and the City of Columbia's past conduct.

44. Defendant City of Columbia's promise to Plaintiffs that their compensation included free single coverage health insurance for life was unambiguous.

45. Plaintiffs had no way of knowing that a future elected body would attempt to interfere with the promises that had been made to them regarding their terms of employment years earlier, especially as the City of Columbia has for decades paid the entire cost of single coverage health insurance for these Plaintiffs.

46. City of Columbia has had a Council-Manager form of government since 1950, and under this form of municipal government, the City Manager performs the administrative functions of the City, not the Council.

47. Plaintiffs reasonably relied upon Defendant's promise of free single coverage health insurance for life as it was made to them while they were employees by Defendant City of Columbia's City Manager.

48. Under the Council-Manager form of government, a City Manager's promise of free single coverage health insurance for life is lawful.

49. Plaintiffs' reliance upon the promise of free single coverage health insurance for life was foreseeable by the City of Columbia.

50. The City of Columbia intended that Plaintiffs rely on its promises in order to retain them as employees and pay them lesser salaries while Plaintiffs were employed.

51. Plaintiffs have been injured as a result of their reliance on the City of Columbia's promise of free single coverage health insurance for life.

52. The City of Columbia's failure to honor its promises to Plaintiffs is without substantial justification. Accordingly, the City of Columbia is estopped from now failing to provide Plaintiffs the promised and agreed upon free single coverage health insurance for life.

53. Plaintiffs seek actual and consequential damages, costs, attorney fees per S.C. Code §15-77-300 and post judgment interest for the Defendant City of Columbia's wrongful actions.

FOR A SECOND CAUSE OF ACTION
(INJUNCTIVE AND DECLARATORY RELIEF)

54. Plaintiffs incorporate all prior allegations, where not inconsistent, as if fully set forth herein.

55. City of Columbia is not entitled to stop providing free single health care coverage to its retirees who were promised this health coverage for life.

56. City of Columbia has announced its intention to stop providing single health care coverage for Plaintiff-retirees when they turn 65, and City of Columbia will continue to stop providing benefits absent an adjudication that it is not entitled to do so.

57. Plaintiffs are entitled to a declaration of their rights, declaring that:

a. City of Columbia must continue to pay the full cost of their single coverage health care for life as promised; and

b. Plaintiffs and Class Members are entitled to injunctive relief to prevent City of Columbia from engaging in the practices complained of herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the proposed classes, pray for the following relief, temporarily and permanently:

1. That the Classes alleged above be Certified;

2. That an award of actual and consequential damages plus interest for the Defendant City of Columbia's wrongful actions and such other equitable and legal relief as this Court deems fair;

3. That this Court award costs and attorney fees pursuant to S.C. Code §15-77-300 and in accordance with state law.

4. That this Court grant an injunction prohibiting the City of Columbia from stopping payment of the free lifetime single coverage health insurance that was promised to its retired employees; and

5. For such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Pursuant to SCRCP 38, Plaintiff hereby demands a trial by jury of all issues triable in this action.

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Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	IN THE FIFTH JUDICIAL CIRCUIT
Kirby L. Bishop; Herman G. Boney; Richard H. Brown; Michael D. Catt; Basilides F. Cruz; Robert B. Dozier; Joseph A. Floyd, Sr.; Arthur C. Gillam, Iii; Alma C. Hill; Barry N. Martin; William J. Meyer; Charles F. Morris, Sr.; and Joseph A. Smith,	Case No.: 2009-CP-40-5680
Plaintiff,	**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
vs.	
City of Columbia ,	
Defendant.	
Larry Strickland, Denious Dimery, and Bailey McClinton,	Case No.: 2013-CP-40-05097
Plaintiffs,	
vs.	
City of Columbia ,	
Defendant.	

RICHLAND COUNTY
FILED
2013 JAN 26 AM 11:15
JEANNETTE W. McBRIDE
C.C.P. & G.S.

I. Introduction

Plaintiffs file this Response to Defendant City of Columbia's ("the City") Second Motion for Summary Judgment. This case involves retired City of Columbia fire fighters and police officers who were promised the city would pay the cost of their single coverage retiree health insurance if they remained employed with the City for a certain number of years. After Plaintiffs retired, Defendant City stopped paying the cost of Plaintiffs' retiree health insurance and/or a

Medicare supplement. Since Defendant City first decided to stop paying the full cost of retiree health insurance, it has periodically raised the rate retirees have had to pay each year.

On February 23, 2013, the Court of Appeals affirmed in part and reversed in part Judge James R. Barber III's grant of summary judgment in the first case in the caption above, *Bishop v. City of Columbia*. The Plaintiffs in the *Bishop* case are retirees who were under the age of 65 when the City stopped paying the full cost of their health insurance. While the *Bishop* case was on appeal, the City of Columbia stopped paying the cost of a Medicare supplement policy for retirees over the age of 65, so the second case in the caption above (*Strickland*) was filed. The two cases were subsequently joined.

The *Bishop* case was remanded for trial by the Court of Appeals on January 23, 2013. (Court of Appeals Order attached as Ex. 1.) Plaintiffs subsequently filed a Motion to Certify a Class of retirees over the age of 65 which was denied although the two cases remain joined.

The arguments Defendant now makes in support of its second Motion for Summary Judgment were either already addressed by the Court of Appeals and are now improper as the Court of Appeals has already remanded this case for trial as to the cause of action for promissory estoppel; are not affected by the Tort Claims Act as Defendant suggests, and/or present factual issues not appropriate for summary dismissal.

II. Legal Standard

In reviewing the grant of a summary judgment motion, the Court applies the same standard as the trial court under Rule 56(c). "[S]ummary judgment is proper when 'there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.'" *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 114-15 410 S.E.2d 537, 545 (1991). In determining whether summary judgment is appropriate, the evidence and its

reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Id.* at 115, 410 S.E.2d at 545.

III. Promissory Estoppel

"[A]n estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice." *Higgins Constr. Co. v. S. Bell. Tel. & Tel. Co.*, 276 S.C. 663, 665, 281 S.E.2d 469, 470 (1981).

"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).

Promissory estoppel is used where the refusal to apply it would sanction the perpetration of a fraud or would result in other injustice. *N. Am. Rescue Prods. v. Richardson,* 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) (quoting *Citizens Bank v. Gregory's Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988)). South Carolina courts recognize a remedy in equity in a promissory estoppel claim. *Satcher v. Satcher,* 351 S.C. 477, 483-484, 570 S.E.2d 535, 538 (Ct. App. 2002); *Woods v. State,* 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App. 1993). The principle that equity "regards as done that which ought to be done" applies in cases where the party seeking equitable relief establishes "a clear obligation based upon a valuable consideration that another do some act which he has failed to perform." *Regions Bank v. Wingard Props., Inc.,* 394 S.C. 241, 253,

715 S.E.2d 348, 354 (Ct. App. 2011) (citing *Wilkie v. Phila. Life Ins. Co.,* 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938)). This maxim applies by dispensing with pure formalities which would otherwise defeat the equity. *Kerr v. City of Columbia,* 232 S.C. 405, 410, 102 S.E.2d 364, 366 (1958) (finding the court must consider the controversy as though town council had issued a business permit, even though the town claimed the area was a residential zone, because town officials told the owner his property was in a commercial zone).When applying this principle, courts look to the substance and intent of the parties, and give a construction consistent with such intent." *Regions Bank,* 394 S.C. at 253-254, 715 S.E.2d at 354-355 (quoting *Harpending v. Reformed Protestant Dutch Church of City of N.Y.,* 41 U.S. 455, 480 (1842)). Once a party establishes an equitable right, the court may dispense with formalities that would defeat the equity. *Wilkie,* 187 S.C. at 393, 197 S.E. at 380. Where a substantive right exists, an equitable remedy may be fashioned to give effect to that right. *E. Tenn. Natural Gas Co. v. Sage,* 361 F.3d 808, 823 (4th Cir. 2004).

IV. LEGAL ARGUMENTS

Defendant's first Motion for Summary Judgment, filed in May of 2010, was based on Defendant's argument that "Plaintiffs cannot establish a cause of action for promissory or equitable estoppel insofar as Plaintiffs cannot reasonably rely upon any promise for future benefits, Plaintiff cannot establish detrimental reliance or any legally recognizable injury... and any representations as to prospective benefits were not binding, as a matter of law, and the duly elected council operate within its lawful authority in the governance of the City of Columbia." (Defendant's 2010 Motion for Summary Judgment, Ex. 2.) Defendant is precluded from repeating any arguments that have already been ruled upon by the Court of Appeals.

Specifically, Defendant's first two reasons for Summary Judgment (the case presents a political question not proper for judicial review and the claims are barred by the separation of powers) have already been ruled upon by the Court

A. A claim of Promissory Estoppel does not present a "Political Question" and is not barred by the doctrine of "Separation of Powers"

Defendant's first two reasons in support of summary judgment are that Plaintiffs' promissory estoppel claim presents a political question not proper for judicial action and a promissory estoppel claim is barred by the doctrine of separation of powers. These arguments have already been considered and rejected by the Court of Appeals. Specifically, the lower court's Summary Judgment Order held, "[A]ny promises by a City Manager, supervisor or individual Council member of lifetime free health insurance are not binding against the City." (Summary Judgment Order, Ex. 3) Overturning the lower court's grant of summary judgment in Defendant's favor, the Court of Appeals held, "We find the trial court erred in granting summary judgment against Retirees on their estoppel claims based on representations made by their supervisors and the City's human and promissory and equitable estoppel claims which are not precluded by summary judgment." (Ex. 1.) The Court of Appeals acknowledged that "[t]he acts of a city official acting within the proper scope of his or her authority may give rise to estoppel against a municipality." (citing *Charleston County v. Nat'l Advert. Co.*, 292 S.C. 416, 418, 357 S.E. 2d 9, 10 (1987)).

Although a court cannot challenge the "wisdom, policy or expediency of an [legislative] act" as such would constitute a nonjusticiable political question (*Segars-Andrews v. Judicial Merit Selection Commission*, 387 S.C. 109, 121-122, 691 S.E.2d 453, 460-461 (2010)), establishing the wages and terms of employment of municipal employees is <u>not</u> a legislative

function under Defendant's Council Manager form of County government because Columbia has adopted the City/Manager form of government.

In the City/Manager form of city government, the Manager is the chief executive officer and responsible for all administrative functions. S.C. Code § 5-13-90. The City Council has legislative powers and employs the Manager. Under this form of government, there is a separation of legislative and executive functions. As the Court of Appeals noted, "The City Manager is the chief executive officer and administrative head of the City. Thus, he is responsible for the administration of the City's affairs including the employment of assistants to exercise such supervisory responsibilities over departments as he may delegate... [and] ... The City Manager indicated that human resource employees were authorized to inform Retirees about their insurance benefits." (Court of Appeals Order, Ex. 1) Therefore, there is no "separation of powers" issue precluding a trial on this promissory estoppel claim.

As the Supreme Court recently stated, "[T]he interpretation of the law—and evaluation of the government's acts pursuant to that law—are critical and necessary judicial functions." *Abbeville County Sch. Dist. v. State*, 410 S.C. 619, 632-633, 767 S.E.2d 157, 163-164 (2014) (internal citations omitted.) Here, the evaluation of the City of Columbia's actions towards its retirees, and whether Defendant City should be estopped from fulfilling the promises it made, are appropriate and necessary for a judicial determination as is any individual's liability for a breach of his or her promises.

B. Delegated Authority and Exercise of Discretion are Tort concepts

Defendant's second two arguments in support of summary judgment allege immunity based on the exercise of delegated legislative authority and the exercise of discretion and it cites to its affirmative defenses numbers 1, 2, 7 and 8 as the basis for both arguments. (Amended

Answer, Ex. 4.) First, the doctrine of delegated legislative authority is not relevant to this promissory estoppel claim. "As stated in *Gaud*....is a well settled rule, supported with practical unanimity by the authorities, that the general doctrine prohibiting the delegation of legislative authority has no application to the vesting in political subdivisions of powers to govern matters which are local in scope." *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 647, 528 S.E.2d 647, 654 (S.C. 1999) (internal citations omitted.)

Second, Defendant's Affirmative Defense Number 2 which Defendant cites to as the basis for its immunity from liability states, "Defendant specifically asserts all right, benefits, and limitations available pursuant to the doctrine of sovereign immunity." (Ex. 4.) However, the extent governmental entities are entitled to immunity is set forth in the Tort Claims Act and as there is no tort cause of action in this case, the South Carolina Tort Claims Act does not apply. *See, North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015) (promissory estoppel is a quasi-contract remedy.) As promissory estoppel is a contract claim and not a tort claim, the Tort Claims Act affords no immunity.

The Tort Claims Act states in pertinent part, "Consequently, it is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein. .....Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty... S.C. Code Ann. § 15-78-20.

"Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract. S.C. Code Ann. § 15-78-20 (d). As the Tort Claims Act is inapplicable to a promissory estoppel claim, its exemptions relating to legislative

authority (S.C. Code Ann. § 15-78-60 (1)) and the exercise of discretion (S.C. Code Ann. § 15-78-60 (5)) are also inapplicable to this case.

Addressing the other specifically stated bases for these two arguments Defendant makes, Defendant's Affirmative Defense Number 1 states, "The Complaint fails to state a claim for which relief can be granted." (Ex. 4) The Court of Appeals has already held there is a scintilla of evidence to support Plaintiffs' promissory estoppel claim and remanded the case for trial on that issue so this argument fails. (Ex. 1) Defendant's Affirmative Defense Number 7 states, "Plaintiffs are without standing to seek the relief claimed in the Complaint." (Ex. 4,) However, by remanding the case for trial the Court of Appeals in effect found Plaintiffs did have standing.

Finally, Defendant's Affirmative Defense Number 8 states any promise for future benefits is *ultra vires* but the Court of Appeals has already ruled that the promise at issue was one involving wages, not benefits. Specifically, 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 Defendant's promise was unenforceable because it was a promise for future benefits.

C. Defendant's arguments that Plaintiffs cannot demonstrate reasonable reliance or detrimental reliance are factual issues as well as issues already addressed by the Court of Appeals.

1. Defendant's last two arguments in support of Summary Judgment are factual arguments and the Court of Appeals has already held that there is "a scintilla of evidence to suggest the representations and promises were within the supervisors' authority and reasonably relied upon." (Ex. 1.) Further, there is no requirement that the reliance in a promissory estoppel claim be detrimental. The Court of Appeals has already stated the elements of a promissory estoppel claim and detrimental reliance is not an element. "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).

V. Conclusion

For the above reasons, Plaintiffs respectfully request Defendant's Second Motion for Summary Judgment is dismissed and this case be set for trial.

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Attorneys for Plaintiffs

Charleston, South Carolina

Date: 12-29-17

EXHIBIT 1

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith, Plaintiffs,

Of whom Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith are, Appellants,

v.

City of Columbia, Respondent.

Appellate Case No. 2010-176227

Appeal From Richland County
James R. Barber, III, Circuit Court Judge

Opinion No. 5077
Heard March 28, 2012 – Filed January 23, 2013

AFFIRMED IN PART AND REVERSED IN PART

Nancy Bloodgood, of Foster Law Firm, LLC, of Charleston, for Appellants.

W. Allen Nickles, III, of Nickels Law Firm, LLC, and Matthew A. Nickles, of Walker & Reibold, LLC, both of Columbia, for Respondent.

WILLIAMS, J.: On appeal, Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gilliam, III, Alma C. Hill, Barry N. Martin, Charles F. Morris, and Joseph A. Smith (collectively, Retirees) claim the circuit court erred in granting the City of Columbia's (the City) motion for summary judgment on Retirees' claims for continuing free health insurance under claims for breach of contract, promissory estoppel, and equitable estoppel. We affirm in part and reverse in part.

FACTS/ PROCEDURAL HISTORY

Retirees are a group of retired firefighters and police officers who each worked at least twenty years for the City of Columbia. Retirees elected to have group health insurance provided by the City through BlueCross BlueShield of South Carolina. Prior to July 1, 2009, the City paid all costs required to fund the group health insurance for employees and retirees. Retirees received newsletters stating retiree health insurance was free and were told by the City's human resources department that retiree health insurance would be at no cost to the retiree.

Retirees received an employee handbook and an insurance benefits booklet each year they were employed by the City. Under the heading "Employee Benefits," the employee handbook provided, "All employees who retire at age 65 or later . . . will be kept under the City's group coverage with the City making a cash contribution." The employee handbook also outlined a policy for employees who retire with twenty years or more of continuous service, stating, "Currently the City will, at no cost to eligible employees, continue health coverage for eligible employees."

The employee handbook's cover page stated in large font that the employee handbook was "**(NOT A CONTRACT).**" The next page of the employee handbook was dedicated to an "**IMPORTANT NOTICE**," which stated, "**NOTHING IN THIS HANDBOOK . . . SHALL BE DEEMED TO CONSTITUTE A CONTRACT OF EMPLOYMENT.**" The important notice further noted, "The City reserves the right to revise, supplement, or rescind any policies or portion of the employee handbook, from time to time, as it deems appropriate in its sole and absolute discretion."

The insurance benefits booklet provided to employees and Retirees each year stated health insurance was "not just fringe benefits, but because the City pays the vast majority of the cost for [Retirees], they represent a significant cost of . . . compensation far beyond your paycheck."

Retirees stated they relied on assurances made by supervisors that retiree health insurance would continue to be free, and they stated they accepted lesser salaries while employed by the City because of the City's policy of providing free health insurance to retirees.

In planning for the 2009-2010 budget, the City considered a number of cost-saving measures, including shifting part of rising health care costs to participants in the City's group health insurance plan. Plan participants, including Retirees, received information, offered objections, and attended meetings concerning the proposed changes to the group health insurance policy. On May 6, 2009, the City Council unanimously voted to require financial contributions by employees and retirees for participation in the group health insurance plan beginning July 1, 2009. Each of the Retirees left employment with the City before July 1, 2009.

On August 10, 2009, thirteen retirees sued the City seeking: (1) reimbursement of all premiums paid since July 1, 2009; (2) individual health insurance on the same terms as provided on the date of retirement prior to July 1, 2009; (3) guarantee of no future reductions in benefits for life; and (4) guarantee of no charges for health benefits for life. The Retirees alleged four causes of action: (1) breach of contract; (2) promissory estoppel; (3) violation of the South Carolina Unfair Trade Practices Act; and (4) declaratory judgment. With the consent of the City, the Retirees amended their complaint to assert equitable estoppel as a cause of action. The City filed a motion to dismiss, and the circuit court dismissed Retirees' unfair trade practices claim but allowed the remaining actions to proceed. The City timely filed a motion for reconsideration, or in the alternative, a motion to stay pending appeal. The circuit court denied both of the City's motions. The City made a summary judgment motion on May 6, 2010. After a hearing, the circuit court granted the City summary judgment on Retirees' breach of contract, promissory estoppel, and equitable estoppel causes of action.[1] Seven of the thirteen retirees bring this appeal.

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[1] The circuit court found Retirees' claims were not actionable in contract because: (1) Retirees were at-will employees and the City promised Retirees unvested fringe benefits, rather than compensation; (2) the City could not be legally bound by promises and representations made by its employees; (3) the City's handbooks and benefits booklets used present tense language that did not make permanent guarantees to support a contractual right; (4) any contract for future benefits would violate public policy because it would bind future city councils in the performance of their governmental functions; and (5) the benefits are governed by the contract between the City and BlueCross BlueShield of South Carolina. The court found

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court under Rule 56(c), SCRCP." *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009). Rule 56(c) provides a circuit court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id.* (quoting Rule 56(c), SCRCP). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009).

"A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). In *Hancock*, our supreme court clarified that the level of evidence required to defeat a motion for summary judgment is dependent upon the non-moving party's burden of proof at trial. 381 S.C. at 330-31, 673 S.E.2d at 803.

LAW/ANALYSIS

I. Breach of Contract

Retirees argue the circuit court erred in granting summary judgment on their cause of action for breach of contract because the record establishes the City breached the contract they had with Retirees. We disagree.

Specifically, Retirees argue the City offered to pay the cost of the retiree health insurance through the employee handbook, insurance benefits booklet, and

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Retirees' claims were not actionable in promissory or equitable estoppel because the actions and statements of the City's employees could not bind a municipality in the council–manager form of government; Retirees are deemed to know this limitation; and Retirees therefore could not reasonably rely on any of the alleged promises or representations in deciding to work for the City.

statements made by City representatives. Retirees contend they accepted the offer by complete performance, working for the City for over twenty years. Further, Retirees argue working for the City for more than twenty years constituted valid consideration for the contract because they could have earned higher salaries from other employers.

The City argues the employee handbook, insurance benefits booklet, and verbal representations do not create a unilateral contract for continuing free health insurance. We agree with the City and address each assertion in turn.

A. Employee Handbook

Retirees argue the employee handbook created a unilateral contract. We disagree.

A unilateral contract has three elements: (1) a specific offer; (2) communication of the offer to the employee; and (3) performance of job duties in reliance on the offer. *Prescott v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 336, 516 S.E.2d 923, 926 (1999). "The issue of whether an employee handbook constitutes a contract should be submitted to the jury when the issue of the contract's existence is questioned and the evidence is either conflicting or is capable of more than one inference." *Watkins v. Disabilities Bd. of Charleston Cnty.*, 444 F.Supp.2d 510, 514 (D.S.C. 2006). However, a court should resolve whether the employee handbook constitutes a contract as a matter of law when the employee handbook's policies and disclaimers, taken together, establish that an enforceable promise does or does not exist. *Id.* An employee handbook forms a contract when: (1) the handbook provisions and procedures in question apply to the employee; (2) the handbook sets out procedures binding on the employer; and (3) the handbook does not contain a conspicuous and appropriate disclaimer. *Grant v. Mount Vernon Mills, Inc.*, 370 S.C. 138, 146, 634 S.E.2d 15, 20 (Ct. App. 2006).

Here, we find the employee handbooks applied to the Retirees during their employment, and the employee handbooks set out a policy of continuing free health insurance. Specifically, the 1987 version stated, "The City of Columbia hereby declares as a matter of policy that the City government . . . can better serve the public by administering . . . a personnel program which provides for and incorporates the following: . . . 5. Providing a program of extended benefits including . . . retirement benefits. " Later versions of the handbook added the following: "Currently, the City will, at no cost to eligible employees, continue health coverage for eligible employees in accordance with the following" eligibility requirements. We hold a contract does not exist.

In *Marr v. City of Columbia*, 307 S.C. 545, 547, 416 S.E.2d 615, 616 (1992), our supreme court held an employee handbook did not form a contract when the employee handbook had a large disclaimer on the front cover stating, "Not a Contract"; there was no evidence the employee handbook was treated as a contract notwithstanding the disclaimer; and there was no evidence the parties waived the disclaimer. Further in *Marr*, the next page of the employee handbook contained an "IMPORTANT NOTICE" that explicitly stated nothing in the handbook should be deemed to constitute a contract. *Id.* The court went on to state the following:

> If an employer wishes to issue policies, manuals, or bulletins as purely advisory statements with no intent of being bound by them and with a desire to continue under the employment at will policy, he certainly is free to do so. This could be accomplished merely by inserting a conspicuous disclaimer or provision into the written document. . . . Where, as here, the employer conspicuously disclaims the handbook as a contract and the parties have not waived the disclaimer, summary judgment for the employer on the issue of whether the handbook forms an employment contract is appropriate.

Id.

Since at least 1987 the employee handbooks contained the same disclaimer as the employee handbook in *Marr*, stating in large font, "Not a Contract" on the front cover of the employee handbooks. Further, the page after the cover page of the employee handbooks was devoted to an "IMPORTANT NOTICE," which provided in bold, conspicuous language: "NOTHING IN THIS HANDBOOK OR IN ANY OF THE CITY'S PERSONNEL POLICIES SHALL BE DEEMED TO CONSTITUTE A CONTRACT OF EMPLOYMENT . . . ." Each Retiree signed numerous acknowledgment forms confirming the employee handbooks did not create a contract. We find the plain language of the employee handbook conspicuously disclaims the existence of a contract, and no evidence indicates the City treated the handbook as a contract despite the disclaimer.

Moreover, our current statutory framework supports the conclusion that the employee handbook contained a conspicuous disclaimer. On March 15, 2004, the South Carolina General Assembly passed section 41-1-110 of the South Carolina

Code (Supp. 2011), which states a handbook shall not create an employment contract if it is conspicuously disclaimed. Section 41-1-110 provides:

> It is the public policy of this State that a handbook, personnel manual, policy, procedure, or other document issued by an employer or its agent after June 30, 2004, *shall not create an express or implied contract of employment if it is conspicuously disclaimed.* For purposes of this section, a disclaimer in a handbook or personnel manual must be in *underlined capital letters on the first page of the document and signed by the employee.* For all other documents referenced in this section, the disclaimer must be in underlined capital letters on the first page of the document. Whether or not a disclaimer is conspicuous is a question of law.

(emphasis added). Section 41-1-110 applies to all employee handbooks issued by the City after June 30, 2004.[2] The only employee handbook provided in the record after June 30, 2004, is the employee handbook for 2005. As said before, the second page of the 2005 employee handbook contained a disclaimer stating, "NOTHING IN THIS HANDBOOK OR IN ANY OF THE CITY'S PERSONNEL POLICIES SHALL BE DEEMED TO CONSTITUTE A CONTRACT OF EMPLOYMENT . . . ." This disclaimer was in all capital letters and was underlined. Additionally, beginning in 2004, Retirees signed a disclaimer contained in the employee handbook. Analogizing to the current statute, we find the disclaimer contained in the 2005 employee handbook was conspicuous as a matter of law, and the City did not waive the disclaimer. *See* § 41-1-110 ("[A] handbook. . . issued by an employer . . . shall not create an express or implied contract of employment if it is conspicuously disclaimed."); *Marr v. City of Columbia*, 307 S.C. 545, 547, 416 S.E.2d 615, 616 (1992) ("Where, as here, the employer conspicuously disclaims the handbook as a contract and the parties have not waived the disclaimer, summary judgment for the employer on the issue of whether the handbook forms an employment contract is appropriate."). Accordingly, the circuit court did not err in granting summary judgment on Retirees' breach of contract claim.

B. Insurance Benefits Booklet

[2] All other employee handbooks provided in the record are not subject to section 41-1-110 as they were issued prior to June 30, 2004.

Retirees also argue the insurance benefits booklet created a unilateral contract for continuing free health insurance. We disagree.

We need not address whether performance in accordance with the insurance benefits booklet creates a unilateral contract because, even if it did, nowhere in the insurance benefits booklet does it provide that Retirees are entitled to continuing free health insurance. Under the title, "Retiree Participation Requirements (Must have 20 years of City Employment),"[3] the insurance benefit booklet states:

> Health coverage is available to retiring employees and dependents if certain eligibility requirements are met . . . . An eligible participant must qualify for a City of Columbia Retirement Program, Fire Fighters Retirement, or Police Retirement. The participant must have worked for the city as a regular employee (at least 30 hours a week) . . . . Retiree Health Coverage for this program will be paid under the benefits specified in this booklet until the attainment of 65. At age 65, the retiree must be enrolled in Medicare PART A and PART B under TITLE XVIII of the Social Security Act.

Accordingly, we find the circuit court did not err in finding the insurance benefits booklet did not create a contract for continuing free health insurance for Retirees.

C. Representations by City Employees

Retirees argue representations made by City employees, such as supervisors and human resource employees, created enforceable unilateral contracts that were consummated by Retirees' continued employment with the City. We disagree.

The authority of the City's employees to contract with Retirees is limited to the authority that can be traced from those employees to the provisions of legislation from which they derive their power. *See* S.C. Code Ann. § 5-7-160 (2011) ("All powers of the municipality are vested in the council, except as otherwise provided by law, and the council shall provide for the exercise thereof and for the

[3] The number of years of employment required to qualify for participation in the Retiree Program increased over the years from no time requirement, to ten years, to fifteen years, to twenty years.

performance of all duties and obligations imposed on the municipality by law."); City of Columbia Ordinance § 1-2(a) (providing that whenever the ordinances require or authorize the head of a department or other officer of the city to do some act or perform some duty, the department head or other officer is authorized to designate, delegate and authorize subordinates to do the required act or perform the required duty unless the terms of the provision specifically designate otherwise); *cf.* 56 Am. Jur. 2d Municipal Corporations, Etc. § 237 ("The general rule with regard to municipal officers is that they have only such powers as are expressly granted by . . . sovereign authority or those which are necessarily to be implied from those granted.").

Here, the City has adopted the council–manager form of municipal government. City of Columbia Ordinance § 2-1. Under that form, the City's legislative and policy powers are vested in the City Council, and the salaries of the City's employees and officials must be approved by the City Council. S.C. Code Ann. § 5-13-30 (2011); City of Columbia Ordinance § 2-111. The City Manager is the chief executive officer and administrative head of the City. Thus, he is responsible for the administration of the municipality's affairs, including the employment of assistants to exercise such supervisory responsibilities over departments as he may delegate. S.C. Code Ann. § 5-13-90 (2011); City of Columbia Ordinance § 2-114(a)-(b). Further, each officer and department head has supervisory control of his department subject to the City Manager's direction and is authorized to delegate power to subordinates to perform their duties. City of Columbia Ordinance § 2-151(a)-(b); City of Columbia Ordinance § 2-125.

Therefore, to survive summary judgment on this argument, Retirees must provide a scintilla of evidence that the supervisors and human resource personnel who made the alleged promises had authority to create contracts for continuing free life insurance. Retirees have failed to do so. They have failed to show any action by the City Council or City Manager authorizing such contracts or granting the authority to these employees to enter the contract. They also failed to provide any evidence the supervisors and human resource employees who made the promises either had authority to enter these contracts directly or through the proper delegation of authority. Consequently, these alleged promises cannot bind the City under a theory of unilateral contract.[4]

[4] The City also argues, and Retirees dispute, that summary judgment on the contract claims was appropriate because: (1) Retirees were "at-will" employees; (2) contracts for continuing free health insurance would violate public policy; and (3) Retirees could not have a permanent right to free lifetime health insurance under

II. Promissory Estoppel and Equitable Estoppel

Retirees argue the circuit court erred in granting the City's motion for summary judgment on the promissory estoppel and equitable estoppel causes of action. Retirees maintain a genuine issue of material fact exists as to whether they reasonably relied on statements by City's representatives and written promises to provide continuing free health insurance after retirement. We agree in part.

As a general rule, to prove estoppel against a city, the relying party must prove: (1) lack of knowledge and of the means to obtain the knowledge of the truth as to the facts in question; (2) justifiable reliance upon the government's conduct; and (3) a prejudicial change in position. *S.C. Dep't of Transp. v. Horry Cnty.*, 391 S.C. 76, 83, 705 S.E. 2d 21, 25 (2011). Similarly, 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. *Woods v. State*, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App. 1993).

A. Written Promises

Retirees assert summary judgment was inappropriate because there is evidence they reasonably relied to their detriment on the City's written promises to provide free health insurance made in the employee handbook, insurance benefits booklet, and employee newsletters.[5] We agree in part.

Retirees argue they relied upon the employee handbook and benefits booklet in deciding to remain employed with the City each year until they reached twenty

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Alston v. City of Camden, 322 S.C. 38, 471 S.E.2d 174 (1996). Because we affirm the grant of summary judgment against the contract claims on other grounds, we need not address these arguments. *See Futch v. McAllister Towing Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

[5] We do not address the employee newsletters in light of our finding that summary judgment was not appropriate as a result of the City's oral promises and representations.

years' service. However, the employee handbook conspicuously disclaimed any binding promises, and the benefits booklet made no promises of continuing free health insurance at all. Therefore, Retirees cannot claim reasonable reliance on those materials, and the estoppel claims cannot survive summary judgment to the extent the claims are based on them.

B. Statements by City Employees

Retirees argue summary judgment on estoppel was inappropriate because there is a genuine issue of fact as to whether they reasonable relied on promises and representations made by City employees. We agree.

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."); *Abbeville Arms v. City of Abbeville*, 273 S.C. 491, 493-94, 257 S.E.2d 716, 718 (1979) (holding the city was not immune from an estoppel claim because a permit applicant bought property in reliance upon: (1) a zoning ordinance passed by the city council and a zoning map issued by the city pursuant to the ordinance that indicated the applicant's property was zoned for the applicant's intended purpose and (2) a statement by the city zoning administrator confirming what the ordinance and zoning map said). "The public cannot be estopped, however, by the unauthorized or erroneous conduct or statements of its officers or agents which have been relied on by a third party to his detriment." *S.C. Coastal Council v. Vogel*, 292 S.C. 449, 453, 357 S.E.2d 187, 189 (Ct. App. 1987).

The City cites to a number of cases, arguing that they indicate Retirees could not rely upon the representation of City employees as to whether they were entitled to free health insurance for life. However, two of the cases do not involve governmental entities. *See McLaughlin v. Williams*, 379 S.C. 451, 457-58, 665 S.E.2d 667, 671 (Ct. App. 2008); *West v. Gladney*, 341 S.C. 127, 134-35, 533 S.E.2d 334, 337-38 (Ct. App. 2000). Other cases involve civil rights claims alleging violations of the plaintiffs' constitutional rights as a result of official policy by the City. *See Stanley v. Kirkpatrick*, 357 S.C. 169, 176, 592 S.E.2d 296, 299 (2004); *Todd v. Smith*, 305 S.C. 227, 230-31, 407 S.E.2d 644, 646-47 (1991). Another case addresses whether a public officer could sustain a contract claim. *See Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 131, 459 S.E.2d 876, 880

(Ct. App. 1995), *aff'd by* 324 S.C. 239, 478 S.E.2d 836 (1996). Further cases hold that estoppel will not lie against a governmental entity when the government's employee gives erroneous information in contradiction of a statute. *See Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant*, 308 S.C. 205, 210-11, 417 S.E.2d 579, 582-83 (1992); *Am. Legion Post 15 v. Horry County*, 381 S.C. 576, 584, 674 S.E.2d 181, 185 (Ct. App. 2009); *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 319-20, 659 S.E.2d 263, 267 (Ct. App. 2008). One also holds that a party cannot reasonably rely on government conduct to create a contract where the governmental actor purports to act pursuant to legislation that itself does not give authority to make the contract. *See Ahrens v. State*, 392 S.C. 340, 353-57, 709 S.E.2d 54, 61-63 (2011). Lastly, a case holds that the plaintiffs could not rely upon representations by a governmental employee where the employee explicitly said his assertions were subject to the school board's approval. *See Davis v. Greenwood School Dist.*, 365 S.C. 629, 634-35, 620 S.E.2d 65, 67-68 (2005).

None of the above cases answer whether a private party may rely on the representations of municipal employees for estoppel claims when the authority to make those representations *can* be traced back to the legislation that granted the municipal authority. *See Oswald v. Aiken Cnty.*, 281 S.C. 298, 303, 315 S.E.2d 146, 150 (Ct. App. 1984) ("The County cannot escape liability to Oswald under a policy it had the general power to implement on the ground that the administrator was not technically authorized to approve payment for compensatory time."). Here, the evidence does not conclusively indicate the City's employees gave information that contradicted a statute or ordinance. Nor does the evidence conclusively indicate the employees acted outside their authority when they explained Retirees' benefits.

Retirees provided a scintilla of evidence that they reasonably relied upon the representations and promises of the City's human resource employees' explanations of the health insurance benefits to their detriment. Retirees presented evidence the City's human resource employees repeatedly told them that retiree health insurance would continue to be free throughout retirement, specifically during discussions on how to explain the City's obligations to new recruits. The City provided employees with newsletters stating free insurance would continue upon retirement. The City Manager indicated that human resource employees were authorized to inform Retirees about their insurance benefits, and the City's ordinances support this testimony.[6]

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[6] *See* City of Columbia Ordinance § 2-114 ("(a) Duties. The city manager shall be the chief executive officer of the city and head of the administrative branch of city

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.

Therefore, instead of holding Retirees were charged with knowledge of the extent to which the City's employees were incorrect, it is a question of fact as to whether these explanations were authorized and reasonably relied upon. As a result, the trial court erred in granting summary judgment on Retirees' estoppel claims.

CONCLUSION

Based on the foregoing, we find the trial court properly granted summary judgment against Retirees on their contract claims. We also find the trial court properly granted summary judgment against Retirees on all of their estoppel claims to the extent those claims are based upon the employee handbook and benefits booklet. However, we find the trial court erred in granting summary judgment against Retirees on their estoppel claims based upon representations made by their supervisors and the City's human resource personnel.

Accordingly, the circuit court's rulings are

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government. The city manager shall perform and exercise the duties and responsibilities prescribed by law for this office and such other duties and responsibilities as prescribed by the City Council. (b) Assistants. The city manager may employ assistants to exercise such supervisory responsibilities over departments as the city manager may delegate."); City of Columbia Ordinance § 2-151 ("(a) The following departments of the city are created: . . . Human resources; . . . Fire; . . . (b) The head of each department shall be a director, who shall be an officer of the city and shall have supervision and control of his department, subject to the city manager. The city manager may serve as director of one or more departments or divisions within any department."); City of Columbia Ordinance § 2-125 ("The director of human resources, subject to the city manager, shall have administrative supervision over the department of human resources and shall be responsible for those activities relating to employment, employee relations, and training and shall perform such additional duties as may be assigned by the city manager.").

AFFIRMED IN PART and REVERSED IN PART.

THOMAS and LOCKEMY, JJ., concur.

EXHIBIT 2

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOR THE FIFTH JUDICIAL DISTRICT**
COUNTY OF RICHLAND)	
)	**Civil Action File No.: 2009-CP-40-5680**
Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith,)	
)	
Plaintiffs,)	
)	
vs.)	**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
)	
City of Columbia,)	
)	
Defendant.)	

Defendant, City of Columbia, moves pursuant to Rule 56(b) and (c) SCRCP, for an order granting summary judgment in this action. This motion is based upon the testimony and evidence of record to be presented to the Court in keeping with Rule 56(e). This testimony and evidence shall demonstrate that the Plaintiffs cannot establish the essential elements of the claims remaining for disposition in their Complaint and that the Defendant is entitled to judgment as a matter of law.

By way of illustration, Plaintiffs cannot establish a cause of action for breach of contract insofar as Plaintiffs are at will employees as a matter of law, cannot establish consideration for future benefits or any vested interest in prospective benefits. Plaintiffs cannot establish a cause of action for promissory estoppel or equitable estoppel insofar as Plaintiffs cannot reasonably rely upon any promise for future benefits, Plaintiffs cannot establish detrimental reliance or any legally recognizable injury. Plaintiffs were placed on actual or constructive notice as to the non-vested nature of prospective benefits and any reliance upon representations to the contrary were

not reasonable or justifiable. At all times, the Defendant operated in good faith and within its statutory authority to adopt a budget for its operations and to direct the administration of benefits in keeping with that budget. Any representations as to prospective benefits were not binding, as a matter of law, and the duly elected council operated within its lawful authority in the governance of the City of Columbia.

For all of these reasons, Plaintiffs cannot establish facts upon which a jury could reasonably render a verdict in their favor and Plaintiffs are not entitled to a declaratory judgment regarding alleged enforceable contract rights. Accordingly, Defendant is entitled to summary judgment as a matter of law.

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Attorneys for Defendant

May 6, 2010
Columbia, South Carolina

EXHIBIT 3

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith, Plaintiffs, vs. City of Columbia, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL DISTRICT Civil Action File No.: 2009-CP-40-5680 ORDER

RICHLAND COUNTY
FILED
2010 SEP 13 AM 9:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter comes before me on Defendant's motion for summary judgment filed May 6, 2010. Having considered the written materials presented by both parties and having heard oral argument on August 12, 2010, I find that Plaintiffs cannot establish the essential elements necessary to obtain the relief requested in their Complaint. Accordingly, Defendant is entitled to summary judgment pursuant to Rule 56, SCRCP.

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Green v. Cottrell, 346 S.C. 53, 550 S.E.2d 324 (Ct. App. 2001); Bruce v. Durney, 341 S.C. 563, 534 S.E.2d 720 (Ct. App. 2000); see also Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d. 187, 191 (1997) ("Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a

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matter of law.").

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 799 (Ct. App. 1999). In determining whether any triable issues of material fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing summary judgment. Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). In responding to a motion for summary judgment, a plaintiff must offer evidence that a genuine issue of material fact exists as to each element necessary to establish the asserted claims. McLaughlin v. Williams, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008).

CONTROLLING FACTS

1. The City of Columbia ("City") has selected a manager/council form of government.

2. In the council/manager form of government, council retains all legislative power and policy making authority while the manager exercises administrative responsibility.

3. Policies and procedures are subject to change.

4. Adoption of a budget is a legislative power confined to City Council.

5. The City Manager must administer the City within the budget approved by Council.

6. The City Manager may enter agreements requiring expenditure only in amounts of $10,000 or less. All other commitment of City funds must be authorized by Council.

7. Council has approved a pay and classification plan for City employees. This plan sets ranges of compensation for employees.

8. The City Manager cannot provide compensation to employees beyond the range set for a position. The City Manager may approve an initial salary for an employee only up to five percent (5%) above the minimum set for the position. The City Manager may not approve compensation that exceeds a salary range.

9. Health insurance is provided by Council through a self funded group health plan available to City employees and eligible retirees administered by Blue Cross/Blue Shield of South Carolina. The City must reflect the cost of providing group health insurance as a contingent liability.

10. The group health insurance plan adopted by Council is available to City employees and eligible retirees on the same basis. At all times relevant to this action, active employees and eligible retirees have been offered the same group health insurance options.

11. Prior to July 1, 2009, the City paid all costs required to fund group health insurance for individual employees and eligible retirees.

12. Council voted on May 6, 2009, to require financial contributions by individual employees and eligible retirees for participation in the group health insurance plan beginning July 1, 2009.

13. Beginning July 1, 2009, all eligible group health insurance plan participants are charged on the same basis for individual coverage. This is $33.18 per month for Plan A and $63.17 per month for Plan B.

14. The Plaintiffs retired between January 26, 1997, and January 8, 2009.

15. Each of the Plaintiffs elected to participate in the City's group health insurance plan upon retirement.

16. The membership application providing for group health insurance coverage

contains a certification statement which includes the following language:

> I understand that upon acceptance of this application by the insurance company, and so long as I meet the eligibility requirements of the contract with this employer, I will be provided with coverage as specified by the group health contract between my employer [City] and the Corporation [Blue Cross/Blue Shield]."

17. Retirees are provided a letter from the benefits administrator in the City's Human Resources Department that describes benefits available upon retirement. Prior to July 1, 2009, in reference to group health insurance, this letter stated, in part: "Under the current policy, the City pays retirees' portion of the health premium. Therefore, no monthly payments are necessary."

18. At oral argument, counsel for the Plaintiffs indicated that the Plaintiffs seek a ruling that they cannot be charged for participating in the City's group health plan. The record reveals, however, that certain Plaintiffs seek exclusion from the City's group health insurance plan. For example, Plaintiffs Catt, Floyd, Hill and Smith claim entitlement to individual health insurance plans with the following features:

a. Reimbursement of all premiums paid since July 1, 2009;

b. Individual health insurance at the same terms (or better) as provided on the date of the individual Plaintiff's retirement;

c. Guarantee of no future reductions in benefits for the life of each Plaintiff;

d. Guarantee of no charges for health benefits for the life of each Plaintiff;

19. Because the Plaintiffs and others have retired on different dates, freezing heath benefits on individual retirement dates would require individual health plans, with different terms and benefits, on the date of every retirement prior to July 1, 2009.

20. There are presently five-hundred forty (540) individuals covered by the City's group health plan that retired before July 1, 2009.

CONCLUSIONS OF LAW

I. Plaintiffs cannot establish a cause of action for breach of contract.

A. Fringe benefits such as health insurance are not vested or enforceable by contract.

Plaintiffs' cause of action for breach of contract fails because Plaintiffs have no contractual right to receive free health insurance in perpetuity. As a matter of law, municipal employees have no contractual right or vested interest in prospective benefits. Alston v. City of Camden, 322 S.C. 38, 45-46, 471 S.E.2d 174, 177-78 (1996). Plaintiffs have stipulated that the manager/council form of government applies to both the City of Camden and the City of Columbia. It was this form of government that the South Carolina Supreme Court addressed in Alston.

In Alston, a group of employees and retirees sued the City of Camden challenging a reduction in the percentage of health insurance costs borne by the City. There, as here, the plaintiffs sought to prevent a municipality from making a prospective change in health benefits applicable to current and former employees. In holding for the City, the Supreme Court made the following observations:

- South Carolina law is clear that "public employees generally have no contractual rights in their employment merely by virtue of a statute describing the terms of that employment." Id. at 45, 417 S.E.2d at 177.
- Ordinances or other policies that establish a standard personnel system do not constitute contracts. Id. at 46-47, 417 S.E.2d at 178-79.
- Policies that apply to fringe benefits are not permanent in nature and may be changed prospectively. Id. at 48-49, 417 S.E.2d at 179.

- Even assuming the language of a handbook (or other documents) constituted a contract, employees have "no reasonable expectation that the terms of the 'contract' would remain unchanged." Id. at 48, 417 S.E.2d at 179.
- Any contractual rights created by a handbook or other writing cannot "give rise to any legitimate expectation that fringe benefits provided for them will continue for any specific amount of time." Id. at 48, 417 S.E.2d at 179.
- Employee contractual rights created by a handbook are subject to unilateral modification. This rule rests on the recognition that "the employer-employee relationship is not static. Employers must have a mechanism which allows them to alter the employee handbook to meet the changing needs of both business and employees. . . . This is especially true where . . . employees concede their at-will status." Id. at 48-49, 417 S.E.2d at 179 (internal citations omitted).
- Government "should have more flexibility than business with respect to the employer/employee relationship." Id. at 49, 417 S.E.2d at 179. Accordingly, a prospective change in benefits does not impair any contractual right.

The Supreme Court confirmed the changeable nature of fringe benefits for municipal employees in Layman v. State, 368 S.C. 631, 630 S.E.2d 265 (2006). In an expressly narrow decision, the Supreme Court found "contractually significant" language in TERI legislation that grandfathered participants who joined the program before a change in the law took effect on July 1, 2005. Addressing concerns by the State that this opinion overruled Alston, the Court responded:

> We find that Alston is distinguishable in several respects. First, the Court held that the benefits affected in Alston were "fringe benefits," and that the employees had a reasonable expectation that those benefits might be subject to change. In addition, the

> agreement in Alston was the type of unilateral contract that is subject to modification at any time.

Id. at 640, 630 S.E. 2d at 270 (internal citations omitted).

Two years after Layman, the Supreme Court rejected a claim by public retirees seeking to avoid a change in the State's approach to taxing retirement benefits. See Anonymous Taxpayer v. S.C. Dep't of Revenue, 377 S.C. 425, 661 S.E.2d 73 (2008). In that opinion, the Supreme Court dismissed the retirees' claims under contract, due process, and the takings clause, finding that the challenged action served a legitimate governmental purpose. Id. at 436-37, 661 S.E.2d at 79. Applied to the present circumstances, there can be no question that City Council acted within its legitimate legislative authority in requiring retiree participants in the City's group health plan to share a portion of the costs of their health care benefits.

B. Fringe benefits are not "wages" protected by state law.

By law, "wages" are confined to monetary payments. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 489, 551 S.E.2d 526, 530 (2001) (stating fringe benefits such as "medical, disability and life insurance" are not part of an employee's wages); see also Stokes v. Westinghouse Savannah River Co., 206 F.3d 420, 426 (4th Cir. 2000). The Supreme Court ruled in Anderson that including fringe benefits such as insurance in the calculation of wages "would dramatically alter the practice in this state." Id. at 497, 551 S.E.2d at 531.

Plaintiffs assert that their health insurance is a form of deferred compensation "earned" during their employment and to which they are entitled upon retirement. This assertion is contrary to the Supreme Court's decisions in Alston, Layman, and Anonymous Taxpayer. It is also inconsistent with the legislative authority of the City Council to adopt a budget. S.C. Code Ann. § 5-13-30(b). In the present case, City Council voted on May 6, 2009, to alter the fringe benefit program available to all current and former employees. The City Manager is obligated to

implement all resolutions adopted by Council. Plaintiffs' requests for relief would invalidate a duly adopted resolution and require the City Manager to operate in a manner inconsistent with the City's elected governing authority.

C. City Handbooks and Benefit Booklets do not establish a contractual right to continuing free health insurance.

Plaintiffs further contend that statements in handbooks, benefit booklets, and other publications permanently bind the City to provide free health insurance for their lifetimes. This assertion is not consistent with or supported by the following established facts of record and controlling law:

1. The handbooks and other publications relied upon by Plaintiffs do not contain language making permanent guarantees. Instead, these publications are each in the present tense and apply only to the period of their effectiveness.

2. Plaintiffs acknowledge and the record establishes that handbooks were subject to change and were changed during Plaintiffs' employment.

3. The benefits booklets relied upon by Plaintiffs do not contain language making permanent guarantees. Instead, all booklets are in the present tense and apply only to the period of their effectiveness.

4. Plaintiffs acknowledge and the record establishes that benefits booklets were subject to change and were changed during Plaintiffs' employment.

5. Plaintiffs acknowledge that handbooks and benefit booklets presented accurate information during the time they were in effect.

6. Handbooks and benefit booklets were amended before July 1, 2009, to reflect charges for individual health coverage to employees and retirees.

7. Plaintiffs signed up for continuing group health coverage knowing that a charge

for the individual benefit would be imposed.

8. No Plaintiff was required to continue with coverage under the group health plan after July 1, 2009.

9. Plaintiffs acknowledge that no former colleague, supervisor, or representative of the City intentionally deceived or knowingly made any false statements concerning health insurance benefits.

10. Plaintiffs acknowledge that information regarding the availability of health insurance benefits upon retirement was accurate at the time provided.

11. Documents provided at retirement before July 2009 described the "current" policy of not charging for health insurance. Plaintiffs acknowledge that the term "current" does not guarantee that the policies will stay the same "forever."

12. Each Plaintiff received individual benefits under the City's group health plan without charge following retirement until July 1, 2009.

All of these facts, as well as the Alston and Layman decisions, establish that the group health insurance benefits made available to the Plaintiffs were subject to change. Furthermore, the Alston and Layman decisions were issued before adoption of the change in the group health plan challenged here. City Council had the right to rely on the published decisions of our Supreme Court in deciding to require all participants share in a portion of the costs necessary to provide group health insurance benefits.

Plaintiffs have presented no publication or other evidence that Council intended to establish a permanent, vested right to unchanging health insurance benefits. Conversely, years prior to the earliest retirement of the Plaintiffs (1997), our Supreme Court affirmed a summary judgment ruling that the City's handbook does not create an employment contract with its

employees. Marr v. City of Columbia, 307 S.C. 545, 547, 416 S.E.2d 615, 616 (1992). Accordingly, the handbooks, booklets, and testimony offered by Plaintiffs provide no support for their exemption from the City's group health plan, including its premium requirement.

D. Any contract for future benefits would be unenforceable as a violation of public policy.

Even if the benefits booklets, handbooks, and other representations relied upon by Plaintiffs could form a basis for a contractual cause of action, Plaintiffs' breach of contract claim fails. This court cannot enforce a contract that violates public policy, statutory law, or constitutional provisions. See McConnel v. Kitchens, 20 S.C. 430 (1884); Batchelor v. Am. Health Ins. Co., 234 S.C. 103, 107 S.E.2d 36 (1959). South Carolina law has established for more than fifty years that a council "has no authority to make . . . a contract extending beyond the terms of its office; that the acts of former councils relating to governmental functions of said councils which involve a matter of discretion to be exercised by such councils are without force and effect upon succeeding councils." Newman v. McCullough, 212 S.C. 17, 25, 46 S.E.2d 252, 256 (1948); see also Piedmont Pub. Serv. Dist. v. Cowart, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995), aff'd, 478 S.E.2d 836 (1996) (affirming Newman's holding that a municipal council lacks power to bind a successor council to a contract involving terms and conditions of municipal employment). A lifetime health insurance program would span multiple four-year council terms and restrict subsequent elected officials in representing the interests of their constituents. Accordingly, no council in the 1980s, 1990s, or 2000s had or has the authority to provide such a benefit.

Had the City intended to create a lifetime contractual entitlement to free health insurance benefits, and the authority to bind future councils, the contract would be void as a matter of constitutional law. South Carolina Constitution, Article X, § 14, entitled "Bonded Indebtedness

of Political Subdivisions," governs the extent to which municipalities and other political subdivisions may incur indebtedness. Subsection (2) of this article provides:

> Such 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].

S.C. Const. art. X, § 14(2).

Any general obligation debt by a municipality must be incurred "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." S.C. Const. art. X, § 14 (2),(5); see also S.C. Code Ann. §§ 11-15-10 et seq. ("Bonds of Political Subdivisions," noting the limitation of general obligation debt is eight percent of the total assessed value of the taxable property of a political subdivision). None of these procedural safeguards have been alleged and "no other" form of activity is an allowed method of incurring debt under the South Carolina Constitution. Accordingly, the City is constitutionally prohibited from undertaking an open-ended pledge of future payments on behalf of former employees.

E. All municipal employees are at-will and contract rights do not attach to compensation or other benefits.

All employees of the City of Columbia are at-will and non-contractual. Bunting v. City of Columbia, 639 F.2d 1090, 1094 (4th Cir. 1981); Bane v. City of Columbia, 480 F. Supp. 34 (D.S.C. 1979). No Plaintiff has provided a "written agreement" signed by an authorized representative that establishes an unalterable, vested interest in free lifetime health insurance. Moreover, any "contract" or promise of such coverage would be unenforceable under controlling statutory and constitutional provisions.

In support of their claims, Plaintiffs have offered Middleton Township Policemen's Benevolent Ass'n Local No. 124 v. Township of Middleton, 744 A.2d. 649 (N.J. 2000). This case involved a claim arising from a collective bargaining agreement and application of New Jersey law. Having carefully examined this opinion, I find that it does not apply to facts before me and is not consistent with the controlling Alston and Anderson decisions. Accordingly, Plaintiffs cannot establish a right to free lifetime health insurance benefits.

F. All participants in the City's group health plan, including retirees, agree that benefits shall be governed by the contract entered between the City and BlueCross/Blue Shield of South Carolina.

Participants in the City's group health insurance plan must sign standard applications to qualify for coverage during employment and upon retirement. The standard application contains a certification which includes the following language:

> I understand that upon acceptance of this application by the insurance company, and so long as I meet the eligibility requirements of the contract with this employer, I will be provided with coverage as specified by the group health contract between my employer [City] and the Corporation [Blue Cross/Blue Shield]."

The group health plan in effect beginning July 1, 2009, provides all participants, including retirees, the option of selecting between a Plan A and Plan B. Under Plan A, all participants are charged a premium of $33.18 per month. Under Plan B, the premium is $63.17 per month. Having agreed to accept coverage under the group health plan, Plaintiffs cannot now seek exemption from their premium obligation.

II. Plaintiffs cannot establish a cause of action for promissory estoppel.

As a second cause of action, Plaintiffs allege that the City made unambiguous promises of free lifetime health insurance on which they justifiably and detrimentally relied. To establish

a claim of promissory estoppel, Plaintiffs must show: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. Powers Constr. Co. v. Salem Carpets, Inc., 283 S.C. 302, 306, 322 S.E.2d 30, 33 (Ct. App. 1984). For purposes of this motion, Plaintiffs' testimony that individual employees, supervisors, and City representatives made statements that free health insurance would continue upon retirement is not disputed. Nevertheless, Plaintiffs cannot establish the essential element of reasonable reliance because none of these statements can bind a city council in the exercise of "governmental functions," including the terms and conditions of employment. See Cowart, 319 S.C. 124, 459 S.E.2d 876; Newman, 212 S.C. 17, 46 S.E.2d 25.

"Estoppel [against a municipality] may not be based on an illegal act." Berkeley Elec. Coop., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 210, 417 S.E.2d 579, 582 (1992). This is true even if the party asserting the estoppel claim was unaware of the illegality of the act because all parties are charged with knowledge of the law, including the limitations of a city's authority. Id.; see also Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267-68 (Ct. App. 2008). The representations identified by Plaintiffs are not binding or enforceable because these statements or expectations cannot restrict a city council from exercising its legislative authority.

The actions or statements of a city manager or any other municipal employee in the council/manager form of government cannot bind the municipality. This issue was addressed by our Supreme Court in Todd v. Smith, 305 S.C. 227, 407 S.E.2d 644 (1991). Affirming summary judgment in favor of the City of Myrtle Beach, the Court stated as follows:

> In the council/manager form of city government all legislative powers of the municipality and the determination of all matters of

> policy shall be vested in the municipal council, each member, including the mayor to have one vote. Section 5-13-30, Code of Laws of South Carolina, 1976. Under the form of government adopted by the City of Myrtle Beach, the city manager and the director of the Myrtle Beach Convention Center do not have the authority to set city policy, nor can their acts be said to represent official policy in view of the legislative authority granted to the municipal council.

Id. at 231, 407 S.E.2d at 646-47.

Subsequently, in rejecting a § 1983 action against the City of Columbia, the Supreme Court confirmed that, as a matter of law, only City Council can serve as a policymaker. Stanley v. Kirkpatrick, 357 S.C. 169, 176, 592 S.E.2d 296, 299 n.6 (2004). As Todd and Stanley make clear, only City Council may make policy and only those policy decisions enacted by Council can bind the City. Accordingly, Plaintiffs' purported entitlement to a lifetime of free health benefits based upon promises by City employees or individual representatives cannot form the basis of a successful claim under contract or promissory estoppel. See Berkeley Elec. Coop., Inc., 308 S.C. at 210, 417 S.E.2d at 582 (1992). Any reliance on promises of free lifetime health insurance was *per se* unreasonable because such promises would be illegal.

Plaintiffs offer Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976), in support of their argument that representations by supervisors, co-workers, and the City Manager can estop the City from imposing a premium for their health care insurance. Neither the facts addressed in Townes nor the Court's opinion support this position. In Townes, the Supreme Court deferred to findings by the master in equity and trial judge that the Greenville City Council had authorized its manager to enter a contract employing an architecture firm. Council knew that the services were being performed and benefitted from those services. Id. at 87-88, 221 S.E.2d at 776. The Supreme Court acknowledged the general principal that a municipality cannot be estopped by the unauthorized acts of its officers, but held that it would

not enforce that rule in Townes because the failure of Council to ratify the contract "was a mere technicality not entitling it to escape liability for the reasonable value of the plaintiff's services." Id. In contrast, Plaintiffs here have not shown a delegation of legislative authority from City Council to the manager. In addition, Plaintiffs have not shown any intent by City Council to enact a permanent health care plan with a lifetime guarantee of free benefits. Unlike Townes, this case does not present a "mere technicality," but involves a clear enactment by Council to adopt a group health plan in keeping with its legislative, budget making authority.

Regardless of what they were told, Plaintiffs agreed to be bound by the terms of the group health plan and were aware that the terms of the group health plan changed during their employment. Plaintiffs could not reasonably assume that changes would cease to take place after they retired. In fact, the letter provided to retirees from the City's benefits administrator prior to July 1, 2009, made clear that payment of the retirees' portion of the health premium was "under the current policy." Plaintiffs signed acknowledgements during their employment that policies were subject to change. This record establishes that Plaintiffs cannot prove reasonable reliance, an essential element of promissory estoppel. McLaughlin v. Williams, 379 S.C. 451, 457-58, 665 S.E.2d 667, 671 (Ct. App. 2008) ("[T]here can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter.").

Plaintiffs have asserted that the presence of material disputed facts renders summary judgment improper on their estoppel claims. By way of response, the City does not challenge any verbal representations asserted by Plaintiffs and points out that written representations relied upon are before the Court. In this context, it is clear that the element of reasonable reliance may be properly adjudicated by way of summary judgment.

Estoppel is an issue to be decided by the court. Gaymon v. Richland Mem'l Hosp., 327

S.C. 66, 488 S.E.2d 332 (1997) (holding that equitable estoppel is an issue for the judge and denying a request for a jury trial). As in other claims, estoppel is an issue of law for the court to determine when the facts are not in dispute or when only one inference can be reasonably drawn from them. T. Leigh Anenson, The Triumph of Equity: Equitable Estoppel in Modern Litigation, 27 Rev. Litig. 377, 422 (2008). Both the Court of Appeals and the Supreme Court have confirmed that the issue of reliance may be determined on summary judgment motions. See, e.g., Davis v. Greenwood Sch. Dist. 50, 365 S.C. 629, 634-35, 620 S.E.2d 65, 67-68 (2005); McLaughlin v. Williams, 379 S.C. 451, 457-58, 665 S.E.2d 667, 671 (Ct. App. 2008); West v. Gladney, 341 S.C. 127, 134-35, 533 S.E.2d 334, 337-38 (Ct. App. 2000). Here, discovery is complete and the material facts are before me. These facts lead to only one conclusion: that reliance by the Plaintiffs was unreasonable. In this context, summary judgment in favor of the Defendant is proper on the issue of promissory estoppel.

III. Plaintiffs cannot establish a basis for declaratory judgment.

For a fourth cause of action, Plaintiffs assert that there is a "justiciable controversy" regarding their alleged rights pursuant to terms of "written contracts." A decision to grant or withhold declaratory judgment is within the sound discretion of the trial court and requires a "real and substantial controversy" ripe for determination. Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 422, 593 S.E.2d 462, 466 (2004). For the reasons stated above, Plaintiffs have failed to identify any enforceable "written contracts." Accordingly, Plaintiffs' request for declaratory judgment is denied.

IV. Plaintiffs cannot establish a cause of action for equitable estoppel.

As a fifth cause of action, Plaintiffs assert that a promise of compensation to employees is an "administrative" rather than "legislative" act. In support, Plaintiffs offer language from certain

handbooks and booklets that health insurance is an important element of compensation and assert that "a city manager's promise of free single coverage health insurance for life is lawful." This argument fails for a number of reasons. First, the fixing of city employees' compensation is a legislative act. 4 McQuillin Mun. Corp. § 13.03.15 (3d ed. 2010). Second, our Supreme Court acknowledged in Alston that municipal employee benefits are not vested and that any "promise" of such benefits, even by way of ordinance, is unenforceable. Third, no municipality, whether through council or manager, is authorized by our Constitution to enter into open-ended indebtedness as would be required to afford lifetime free health insurance. Fourth, under the council/manager form of government, it is the duty of the council to adopt the budget of the municipality. S.C. Code Ann. § 5-13-30(3). Finally, the City's manager may not expend more than $10,000 for any contract or service, including a group health plan, without prior approval of Council.[1] There can be no dispute that the cost of the group health plan borne by the City runs in the millions of dollars each year.

Plaintiffs understandably seek to shift responsibility for adoption of the group health plan from Council to the City's manager. This is not supported by the testimony of the current City Manager, the public vote of Council in adopting the plan, or controlling law. As stated above, the Todd and Stanley decisions affirm that only a city council is authorized by law to make policy. Specifically, the Court stated in Stanley that under the City of Columbia's council/manager form of government "all legislative powers of the municipality and the determination of all matters of policy [are] vested in the municipal council." 357 S.C. at 176, 592 S.E.2d at 299 n.6. South Carolina law has established for more than 100 years that an "administrative" act is enforceable only if supported by legislative authority. See Glenn v.

[1] Under the City's council/manager form of government, the city manager may fix salaries of individual employees subject to limits established in an approved compensation plan and the budget adopted by Council.

County Comm'rs of York, 6 S.C. 412, 440 (1873) ("administrative" act cannot create new rights or obligations but may be exercised only under legislative authority). Accordingly, any promises by a City Manager, supervisor, or individual Council member of lifetime free health insurance are not binding against the City.

The essential elements of equitable estoppel against a government agency are (1) lack of knowledge and means of knowledge of the truth as to the facts in question; (2) justifiable reliance on the government's conduct; and (3) a prejudicial change of position. See Am. Legion Post 15 v. Horry County, 381 S.C. 576, 584, 674 S.E.2d 181, 185 (Ct. App. 2009). Citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests. Id. (citing Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (finding estoppel unavailable where a representative of the state's retirement system erroneously provided retirement benefit advice beyond the scope of his authority and in contradiction of law)). As the Supreme Court observed in Berkeley Electric Coop., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 417 S.E.2d 579 (1992), parties are charged with knowledge of limiting legislation and cannot have "reasonably justified" reliance on actions inconsistent with such legislation. In reaching this conclusion, the Court stated:

> Restrictions on municipal power are created to protect citizens. Although it may seem harsh to deny Berkeley a remedy . . . it is better that Berkeley suffer from the mistake of Mount Pleasant than for this Court to adopt a rule which, through improper combination or collusion, could be detrimental or injurious to the public.

308 S.C. at 210, 417 S.E.2d at 583.

Taking all the allegations by the Plaintiffs as true, it remains clear that no person, whether employee, city manager, or council member had the authority to guarantee free lifetime health insurance. Like their promissory estoppel claim, Plaintiffs' equitable estoppel cause of action is

properly adjudicated by summary judgment. As addressed above, it is well established that an equitable estoppel claim may be determined by way of summary judgment. See, e.g., Quail Hill v. County of Richland, 387 S.C. 223, 236-37, 692 S.E.2d 499, 506-07 (2010). Furthermore, a claim of equitable estoppel is an issue for the judge to determine, not the jury. Gaymon, 327 S.C. 66, 488 S.E.2d 332. Based upon these controlling principles of law and a comprehensive review of the record, it is clear that the City is entitled to summary judgment on the issue of equitable estoppel.

CONCLUSION

Plaintiffs argue that adoption of a group health plan is an administrative function within the authority of the City's manager. Once adopted, Plaintiffs contend that the terms of a group health plan cannot be altered without their consent. Both the record and the established law of this State lead to a different conclusion. In this case it is clear that Council has reserved to itself the authority to determine what costs, if any, will be borne by participants in the City's group health plan. This is consistent with Council's legislative authority to place limits on spending of public funds. In this factual and legal context, Plaintiffs cannot establish breach of contract, promissory, or equitable estoppel.

ORDER

For the reasons stated above and evidenced in the testimony and documents of record, there is no genuine issue of material fact for determination by a jury in this case. Instead, controlling legal principles establish that Plaintiffs cannot satisfy essential elements necessary to obtain the relief requested in this action. On this basis, the City of Columbia is entitled to an order granting summary judgment pursuant to Rule 56, SCRCP.

AND IT IS SO ORDERED.

James R. Barber, III, Judge
Fifth Judicial Circuit

September 10, 2010.
Columbia, South Carolina

EXHIBIT 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COM
	)	FOR THE FIFTH JUDICI
COUNTY OF RICHLAND	)	
	)	Civil Action File No.: 2009
Kirby L. Bishop, Herman G. Boney, Richard H. Brown, Michael D. Catt, Basilides F. Cruz, Robert B. Dozier, Joseph A. Floyd, Sr., Arthur C. Gillam, III, Alma C. Hill, Barry N. Martin, William J. Meyer, Charles F. Morris, Sr., and Joseph A. Smith,	)	
Plaintiffs,	)	
vs.	)	DEFENDANT'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT
City of Columbia,	)	
Defendant.	)	

The Defendant, responding to Plaintiffs' Complaint, alleges as follows:

FOR A FIRST DEFENSE

I. The Complaint fails to state a claim for which relief can be granted.

FOR A SECOND DEFENSE

II. Defendant specifically asserts all rights, benefits and limitations available pursuant to the doctrine of sovereign immunity.

FOR A THIRD DEFENSE AND BY WAY OF ANSWER

III. The Defendant answers each of the allegations of the Complaint by numbers which correspond or refer to the numbered paragraphs of the Complaint as follows. Each allegation of the Complaint not hereinafter specifically admitted is denied.

JURISDICTION AND VENUE

1. Admitted upon information and belief.

2. Admitted.

3. Admitted.

4. The allegations of this Paragraph are legal in nature and do not require a response.

PARTICULAR ALLEGATIONS

5. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff.

6. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

7. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

8. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

9. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

10. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

11. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

12. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, the Plaintiff was not authorized to make promises or enter binding agreements on behalf of Defendant.

13. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

14. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

15. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

16. Defendant is without sufficient information to respond to the allegations of this Paragraph. Defendant denies that any employee was authorized to make promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable. By way of further response, Defendant craves reference to the "benefits booklet" referenced therein.

17. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

18. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

19. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

20. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein.

21. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

22. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

23. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

24. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, the Plaintiff was not authorized to make promises or enter binding agreements on behalf of Defendant.

25. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any contractual obligation to provide free health insurance to any employee or retiree.

26. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

27. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

28. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

29. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

30. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

31. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

32. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

33. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

34. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

35. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

36. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

37. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

38. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

39. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

40. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

41. Defendant is without sufficient information to respond to the allegations of this Paragraph.

42. In response to the allegations of this Paragraph, Defendant craves reference to the letter referenced therein.

43. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

44. In response to the allegations of this Paragraph, Defendant craves reference to the letter referenced therein.

45. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

46. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

47. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

48. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

49. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

50. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

51. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

52. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

53. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

54. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

55. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

56. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

57. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

58. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

59. In response to the allegations of this Paragraph, Defendant craves reference to the employment record of the Plaintiff and the health insurance coverage selected by the Plaintiff. The remaining allegations of this Paragraph are denied.

60. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

61. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

62. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by Plaintiff. The remaining allegations of this Paragraph are denied.

COMMON ALLEGATIONS

63. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

64. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

65. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

66. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

67. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by each Plaintiff.

68. Admitted.

69. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by each Plaintiff.

70. In response to the allegations of this Paragraph, Defendant craves reference to the handbooks referenced therein. The remaining allegations of this Paragraph are denied.

71. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by each Plaintiff.

72. Denied.

PLAINTIFFS' FIRST CAUSE OF ACTION
(Breach of Contract)

73. Defendant incorporates Paragraphs 1-72 above as if set forth verbatim.

74. In response to the allegations of this Paragraph, Defendant craves reference to the handbooks referenced therein. By way further response, Defendant craves reference to the employment records of the Plaintiffs.

75. In response to the allegations of this Paragraph, Defendant craves reference to the handbooks referenced therein.

76. Defendant is without sufficient information to respond to the allegations of this Paragraph. Accordingly, these allegations are denied.

77. In response to the allegations of this Paragraph, Defendant craves reference to the "benefits booklet" referenced therein. The remaining allegations of this Paragraph are denied.

78. In response to the allegations of this Paragraph, Defendant craves reference to the newsletters referenced therein. The remaining allegations of this Paragraph are denied.

79. In response to the allegations of this Paragraph, Defendant craves reference to the financial statements referenced therein. The remaining allegations of this Paragraph are denied.

80. Denied.

81. Denied.

82. Denied.

83. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by each Plaintiff.

84. Defendant is without sufficient information to respond to the allegations of this Paragraph.

85. Denied.

86. Denied.

87. The allegations of this Paragraph are legal in nature and do not require a response. By way of further response, Defendant denies that Plaintiffs are entitled to the relief requested.

PLAINTIFFS' SECOND CAUSE OF ACTION
(Promissory Estoppel)

88. Defendant incorporates Paragraphs 1-87 above as if set forth verbatim.

89. Denied. By way of further response, Defendant denies that any employee was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

90. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies that any employee or other individual

was authorized to make the promises allegedly relied upon by Plaintiff and any reliance upon such alleged promises would have been unreasonable.

91. In response to the allegations of this Paragraph, Defendant craves reference to the Plaintiffs' records of employment. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

92. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

93. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

94. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

95. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

96. Defendant is without sufficient information to respond to the allegations of this Paragraph. By way of further response, Defendant denies any conduct that could reasonably induce an employee to believe that any fringe benefit is guaranteed for a lifetime regardless of changes in circumstances.

97. Denied.

98. Denied.

99. Denied.

100. The allegations of this Paragraph are legal in nature and do require a response. By way of further response, Defendant denies any "wrongful actions."

PLAINTIFFS' THIRD CAUSE OF ACTION
(Unfair Trade Practice)

101. Defendant incorporates Paragraphs 1-100 above as if set forth verbatim.

102. The allegations of this Paragraph are legal in nature and do require a response. By way of further response, Defendant denies that Plaintiffs have stated a claim under the South Carolina Unfair Trade Practices Act.

103. Admitted.

104. Denied.

105. Denied.

106. Admitted.

107. Denied.

108. In response to the allegations of this Paragraph, Defendant endeavors to employ the best available staff for each of its positions of employment.

109. Denied.

110. Denied.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

PLAINTIFFS' FOURTH CAUSE OF ACTION
(Declaratory Judgment)

117. Defendant incorporates Paragraphs 1-116 above as if set forth verbatim.

118. The allegations of this Paragraph are legal in nature and do require a response. By way of further response, Defendant denies that Plaintiffs are entitled to declaratory judgment.

119. Denied.

120. In response to the allegations of this Paragraph, Defendant craves reference to the health insurance coverage selected by each Plaintiff.

121. Defendant is without sufficient information to ascertain Plaintiffs' subjective beliefs. All remaining allegations of this Paragraph are denied.

122. In response to the allegations of this Paragraph, Defendant denies that it has breached any contractual obligation to Plaintiffs.

123. Denied.

124. The allegations of this Paragraph are legal in nature and do require a response. By way of further response, Defendant denies any "wrongful actions."

PLAINTIFFS' FIFTH CAUSE OF ACTION
(Equitable Estoppel)

125. Defendant incorporates Paragraphs 1-124 above as if set forth verbatim.

126. Denied.

127. Denied.

128. In response to the allegations of this Paragraph, Defendant craves :

Code of Laws for South Carolina and the ordinances of the City of Columbia th

duties of the City Manager.

129. Denied.

130. Denied.

131. Denied.

132. Denied.

FOR A FOURTH DEFENSE
(Statute of Limitations)

IV. Plaintiff's claims and requests for relief are barred by the applicable statutes of limitations.

FOR A FIFTH DEFENSE
(Accord and Satisfaction)

V. Plaintiff's claims and requests for relief are barred by the doctrine of accord and satisfaction.

FOR A SIXTH DEFENSE
(State Tort Claims Act)

VI. Defendant specifically asserts and preserve all immunities and limitations contained in the State Tort Claims Act.

FOR A SEVENTH DEFENSE
(Lack of Standing)

VII. Plaintiffs are without standing to seek the relief claimed in the Complaint.

FOR AN EIGHTH DEFENSE
(Exercise of Governmental Authority)

VIII. The availability of fringe benefits sought by Plaintiffs is a matter within the governmental authority of the Defendant. Plaintiffs are without standing and Plaintiff's claims are barred by the lawful exercise of governmental discretion. Additionally, any alleged promises regarding future benefits are unenforceable as such communications are unauthorized and *ultra vires* as a matter of law.

WHEREFORE, having fully answered the Complaint of Plaintiffs, Defendant demands that the Complaint be dismissed with prejudice.

NICKLES & SOLOMON, LLC

By: _____

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October 14, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	IN THE FIFTH JUDICIAL CIRCUIT
Basilides F. Cruz; Joseph A. Floyd, Sr.; Arthur C. Gillam, III; Alma C. Hill; Barry N. Martin; Charles F. Morris, Sr.; and Joseph A. Smith,)	Case No.: 2009-CP-40-5680
Plaintiff,)	
vs.)	
City of Columbia,)	
Defendant.)	
)	Case No.: 2013-CP-40-05097
Larry Strickland, Denious Dimery, and Bailey McClinton,)	
Plaintiffs,)	
vs.)	
City of Columbia,)	
Defendant.)	

PLAINTIFFS' POST-TRIAL BRIEF

The parties tried this promissory estoppel case before the Court on December 19 and 20, 2018. Over the course of the two-day bench trial, the Court received evidence and heard testimony from the retired-firefighter Plaintiffs and three witnesses for the City of Columbia and took the case under advisement. In this post-trial brief, Plaintiffs (1) review why the greater weight of the evidence supports finding in favor of all 10 Plaintiffs; (2) articulate why the City of Columbia's defenses are inapplicable here; and (3) propose alternatives for calculating damages.

TABLE OF CONTENTS

I. BACKGROUND 3

II. THE GREATER WEIGHT OF THE EVIDENCE SUPPORTS FINDING IN FAVOR OF ALL 10 PLAINTIFFS 4

1. City of Columbia officials unambiguously promised Plaintiffs that their service to the City of Columbia would earn them no-cost, single coverage healthcare for life 4

2. City of Columbia officials acted within the scope of their authority when they promised Plaintiffs no-cost, single coverage healthcare for life 5

3. It was reasonable for Plaintiffs to rely on the promise of post-retirement, no-cost, single coverage healthcare for life 10

4. The City of Columbia, through its agents, expected Plaintiffs to rely on the promise of post-retirement, no-cost, single coverage healthcare for life 12

5. Each plaintiff sustained an injury by relying on the promise of post-retirement, no-cost single coverage healthcare for life 12

III. NONE OF THE CITY OF COLUMBIA'S DEFENSES ARE APPLICABLE 17

1. The State Tort Claims Act does not apply 17

2. The "political question" doctrine does not apply 17

3. Plaintiffs are not seeking to prevent City Council from implementing changes writ large 18

4. Article X, Section 14 of the South Carolina Constitution is inapplicable 19

5. None of the themes repeated by the City of Columbia throughout the trial constitute defenses 19

IV. CALCULATING DAMAGES 20

V. CONCLUSION 22

I. BACKGROUND

The basic facts of this case are not seriously in dispute. Plaintiffs began working for the City of Columbia as firefighters in the 1960s, 1970s, and 1980s. Each plaintiff articulated specific instances throughout their careers when Chiefs, City Managers, and Human Resources officials represented to them that they would receive no-cost single coverage healthcare from the time of their retirement until the time of their death. And the City of Columbia did, in fact, provide Plaintiffs with no-cost single coverage healthcare from the dates of their retirement until July 2009 for individuals under 65, and 2013 for those individuals over 65. Plaintiff Denious "D.L." Dimery's experience illustrates this last point—Dimery retired in 1991 and received no-cost single coverage healthcare for over 20 years before the City of Columbia began requiring him to pay the premium for the same coverage.

The only remaining cause of action in this case is for promissory estoppel. "Promissory estoppel is a quasi-contract remedy." N. Am. Rescue Prods., Inc. v. Richardson, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015). "Promissory estoppel developed to protect the ability of individuals to trust promises in circumstances where trust is essential. It is the value of trust that forms the basis of the entitlement to rely." State Bank of Standish v. Curry, 442 Mich. 76, 83–84, 500 N.W.2d 104, 107 (1993) (citing Daniel A. Farber and John H. Matheson, Beyond Promissory Estoppel: Contract Law and the "Invisible Handshake", 52 U. Chi. L. Rev. 903, 928 (1985)).

In South Carolina, the elements of promissory estoppel are "(1) an unambiguous promise; (2) reasonable reliance on that promise by the person to whom the promise is made; (3) the reliance was expected by the person making the promise; and (4) the person to whom the promise was made sustained an injury by relying on the promise." Judge Early's Charge Book (citing Woods v. State, 314 S.C. 501, 431 S.E.2d 260 (Ct. App. 1993)).

II. THE GREATER WEIGHT OF THE EVIDENCE SUPPORTS FINDING IN FAVOR OF ALL 10 PLAINTIFFS

The preponderance of the evidence shows that (1) there was an unambiguous promise; (2) City of Columbia officials who made the promise were acting within the scope of their authority; (3) it was reasonable for Plaintiffs to rely on the promise; (4) the reliance was expected by the individuals making the promise; and (5) each plaintiff sustained an injury by relying on the promise, establishing a cause of action for promissory estoppel for each plaintiff. Although this is not a class action, much of the evidence presented by the parties in this case is relevant to every plaintiff's individual claim for promissory estoppel, as highlighted below.

1. City of Columbia officials unambiguously promised Plaintiffs that their service to the City of Columbia would earn them no-cost, single coverage healthcare for life

Each plaintiff testified that throughout their careers with the City of Columbia Fire Department they were promised that they would receive no-cost, single coverage healthcare for life upon retirement through the City of Columbia's healthcare plan, so long as they satisfied the applicable years-of-service requirement. Steve Gantt, the City of Columbia's City Manager when the decision to stop providing such coverage was made, acknowledged that it was the city's longstanding practice to provide such coverage to retirees.

The years-of-service requirement changed over the years, moving first from 10 years to 15 years, and ultimately to 25. The particulars of the City's healthcare plan changed from year-to-year as well; for example, there was testimony that certain doctors may have gone from "in network" to "out of network" or vice versa. But the promise that eligible retirees would receive one constant was the promise that retirees would receive no-cost, single coverage healthcare for life through the City of Columbia's healthcare plan was unambiguous and unchanging.

The City of Columbia presented no competent evidence to counter Plaintiffs' testimonies regarding the promises that were made to them. Its attempt to characterize its longstanding practice

of providing eligible retirees with no-cost, single coverage healthcare as a "then-in-place policy" as opposed to a bona fide promise is disingenuous.

Merriam-Webster's dictionary defines "promise" as "a declaration that one will do or refrain from doing something specified." Promise, Merriam-Webster Online, https://www.merriam-webster.com/dictionary/promise (last visited Jan. 14, 2019). Here, the cumulative evidence provided by Plaintiffs' testimonies, testimony from Steve Gantt, and documentary evidence such as the letter instructing new retirees not to take out Medicare Part D several years before they would even be eligible all support the existence of a declaration—numerous declarations—from agents of the City of Columbia that it would do something specified. More specifically, the greater weight of the evidence supports the existence of a promise to provide Plaintiffs with no-cost, single coverage healthcare until they die.

Finally, the City of Columbia cannot sincerely argue that the promise of no-cost, single coverage healthcare for life was ambiguous because (1) it delivered that promise for many years and for many individuals over the years; and (2) it provided each plaintiff with no-cost, single coverage healthcare under the City of Columbia's healthcare plan for some period of time after he retired. Accordingly, each Plaintiff satisfies the first element of promissory estoppel.

2. City of Columbia officials acted within the scope of their authority when they promised Plaintiffs no-cost, single coverage healthcare for life

The Court of Appeals has held in this case that "[t]he acts of a city official acting *within the proper scope of his or her authority* may 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); see also id. at 667 (holding that "the employment review context during which the representations [of no-cost, single coverage healthcare] were made provides a scintilla of evidence to suggest the representations and promises were within the supervisors' authority"). Although the question of whether the person who made

the promise acted within the scope of his or her official authority is not a traditional element of the promissory estoppel cause of action, it is must be addressed here.

Plaintiffs presented substantial evidence—and law—that the individuals who made the promises were acting within the scope of their authority. Plaintiffs all testified that they were told by City Managers, Human Resources officials, and Fire Chiefs that they would receive no-cost, single coverage healthcare for life if they met the years-of-service requirement. As chief executive officer, the scope of the City Manager's authority is broad and includes control over the city's departments, which include Human Resources and Fire. City of Columbia Ordinances § 2-114, 2-151. Plaintiffs testified that these promises and representations were made regularly and in various controlled, professional settings, including fire station meetings, retirement planning seminars, and direct talks with various City of Columbia officials including Mona Holliday.

Plaintiff Joe Floyd testified that he was instructed by Human Resources to discuss the promise of no-cost, single coverage healthcare for life with potential recruits, as did Plaintiff Frank Cruz. Steve Gantt, the City Manager, testified that it was within the scope of Human Resource officials' authority to inform retirees about their benefits. This was offered further support by City of Columbia Ordinance § 2-122, which specifies that the director of human resources is "responsible for all activities related to employment, employee relations, [and] . . . employee benefits." Defendant's Trial Ex. 6.

In Bishop, the Court of Appeals identified several additional City of Columbia ordinances that are relevant to the question of the scope of authority:

- City of Columbia Ordinance § 2–114("(a) Duties. The city manager shall be the chief executive officer of the city and head of the administrative branch of city government. The city manager shall perform and exercise the duties and responsibilities prescribed by law for this office and such other duties and responsibilities as prescribed by the City Council. (b) Assistants.

> The city manager may employ assistants to exercise such supervisory responsibilities over departments as the city manager may delegate.");
>
> - City of Columbia Ordinance § 2–151("(a) The following departments of the city are created: ... Human resources; ... Fire; ... (b) The head of each department shall be a director, who shall be an officer of the city and shall have supervision and control of his department, subject to the city manager. The city manager may serve as director of one or more departments or divisions within any department."); and
>
> - City of Columbia Ordinance § 2–125 ("The director of human resources, subject to the city manager, shall have administrative supervision over the department of human resources and shall be responsible for those activities relating to employment, employee relations, and training and shall perform such additional duties as may be assigned by the city manager.").

In addition, the testimony provided by Pamela Benjamin, the current Human Resources Director for the City of Columbia, strongly supports the conclusion that discussing retirement benefits with employees is within the scope of Human Resources officials' authority. Ms. Benjamin testified that she "make[s] it very clear to her staff that [they're] talking about the present" and that things could change when they discuss retirement benefits with potential recruits and current employees. This testimony is important for two reasons.

First, it highlights the fact that *to this day* the task of discussing retirement benefits with employees falls within the scope of the authority of Human Resources officials. Ms. Benjamin notably did not say that she told her staff not to discuss retirement benefits because they were outside the scope of their authority or that they had no authority to make any statements. The Human Resource department is *the* place employees go for reliable information regarding benefits, as underscored by Plaintiff Cam Gillam's discussion with Mona Holliday to confirm that he was set to retire with no-cost, single coverage healthcare for life and Steve Gantt's testimony that it was fair for Plaintiffs to rely on Mona Holliday's representations regarding retiree health insurance benefits.

Second, although Ms. Benjamin's testimony may be an accurate reflection of the current practices of the City of Columbia's Human Resources Department, it is of no relevance to the practices during the relevant period, which is 1968 to 2009 (i.e., the earliest date a plaintiff was hired to the latest date a plaintiff retired). Ms. Benjamin did not begin working with the City of Columbia until July 2011, and she testified that she had no knowledge regarding whether her predecessors were as diligent as she was in making sure that her representations regarding retirement benefits contained caveats such as "this is the current policy" or "things may change."

The City of Columbia offered little in the way of evidentiary support for the position that making these representations fell outside the scope of the authority of the City Manager, Human Resources, or the Fire Chiefs. In fact, much of the testimony the City of Columbia elicited appeared to conflate the question of the *scope of authority* with the question of whether particular individuals had the *actual authority* to create a binding contract between the City of Columbia and Plaintiffs. The scope of authority is what is at issue here, and it is distinct from actual authority. The doctrine of respondeat superior provides a useful analogy.

"The doctrine of respondeat superior provides that the employer, as the employee's master, is called to answer for the tortious acts of his servant, the employee, when those acts occur in the course and scope of the employee's employment." James v. Kelly Trucking Co., 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008). The doctrine does not exist because the employee has undertaken an action that the employer has specifically authorized, or even because the employer did something wrong. The liability arises when the acts of the employee "occurred while the employee was going about the employer's business." Id. In other words, respondeat superior liability attaches because the tortious act took place in the scope of the business

Here, there is no doubt that City Managers, Human Resource officials, and Fire Chiefs made the promises and representations to Plaintiffs while going about the City of Columbia's business. When they made the promises, they were attempting to attract and retain Plaintiffs to operate a vital arm of the City of Columbia's "business" of governance—the fire department. This was within the scope of their authority.

The City of Columbia has argued that making these promises was outside of the scope of the City Manager's authority because city ordinances prevented him from making such decisions unilaterally. This is incorrect for at least two reasons. First, the argument again conflates the scope of authority with actual authority. Second, the ordinance that the City of Columbia cited during trial—§ 2-207, Defense Tr. Ex. 1, tab 2—is inapplicable to the case at bar. That ordinance applies only to the rejection or approval of bids and purchase contracts, as well as awarding contracts. This is not a contracts case.

In sum, the question of fact before the court is whether the individuals who made the representations of no-cost, single coverage healthcare for life to Plaintiffs were acting within the scope of their authorization. The Court of Appeals has already conclusively answered the question of whether City Managers, Human Resource officials, or Fire Chiefs had the actual authority to enter into unilateral contracts with Plaintiffs in the negative. Bishop v. City of Columbia, 401 S.C. 651, 663, 738 S.E.2d 255, 261 (Ct. App. 2013). But it held that Plaintiffs had provided at least a scintilla of evidence that the promises were made by individuals acting within the scope of their authority. The great weight of evidence presented during the trial established that this is, indeed, the case. There was no evidence put forward to question what Plaintiffs represented they had been told, and there was no evidence put forward to suggest that the City Managers, Human Resources officials, and Fire Chiefs who made the representations had gone rogue. To the contrary, it was

established that providing this earned benefit in retirement was a longstanding tradition. Accordingly, the greater weight of the evidence supports finding that the promises were made by individuals acting within the scope of their authority.

3. It was reasonable for Plaintiffs to rely on the promise of post-retirement, no-cost, single coverage healthcare for life

It was reasonable for Plaintiffs to rely on the promise that they would receive no-cost single coverage healthcare for life upon retirement because (1) the benefit was a logical tradeoff for lower pay (and was characterized as such); (2) the promise was reinforced through official City of Columbia channels; (3) the City of Columbia allowed the understanding to proliferate; (4) Plaintiffs observed the city making good on that promise to others for many years; and (5) the City of Columbia made good on the promise to all 10 Plaintiffs for some period of time.

Each plaintiff's testimony painted a similar picture. When he was hired, the fire chief and/or an individual from Human Resources would tell him about the benefits that came along with working as a firefighter. One of these benefits was the promise of no-cost, single coverage healthcare for life. As multiple plaintiffs noted, this earned benefit was understood to be a tradeoff for the low salary and high risk that came with the job. To paraphrase the testimony of Plaintiff Bailey McClinton, the firefighters were told that they may never get rich, but at least they had this paid up benefit in retirement.

The uncontested evidence shows that this message was reiterated and reinforced through official channels throughout each plaintiff's career with the City of Columbia. Human Resources put on retirement planning seminars that addressed retiree healthcare coverage. City Managers came to meetings at the fire stations and discussed retiree healthcare coverage. Human Resources instructed the fire department to use retiree health coverage as a recruiting tool. Mona Holliday and others within Human Resources advised Plaintiffs that they were "good to go" with respect to

health insurance benefits in retirement and mailed Plaintiffs letters advising them not to take Medicare Part D because the City's health insurance plan was that much better. In his deposition testimony, Steve Gantt, the former City Manager, testified that it would be reasonable for Plaintiffs to rely on the word of Mona Holliday.

This constant reiteration and reinforcement from the City of Columbia caused an understanding—perhaps even a culture—to proliferate throughout the fire department. There was no doubt in any of the plaintiffs' mind that they would receive the no-cost, single coverage health care when they retired because they had earned it. Every Plaintiff testified that he knew other firefighters who received no-cost, single payer coverage in retirement until death. DL Dimery testified that three chiefs who he outlived all received this promise in retirement. Barry Martin's father, who was also a City of Columbia firefighter, received this promise until he died. Finally, the City of Columbia made good on the promise to each and every Plaintiff for some period of time after retirement, ranging from 9 months to 22 years.

Finally, the City of Columbia has suggested that it was not reasonable for Plaintiffs to rely on these representations because (1) "things change," and (2) "this is how things operate in a democratic society." But the City of Columbia put forth no evidence that the longstanding policy that provided eligible retirees with no-cost, single coverage healthcare for life was implemented through a vote by City Council. Accordingly, Plaintiffs had no reason to believe that what had been promised to them for years during employment and delivered to them in retirement could be changed by the vote of City Council. These aphorisms have no bearing on whether it was reasonable for Plaintiffs to rely on the representations that they would receive no-cost, single coverage healthcare for life upon their retirement.

Considering the factors above, both individually and in the aggregate, it was reasonable for Plaintiffs to rely on the promise of no-cost, single coverage healthcare for life.

4. The City of Columbia, through its agents, expected Plaintiffs to rely on the promise of post-retirement, no-cost, single coverage healthcare for life

As discussed above, agents for the City of Columbia acted within the scope of their authority when they used the promise of no-cost, single coverage healthcare for life as an incentive, both to attract new hires and also to prevent active employees from leaving the fire department for other opportunities. The promise of this future benefit was specifically designed to entice people to come to work for the City of Columbia and continue to work for the City of Columbia despite the low rate of pay. To that end, the individuals making the representations on behalf of the City of Columbia—that is, the City Managers, Human Resources officials, and Fire Chiefs—all expected Plaintiffs to rely on the promise of no-cost, single coverage healthcare for life.

To find that City Managers, Human Resources officials, and Fire Chiefs did not expect Plaintiffs to rely on the promise of no-cost, single coverage healthcare for life would require a factfinder to ignore the fact that these individuals knew that people had relied on this promise for decades, as evinced by testimony regarding individuals who retired with this benefit in the 1970s, 1980s, 1990s, and 2000s. Accordingly, the greater weight of the evidence supports finding that City Managers, Human Resources officials, and Fire Chiefs did expect plaintiffs to rely on their promises and representations.

5. Each plaintiff sustained an injury by relying on the promise of post-retirement, no-cost single coverage healthcare for life

Plaintiffs all testified that they (1) made decisions in reliance of the promise of post-retirement, no-cost single coverage healthcare for life; and (2) had no reason to think that the promise would not be fulfilled. Because that promise was not kept, Plaintiffs all sustained various injuries, as discussed further below.

The class action was not certified because the circuit court held that all Plaintiffs needed to individually establish that they had suffered an injury in reliance on the promise of no-cost, single coverage healthcare for life. Testimony during the trial, however, established that Plaintiffs all suffered identical injuries. Each Plaintiff testified that the promise either induced him to work for or continue working for the City of Columbia for some period of time. Accordingly, each Plaintiff suffered the identical injury in reliance on the broken promise of no-cost, single coverage healthcare for life—the effective reduction of compensation for work already performed. This has caused all Plaintiffs to incur out-of-pocket costs for insurance premiums that they would not have otherwise incurred.

As the Court will recall, Plaintiffs brusquely bristled at the description of no-cost, single coverage health insurance for life as "free healthcare." Plaintiffs earned it through their service to the City of Columbia, and they factored it into their personal compensation calculus. Several plaintiffs also testified that the City of Columbia provided them with slips of paper that showed them their "true" compensation, which included calculations for benefits such as no-cost, single coverage healthcare for life and significantly increased the amount of their effective compensation beyond their salaries. When the City of Columbia reneged on the promise, it pulled a bait and switch with overall compensation, injuring all Plaintiffs. The broken promise wiped out "savings" the Plaintiffs had earned over the years through their work, in the form of the cost of the monthly premiums for their insurance. Because each Plaintiff was on a fixed income, this effect was significant and substantial, despite the relatively low cost of monthly premiums.

An analogous situation would be if the City of Columbia hired Plaintiffs at a stated rate of $15/hour and deferred payment of $5/hour until retirement. In other words, Plaintiffs would pocket only $10/hour while they worked, but they were induced to work for the promise of $15/hour. If the

City of Columbia failed to deliver the promised earned $5/hour in retirement, the effective rate that Plaintiffs would earn is less than the $15/hour they were initially promised. Here, the reduced effective hourly rate is the injury common to all Plaintiffs.

In addition to the reduction in effective compensation, each plaintiff provided testimony relating to additional injuries suffered in reliance of the promise of no-cost, single coverage healthcare for life:

- Plaintiff Cam Gillam testified that he calculated his ability to retire—that is, the costs he expected to incur and whether he needed to continue to work to satisfy those obligations—based on his reliance of the promise of no-cost, single coverage healthcare for life.

- Plaintiff Larry Strickland stayed with the City of Columbia Fire Department because of the promise of no-cost single coverage healthcare for life instead of seriously pursuing a higher paying job with Southern Railway. This injury is compounded by the fact that the difference in compensation between the two jobs is increased by the elimination of no-cost, single coverage healthcare for life. He also factored no-cost, single coverage healthcare into his retirement planning.

- Plaintiff Bailey McClinton testified that the promise of no-cost, single coverage healthcare induced him to stay with the fire department instead of looking at the numerous well-paying private employers that came to the area during his tenure, including Mack Truck. He also factored no-cost, single coverage healthcare into his retirement planning.

- Plaintiff Charlie Morris testified that he developed bad knees during the course of his work as a firefighter, and he worked for some period of time with his bad knees to reach the years-in-service requirement that would make him eligible for no-cost, single coverage healthcare for life. Morris had surgery on his knees after he retired, but he testified that he would have had the surgery earlier, left the department earlier, and found other work if he had known that the promise of no-cost, single coverage health insurance for life was not going to be covered. Like Gillam, Morris also testified that he knew he was on a fixed income and made calculations based on his expected expenses, which did not include healthcare premiums.

- Plaintiff Alma Hill testified that after he was planning to leave the Fire Department after a rough patch in his life, he decided to stay, in part because of the promise of no-cost, single coverage healthcare for life. He also retired at the age of 47 and could have continued to work as a firefighter to save for the costs of health insurance premiums, but he timed his retirement based, in part on the promise.

- Plaintiff Joe Floyd testified that he withdrew his name from consideration from the final round of the Summerville Fire Department's search for a new Chief in order to obtain the promised no-cost, single coverage healthcare for life. He also testified that he had factored having no-cost, single coverage healthcare for life into his retirement planning.

- Plaintiff Rusty Smith testified that he timed his decision to retire based on the promise of no-cost, single coverage healthcare for life. At the time of his retirement in 2006—after 33 years with the Fire Department—Smith would have continued to work as a firefighter and continued to save money for several additional years, had he known that he would need to factor the cost of his health insurance premiums into his retirement planning. But the City of Columbia's decision to renege on its promise three years after his retirement deprived him of that opportunity.

- Plaintiff Frank Cruz, the son of an Army veteran, specifically took the job with the fire department because of the promise of no-cost, single coverage health insurance premiums until retirement. He made the choice to stay with the Fire Department instead of the Marine Reserves because of this promise, and he was induced not lo look at any other employment options at any point in time because of this promise. Because of

- Plaintiff Barry Martin came to work for the City of Columbia Fire Department and stayed with the Fire Department because of the benefits, including no-cost, single coverage health insurance for life. He did not look for other options because of the benefits, and factored the promise of no-cost, single coverage healthcare for life into his decision to continue working with the fire department after he suffered his first heart attack.

- Plaintiff DL Dimery retired at the age of 49 in 1991 because of dry eyes that prevented him from continuing to work as a firefighter. He testified that he could have retired earlier and sought other work if he had known that the promise of no-cost, single coverage healthcare for life was not going to be fulfilled. And because he retired at the age of 49 with no serious physical ailments besides dry eyes, he could have worked in other areas to save for the costs of health insurance premiums. Instead, he was led to believe, as the City of Columbia provided him no-cost, single coverage healthcare for 22 years after his retirement, that he would receive this for life. By waiting 22 years after Dimery's retirement to eliminate the no-cost, single coverage healthcare, the City of Columbia deprived him of opportunities to perform work that he could have performed in his 40s, 50s, and even his 60s to save for this expense.

The City of Columbia has argued that to prove injury in reliance on the promise, Plaintiffs need to demonstrate that they "would have done better" by going to another job instead of staying with the Columbia Fire Department until their retirement. This "requirement" is made from whole

cloth and inconsistent with the law on promissory estoppel in South Carolina and the principles that underpin promissory estoppel.

A plaintiff who brings a cause of action in South Carolina need only demonstrate that "the promise to be enforced [is] unambiguous with clearly articulated, definite terms, [and that] the sustained injury . . . result[ed] from an inconsistent disposition by the promisor." Barnes v. Johnson, 402 S.C. 458, 470, 742 S.E.2d 6, 11 (Ct. App. 2013). There is no requirement that a plaintiff demonstrate that he or she would have gotten another job or would have "done better" elsewhere. This is why the doctrine of promissory estoppel applies in areas outside the arena of promises related to employment. See, e.g., Powers Const. Co. v. Salem Carpets, Inc., 283 S.C. 302, 306, 322 S.E.2d 30, 33 (Ct. App. 1984) ("Because promissory estoppel is a recognized doctrine in South Carolina, we have no doubt that the doctrine can support an action brought in this state by a contractor who has submitted a prime bid in reliance upon a subcontractor's bid." (internal citation omitted)); see also Furman University v. Waller, 124 S.C. 68, 117 S.E. 356 (1922) (applying the concept of promissory estoppel—although not by name—to a situation where a university relied on a pledged donation to build a dormitory); Higgins Const. Co. v. S. Bell Tel. & Tel. Co., 276 S.C. 663, 665–66, 281 S.E.2d 469, 470 (1981) (recognizing that Waller was a promissory estoppel case and holding that the doctrine is not restricted to cases involving charities).

Because the greater weight of the evidence demonstrates that Plaintiffs all (1) took some action or refrained from taking some action based on the promise of no-cost, single coverage healthcare for life; and (2) suffered some injury as a result of that action or forbearance, Plaintiffs have all successfully established their claims for promissory estoppel by a preponderance of the evidence.

III. NONE OF THE CITY OF COLUMBIA'S DEFENSES ARE APPLICABLE

Throughout the course of litigation and during the trial itself, the City of Columbia has expressly articulated defenses and discussed themes that one could believe to be assertions of defenses. None of these express or implied defenses are applicable to the case at bar.

Plaintiffs are not attempting to prohibit city council from making policy changes

1. The State Tort Claims Act does not apply

The City of Columbia has asserted multiple defenses under the South Carolina Tort Claims Act. The South Carolina Tort Claims Act applies only to torts, not to contract or quasi-contract claims. S.C. Code Ann. § 15-78-40 ("The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein."); S.C. Code Ann. § 15-78-20(d) ("Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract."). "Promissory estoppel"—the sole remaining claim in the case—"is a quasi-contract remedy." N. Am. Rescue Prod., Inc. v. Richardson, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015). Because there is no tort claim in this case, all defenses based on the Tort Claims Act must fail as a matter of law.

2. The "political question" doctrine does not apply

Throughout litigation, the City of Columbia has argued that this case presents a "political question" that the Court should not decide. It takes more than a litigant stating the words "political question," however, for the political question doctrine to apply.

Political question cases are those cases in which the court exercises judicial restraint abstaining from deciding certain matters that would place it in conflict with a coequal branch of government. Alexander v. Houston, 403 S.C. 615, 618–19, 744 S.E.2d 517, 519 (2013) (clearly

outlining the political question doctrine). As the United States Supreme Court has noted, this doctrine "is one of 'political questions,' not one of 'political cases.'" Baker v. Carr, 369 U.S. 186, 217, 82 S. Ct. 691, 710, 7 L. Ed. 2d 663 (1962) (quotation marks in original).

To be sure, this case involves City of Columbia politics. But the Court of Appeals has already held that the City of Columbia can be estopped by the representations of City employees where the employees' statements were authorized and reasonably relied upon. Bishop v. City of Columbia, 401 S.C. 651, 666–67, 738 S.E.2d 255, 263 (Ct. App. 2013). By remanding the case for factfinding, the Court of Appeals has implicitly recognized that this is not a political question case. Accordingly, the political question doctrine does not apply to this case.

3. Plaintiffs are not seeking to prevent City Council from implementing changes writ large

In its pre-trial brief, the City of Columbia argued that this case somehow presents the question of whether "the City may be judicially barred from making changes in its health insurance program applicable to retirees." City of Columbia's Pre-Trial Brief at 4. This question misstates the issue before the Court, and all of the cases and constitutional provisions cited by the City of Columbia are inapplicable.

As a threshold matter, this case is not about the City of Columbia's decision to make changes in its health insurance program applicable to retirees; it is about the City of Columbia's decision to charge retirees for single coverage healthcare, when they had been promised no-cost, single coverage healthcare for life. And because this is not a class action and the statute of limitations has run for members of the denied class who are not a part of this action, this case is about only the 10 Plaintiffs, not all retirees.

Turning to the cases cited by the City of Columbia, they are all completely unrelated to the matter before the Court:

- Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 635, 743 S.E.2d 808, 814 (2013), involved immunity for a regulatory board pursuant to the Tort Claims Act. As discussed above, the Tort Claims Act is inapplicable here because Plaintiffs' cause of action does not sound in tort.

- Tenney v. Brandhove, 341 U.S. 367 (1951), is a United States Supreme Court case that involved the privileges of state legislators who brought a citizen before them to testify. This case is also unrelated to the case before the Court, which involves no such acts.

- Sandlands C & D, LLC v. Cty. of Horry, 394 S.C. 451, 716 S.E.2d 280 (2011), dealt with the constitutionality of a municipal ordinance. This case does not present a challenge to the constitutionality of any municipal ordinances.

Because Plaintiffs do not seek to "judicially bar" the City of Columbia from making changes in its health insurance program applicable to retirees and the cases cited by the city are unrelated to this promissory estoppel action, the Court should disregard this defense.

4. Article X, Section 14 of the South Carolina Constitution is inapplicable

The City of Columbia has suggested that Article X, Section 14 of the South Carolina Constitution provides a defense to Plaintiffs' promissory estoppel claims. The City of Columbia represents that this constitutional provision bars "public subdivisions"—which include the City of Columbia—"from incurring public indebtedness beyond revenue production." City of Columbia' Pre-trial Brief at 4. However, this constitutional provision simply addresses the terms of "bonded indebtedness" for "political subdivisions." In other words, it outlines the power by which political subdivisions can issue bonds to raise funds. This has no bearing on the promissory estoppel matter before the Court and should be disregarded.

5. None of the themes repeated by the City of Columbia throughout the trial constitute defenses

Throughout the trial, the City of Columbia revisited several themes through its cross examination of Plaintiffs. These themes included the following:

- Plaintiffs received pay increases and were able to retire earlier than many people in society;

- Plaintiffs received personal gratification from working as firefighters;
- Insurance costs and healthcare costs are rising;
- Everyone is wrestling with healthcare costs;
- Things change, that's a fact of life;
- It's not a legal requirement to provide anyone with health insurance;
- Shift work allowed Plaintiffs to work additional jobs if they wanted to;
- At least The City of Columbia provided Plaintiffs with no-cost, single coverage healthcare for some period of time. That's a good deal, when looked over the course of their careers;
- The pension was the primary benefit, the no-charge, single coverage health insurance was an afterthought;
- Even though Plaintiffs are now required to pay for their health coverage, the City of Columbia is still contributing to it; and
- We live in a democratic society, and the way to address any issues you have with decisions of City Council is to vote.

None of these themes tip the balance in favor of the City of Columbia with respect to any element of promissory estoppel. Moreover, none of these themes, individually, or in the aggregate, constitutes a defense to promissory estoppel.

Because Plaintiffs have all established the elements of promissory estoppel by a preponderance of the evidence and the City of Columbia has not articulated an applicable defense, Plaintiffs should prevail on their promissory estoppel claims.

IV. CALCULATING DAMAGES

Promissory estoppel is an equitable remedy. Barnes v. Johnson, 402 S.C. 458, 469, 742 S.E.2d 6, 11 (Ct. App. 2013) (noting that "promissory estoppel is a flexible doctrine that aims to achieve equitable results"). Accordingly, the Court has the authority to determine the proper measure of damages on a case-by-case basis to ensure a fair result.

By working for the City of Columbia for substantial periods of time at reduced pay (as compared to the private sector) but with the expectation of no-charge, single coverage healthcare until retirement, Plaintiffs conferred a bargained-for benefit upon the City of Columbia. The appropriate measure of damages situations such as this where Plaintiffs' restitution interests have been violated is expectation damages—that is, the value of the promise that was broken. This is consistent with Judge Early's charge on Promissory Estoppel and the weight of the authority on promissory estoppel damages.[1]

Plaintiffs all testified to a dollar amount that they had spent out of pocket to the date of the trial. There is no question that Plaintiffs should receive these amount as damages for expenses already incurred. And because Plaintiffs have all paid their monthly premiums for the month of January, this amount should be incrementally increased accordingly. But calculating future damages presents a more complicated task. Plaintiffs propose three alternatives to the Court.

First—and perhaps the most straightforward—the City of Columbia could consent to provide Plaintiffs with no-cost, single coverage healthcare for life, as initially promised. This coverage would be the same as the employee/retiree plan Plaintiffs are currently eligible to participate in and include a drug coverage option "as good or better" than Medicare Part D, as specified in the letters Plaintiffs received from Human Resources upon their retirements instructing them not to take Medicare Part D. If the City of Columbia does not consent to such a resolution, Plaintiffs anticipate that the Court will be hesitant to order specific performance and retain jurisdiction over compliance indefinitely.

[1] Judge Early's promissory estoppel charge states, in relevant part, "IF YOU FIND PROMISSORY ESTOPPEL, THE PROMISE MUST BE ENFORCED." Citing 31 C.J.S. Estoppel § 80. For a comprehensive discussion of damages available in promissory estoppel cases, see Mary E. Becker's informative article, Promissory Estoppel Damages, 16 Hofstra Law Review 131 (1987), which is attached to this post-trial brief as Exhibit 1.

Accordingly, the remaining options involve lump sum payments from the City of Columbia to Plaintiffs to cover the cost of healthcare premiums.

As a second option, the Court could use (1) the evidence the parties stipulated to that contains Plaintiffs ages; (2) life expectancy tables; and (2) evidence presented in Court to estimate the monthly premiums each Plaintiff would pay over time. Plaintiffs under 65 testified that they were paying monthly premiums around $40, while those Plaintiffs 65 and over testified that they were paying monthly premiums of around $250. Plaintiffs and Melissa Caughman referenced a City Council meeting where it was suggested that the cost of premiums could rise to $800. By selecting some values that recognize the expected rising costs of healthcare and the associated premiums in the coming years—perhaps a monthly premium of $80 for the years before the age of 65 and $500 for 65 and older— the Court could arrive at a lump sum number for each Plaintiff designed to cover the costs of their insurance premiums.

Third, the Court could take the path of Judge Nicholson in the North Charleston firefighter case and reopen the trial for the sole purpose of hearing from experts from each party on future damages. See Rissanen v. City of North Charleston, Case No. 2013-CP-10-3210.

V. CONCLUSION

For all of the above reasons, Plaintiffs respectfully ask the Court to find that Plaintiffs have proven a case of promissory estoppel against Defendant and award them make whole relief, including payment for their out-of-pocket expenses, future expenses, and attorney's fees pursuant to S.C. Code Ann. § 15-77-300.

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Respectfully submitted,

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Date: January 15, 2019

EXHIBIT 1

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ARTICLE

PROMISSORY ESTOPPEL DAMAGES

*Mary E. Becker**

INTRODUCTION

The proper measure of damages in promissory estoppel cases is a traditional subject of controversy.[1] During the drafting of section 90 of the Restatement of Contracts,[2] Professor Williston maintained that once a promise was enforced because a promisee had reasonably relied upon it, expectation damages should be awarded, as in other contract actions.[3] Although the original section seemed to reflect this

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1. Courts and commentators have generally taken three approaches to measuring damages in promissory estoppel cases: the reliance measure, the expectancy measure, and a flexible or discretionary approach. For cases awarding reliance damages, see Goodman v. Dicker, 169 F.2d 684 (D.C. Cir. 1948); Grouse v. Group Health Plan, Inc., 306 N.W.2d 114 (Minn. 1981); Wheeler v. White, 398 S.W.2d 93 (Tex. 1965); Hoffman v. Red Owl Stores, 26 Wis. 2d 683, 133 N.W.2d 267 (1965). For cases granting expectation damages, see Walters v. Marathon Oil Co., 642 F.2d 1098 (7th Cir. 1981); Signal Hill Aviation Co. v. Stroppe, 96 Cal. App. 3d 627, 158 Cal. Rptr. 178 (1979); Chrysler Corp. v. Quimby, 51 Del. 264, 144 A.2d 123 (1958). For courts recognizing a flexible approach, see Farm Crop Energy, Inc. v. Old Nat'l Bank, 38 Wash. App. 50, 685 P.2d 1097 (1984) (awarding lost profits). *See also Infra* notes 5-11 and accompanying text (the approaches taken by commentators).

2. RESTATEMENT (FIRST) OF CONTRACTS § 90 (1932), which in pertinent part states:
> A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.

3. 4 A.L.I. PROCEEDINGS App. 97-106 (1926).

view,[4] other commentators disagreed, arguing that when a non-bargain promise is enforced because of the promisee's reliance, liability should be limited to the promisee's reliance loss.[5]

Promissory estoppel was initially limited to donative, non-commercial, situations.[6] With the expansion of promissory estoppel to commercial settings, some commentators argue that expectation damages are, or should be, generally available in commercial cases.[7] Other commentators note that a flexibile approach to damage awards has evolved in promissory estoppel cases.[8] According to these commentators, there are two sets of cases with different measures of damages: expectation damages in commercial settings and reliance damages in donative settings.[9] The Restatement (Second) of Contracts adopts a discretionary approach: "[t]he remedy granted for breach may be limited as justice requires."[10] Nonetheless most com-

4. The first § 90 provided that the "promise" was "binding," presumably by its terms, once reasonably and forseeably relied upon. RESTATEMENT (FIRST) OF CONTRACTS § 90 (1932); *see* Comment, *Once More into the Breach: Promissory Estoppel and Traditional Damage Doctrine*, 37 U. CHI. L. REV. 559, 562-63 (1970).

5. *See* 1A A. CORBIN, CORBIN ON CONTRACTS § 205 (1963); Boyer, *Promissory Estoppel: Requirements and Limitations of the Doctrine*, 98 U. PA. L. REV. 459, 490-91 (1950); Fuller & Perdue, *The Reliance Interest in Contract Damages: 1*, 46 YALE L. J. 52, 63-65 (1936)[hereinafter *Contract Damages: 1*]; Fuller & Perdue, *The Reliance Interest in Contract Damages: 2*, 46 YALE L.J. 373, 401-06 (1937)[hereinafter *Contract Damages: 2*]; Shattuck, *Gratuitous Promises—A New Writ?*, 35 MICH. L. REV. 908, 942-43 (1937); Note, *An Inquiry into the Principles of the Law of Contracts*, 46 HARV. L. REV. 1, 22-23 (1932).

6. *See, e.g.*, Robert Gordon, Inc. v. Ingersoll-Rand Co., 117 F.2d 654 (7th Cir. 1941); James Baird Co. v. Gimbel Bros., 64 F.2d 344, 346 (2d Cir. 1933). For a comprehensive analysis of the case law, see 1 S. WILLISTON, A TREATISE ON THE LAW OF CONTRACTS §§ 139, 140 (3d ed. 1936); Boyer, *supra* note 5, at 461-70; Henderson, *Promissory Estoppel and Traditional Contract Doctrine*, 78 YALE L.J. 343, 344 (1969); Note, *Promissory Estoppel-Measure Of Damages*, 13 VAND. L. REV. 705, 706 (1960); Comment, *supra* note 4, at 561.

7. Farber & Matheson, *Beyond Promissory Estoppel: Contract Law and the "Invisible Handshake,"* 52 U. CHI. L. REV. 902, 945 (1985); Note, Farm Crop Energy v. Old National Bank: *A Meaningful Test For Damages Under Promissory Estoppel?*, 10 U. PUGET SOUND L. REV. 277, 294 (1987); Note, *supra* note 6, at 709; Comment, *supra* note 4, at 561, 568.

8. J. CALAMARI & J. PERILLO, THE LAW OF CONTRACTS §§ 6-12, at 291 (3d ed. 1987); A. CORBIN, *supra* note 5, § 205, at 249; *Contract Damages: 2*, *supra* note 5, at 401-06; Comment, *supra* note 4, at 564.

9. *Contract Damages: 2*, *supra* note 5, at 401-06; Metzger & Phillips, *The Emergence of Promissory Estoppel as an Independent Theory of Recovery*, 35 RUTGERS L. REV. 472, 545 (1983); Comment, *supra* note 4, at 560-65. For an analysis of damages in donative settings, see *infra* notes 29-51 and accompanying text. For an analysis of damages in commercial settings, see *infra* notes 51-82 and accompanying text.

10. RESTATEMENT (SECOND) OF CONTRACTS § 90 (1979), Comment d provides that "The same factors which bear on whether any relief should be granted also bear on the character and extent of the remedy." *See* J. CALAMARI & J. PERILLO, *supra* note 8, §§ 6-12, at 273; Henderson, *supra* note 6, at 378-87.

mentators continue to view reliance damages as appropriate in many donative settings.[11]

Views on damages in promissory estoppel cases are linked to a more basic issue: Is the basis of liability in promissory estoppel cases contract or tort? Commentators who view promissory estoppel as more tort than contract consider reliance the appropriate measure of damages,[12] though in many commercial settings expectation damages may be the best measure of full reliance loss.[13] In contrast, those commentators who view promissory estoppel as more contract than tort view expectation damages as generally appropriate, at least in commercial settings.[14]

This article attempts to describe and explain damages in promissory estoppel cases. In doing so, I rely on an earlier article, which explained why liability is imposed in promissory estoppel cases.[15] That article suggested that in most promissory estoppel cases liability can be understood as contractual in the broad sense that the promisor intended to be legally bound under an objective standard, even though some traditional formal limit on contract liability—such as consideration or the Statute of Frauds — would bar enforcement.[16] There are a few promissory estoppel cases, however, in which liability can be understood only on the basis of tort notions.[17] In

11. Henderson, *supra* note 6, at 379; Metzger & Phillips, *supra* note 9, at 545; Eisenberg, *Donative Promises*, 47 U. CHI. L. REV. 1 (1979); Comment, *supra* note 4, at 563, 565, 568. *But see* 1 S. WILLISTON, A TREATISE ON THE LAW OF CONTRACTS § 140 (3d ed. 1936)(advocating expectation damages in donative settings); Posner, *Gratuitous Promises in Economics and Law*, 6 J. LEGAL STUDIES 413 (1977)(advocating expectation in donative settings).

12. *See Contract Damages: 2*, *supra* note 5, at 406-10; Posner, *supra* note 11, at 416.

13. *See Contract Damages: 1*, *supra* note 5, at 60 (observing that full reliance in a commercial setting is often best measured by expectation damages). *See also* Metzger & Phillips, *supra* note 9, at 545 (noting that expectation damages may be best remedy for full reliance since lost profits from forgone opportunities are not always included in reliance); Comment, *supra* note 4, at 566-70 (noting that within the commercial setting, the goal of proper compensation for gains prevented as well as opportunity costs may best be achieved by applying contract damage principles: expectation damages and mitigation rules).

14. *See, e.g.*, Farber & Matheson, *supra* note 7, at 945; Metzger & Phillips, *supra* note 9, at 545; Note, *supra* note 6, at 709.

15. Barnett & Becker, *Promissory Estoppel, Contract Formalities, and Misrepresentation*, 15 HOFSTRA L. REV. 443 (1987).

16. *Id.* at 496.

17. *Id.* at 485-97. *See* Greenstein v. Flatley, 19 Mass. App. Ct. 351, 474 N.E.2d 1130 (1985) (awarding compensatory and punitive damages: the defendant engaged in a pattern of conduct calculated to mislead plaintiffs into believing that a deal had been made). *See also* Chrysler Corp. v. Quimby, 51 Del. 264, 144 A.2d 123 (1958) (awarding expectation and reliance damages in similar situation).

these cases, liability seems to be imposed because of misrepresentation, even though liability would not always lie under established tort standards for misrepresentation.

In this article, I explain promissory estoppel damages in terms of traditional contract and tort damage rules. I also consider whether the use of promissory estoppel as a basis of liability, rather than overtly changing traditional contract and tort limits on liability, has affected the measure of relief.[18] Section I analyzes the measure of relief afforded in promissory estoppel cases in which the imposition of liability can be understood as contractual in a very broad sense: the promise was made with apparently an intent to be legally bound. Although the absence of consideration or the informality of the promise would normally bar recovery under traditional contract doctrines,[19] in the vast majority of these cases, the relief awarded is consistent with traditional contract remedy rules. In donative settings, expectation damages[20] or specific performance[21] are often awarded by courts despite commentators' widely-shared doubts

18. Recent articles have not discussed damages in promissory estoppel cases in any depth. *See, e.g.*, Eisenberg, *supra* note 11, at 18-31 (discussing normative question of damages in donative cases). Farber & Matheson, *supra* note 7, at 944 (only very brief discussion of damages in article discribing liability extensively); Kostritsky, *A New Theory of Asset-Based Liability Emerging Under the Guise of Promissory Estoppel: An Explanation and Defense*, 33 WAYNE L. REV. 895 (1987)(discussing *only* liability, not damages). Metzger & Phillips, *supra* note 9, at 495-500, 544-45. A 1971 Comment is the most recent discussion of promissory estoppel damages in any depth, and it discusses damages in only a narrow set of commercial cases. *See* Comment, *supra* note 4, at 569-71, 582-603.

Although many commentators have assumed that tort damages would be limited to reliance losses, these commentators have not discussed in any depth how tort damage rules should apply in promissory estoppel cases. *See, e.g.*, Eisenberg, *supra* note 11, at 18-31; Henderson *supra* note 6, at 343-57; Metzger & Phillips, *supra* note 9, at 498-500; Posner, *supra* note 11, at 416; Comment, *supra* note 4, at 559-65.

19. See *infra* notes 29-50 and accompanying text for an analysis of damages in donative settings. For an analysis of damages in commercial settings, see *infra* notes 51-82 and accompanying text.

20. *In re* Estate of Bucci, 488 P.2d 216 (Colo. Ct. App. 1971); Suter v. Suter, 97 Idaho 461, 546 P.2d 1169 (1969); *In re* Jamison's Estate, 202 S.W.2d 879 (Mo. 1947); Richetts v. Scothorn, 57 Neb. 51, 77 N.W. 365 (1898).

21. *See* Horsfield v. Gedicks, 94 N.J. Eq. 82, 118 A. 275 (1922), *aff'd sub nom.* Roberts-Horfield v. Gedicks, 96 N.J. Eq. 384, 124 A. 925 (1924)(enforcing a promise to convey land after the promisee took possession of the land and made substantial improvements). *See also* Ricketts v. Scothorn, 57 Neb. 51, 77 N.W. 365 (1898)(enforcing a promissory note which grandfather had given grandaughter to induce her to abandon her lucrative position). When specific performance is awarded in a donative setting, the courts tend to use the equitable doctrine of part performance rather than promissory estoppel. *See infra* note 47; *see also* Greiner v. Greiner, 131 Kan. 760, 293 P. 759 (1930); Seavey v. Drake, 62 N.H. 393 (1882); Horsfield v. Gedicks, 94 N.J. Eq. 82, 118 A. 275 (1922), *aff'd sub nom.* Roberts-Horsfield v. Gedicks, 96 N.J. Eq. 304, 124 A. 925 (1924); Freeman v. Freeman, 43 N.Y. 34 (1870).

about such awards in these cases.[22] Similarly, when promissory estoppel is used in commercial settings, the remedy is consistent with traditional contract damage rules. Thus, courts routinely award expectation damages[23] unless those damages are too speculative, indefinite, or otherwise unavailable under traditional contract rules.[24] The many cases in which courts use both promissory estoppel and traditional contract analysis as alternative bases for relief[25] are not discussed because there is nothing novel or interesting about damages in such cases.

Section II analyzes the measure of damages in those promissory estoppel cases in which courts impose liability on the basis of tort notions: to remedy negligent or reckless promissory misrepresentations.[26] In these cases, courts have tended to impose expectation damages when expectation damages can be calculated.[27] In addition, punitive damages have been imposed in two cases in which the misrepresentation was intentional.[28] Whether the overt use of tort principles to impose liability would have resulted in a different measure of compensatory relief, limiting the plaintiff's compensation to reliance losses rather than expectation damages, is not clear.

I. Damages in Contract Cases

A. *Promises in Donative Settings*

Most commentators agree that in donative settings, the case for expectation damages is weak.[29] In commercial settings a promisee may rely on a gratuitous promise by foregoing alternative opportunities; expectation damages may be the best (or only) available proxy

22. *See supra* note 11 and accompanying text.

23. *See, e.g.*, Bixler v. First Nat'l Bank, 49 Or. App. 195, 619 P.2d 895 (1980); Fretz Constr. Co. v. Southern Nat'l Bank, 626 S.W.2d 478, 483 (Tex. 1982); *Contract Damages: 2*, *supra* note 5, at 379.

24. *See, e.g.*, Wheeler v. White, 398 S.W.2d 93 (Tex. 1965) (holding loan arrangement too vague and indefinite to be enforced under contract principles but using promissory estoppel to impose reliance damages); Hoffman v. Red Owl Stores, 26 Wis. 2d 683, 133 N.W.2d 267 (1965)(compensating reliance on a promise when parties had not agreed upon specific terms of exchange).

25. *See, e.g.*, Litman v. Massachussetts Mut. Life Ins. Co., 739 F.2d 1549, 1558-59 (11th Cir. 1984); Glover v. Sayer, 667 P.2d 1198, 1202 (Ala. 1983).

26. *See infra* notes 121-54 and accompanying text.

27. *See infra* text accompanying notes 121-30.

28. *See* Chrysler Corp. v. Quimby, 51 Del. 264, 144 A.2d 123 (1958); Greenstein v. Flatley, 19 Mass. App. Ct. 351, 474 N.E.2d 1130 (1985).

29. *See supra* note 5 and accompanying text.

for actual reliance loss.[30] When the promisor has promised to give a gift to a donee, the donee rarely passes up equivalent opportunities to receive equivalent gifts. The award of more than actual reliance loss may compensate the donee for disappointed hopes, rather than any actual loss.[31]

It is, therefore, surprising that courts have consistently and routinely awarded expectation damages when they enforce donative promises, either on the basis of promissory estoppel,[32] or by finding (fictional) consideration.[33] When the question is whether to enforce a formal promise to a charity, actual reliance is often not even required by many courts as a prerequisite to awarding full expectation damages.[34] In the context of family promises, reliance is generally required as a prerequisite for liability.[35] Yet once reliance has occurred, full expectation damages are awarded even when adequate reliance damages can be easily calculated.[36]

In the context of formal promises to charities, any link between reliance and enforcement either at the liability stage or the damage stage makes little sense. Whether a charity will rely on a formal subscription's legal enforceability depends entirely on whether the legal system enforces such promises. Charities are repeat players, and will learn the legal rule. If charitable subscriptions are legally en-

30. *See* Metzger & Phillips, *supra* note 9, at 545; *Contract Damages: 1*, *supra* note 5, at 60. Fuller & Perdue first observed that full reliance in commercial settings is often best measured by expectation damages. *Id.* at 61.

31. Eisenberg, *supra* note 11, at 29-30. Eisenberg would generally award only reliance damages in donative settings but would award expectation damages when adequate reliance loss cannot be calculated. Other commentators suggest that expectation damages or specific performance might be appropriate in some donative cases. *See Contract Damages: 2*, *supra* note 5, at 405; Posner, *supra* note 11, at 413; Metger & Phillips, *supra* note 10, at 545.

32. *See, e.g.*, Danby v. Osteopathic Hosp. Ass'n, 34 Del. Ch. 427, 104 A.2d 903 (1954); Greiner v. Greiner, 131 Kan. 760, 293 P. 759 (1930); Estate of Timko v. Oral Roberts Evangelistic Ass'n, 51 Mich. App. 662, 215 N.W.2d 750 (1974).

33. *See, e.g.*, First Presbyterian Church v. Dennis, 178 Iowa 1352, 161 N.W. 183 (1917); Congressional B'nai Sholom v. Martin, 382 Mich. 659, 173 N.W.2d 504 (1969); *In re* Upper Peninsula Dev. Bureau, 364 Mich. 179, 110 N.W.2d 709 (1961); Depaul Univ. v. Ankeny, 97 Wash. 451, 166 P. 1148 (1917); I. & I. Holding Corp. v. Gainsburg, 276 N.Y. 427, 12 N.E.2d 532 (1938); Allegheny College v. National Chautauqua County Bank, 246 N.Y. 369, 159 N.E. 173 (1927); E.A. FARNSWORTH, CONTRACTS § 2.19 (1982); Barnett & Becker, *supra* note 15, at 451-53.

34. *See, e.g.*, *In re* Darlan's Estate, 311 Ill. App. 481, 36 N.E.2d 608 (1941); *In re* Stack's Estate, 164 Minn. 57, 204 N.W. 546 (1925); Salsbury v. Northwestern Bell Tel. Co., 221 N.W.2d 609 (Iowa 1974); RESTATEMENT (SECOND) OF CONTRACTS §90 comment f (1979). *See also* Becker & Barnett, *supra* note 15, at 451-53.

35. *See infra* note 42 and accompanying text; *see also* Becker & Barnett, *supra* note 15, at 453-55.

36. *See infra* note 49 and accompanying text.

forced, charities will rely upon them as such. If charitable subscriptions are not legally enforced, charities will not rely on them. Formal promises to charities should, therefore, either be enforced by their terms, because giving donors the ability to bind themselves by their promises to charities is desirable [37] — or should remain unenforced, regardless of reliance. Most American jurisdictions, however, have chosen to enforce charitable subscriptions despite the absence of meaningful reliance.[38]

In the context of family promises, linking reliance with liabilty or damages makes more sense because these donees are less likely to be repeat players. As a result, whether a particular family member relies on a particular promised gift may have nothing to do with whether the law would enforce such a promise. In *In Re Estate of Bucci*,[39] for example, a grandfather executed a formal "assignment" of $17,000 to his granddaughter; he planned to give her the money when certain real estate he owned was sold.[40] The granddaughter and grandfather had lived together for fifteen years. She had performed a variety of services for him and had helped care for him. The grandfather wanted to buy a house for her, and they agreed on a property with both a house and an apartment. The granddaughter was to live in the house, and the grandfather and his wife in the apartment. The granddaughter relied on his "assignment" by spending $2,000 to extend an option on the house.[41] Shortly thereafter, the grandfather died, and the question was whether the granddaughter could enforce the promise against his estate. Although full reliance damages could easily be calculated at $2,000, the court enforced the grandfather's promise to give his granddaughter the full $17,000.

In cases like *Bucci*, reliance may occur regardless of the legal rule on enforceability. Because the grandfather's promise was so formal — an "assignment" — the granddaughter may have assumed that the promise would be legally enforceable. She would be less likely than a charitable organization to know or learn the applicable law, and more likely to rely on the formal "legal" document as enforceable. If the grandfather's promise had been less formal, the

37. *See* Posner, *supra* note 11, at 411-12.

38. *See, e.g., In re* Drain's Estate, 311 Ill. App. 481, 36 N.E.2d 608 (1941); *In re* Stack's Estate, 164 Minn. 57, 204 N.W. 546 (1925); Salsbury v. Northwestern Bell Tel. Co., 221 N.W.2d 609 (1974); RESTATEMENT (SECOND) CONTRACTS § 90(2) (1979).

39. 488 P.2d 216 (Colo. App. 1971).

40. *Id.* at 217.

41. *Id.* at 217-18. Originally, the grandfather had given the granddaughter $1,000 to purchase the option. The $2,000 was paid to extend the option. *Id.*

granddaughter might have relied on it without ever considering whether the promise was legally enforceable. Again, her reliance might be independent of the legal rules on enforceability.

Thus, reliance by a donee in a family setting does increase the need for a remedy. In addition, reliance can be evidence that enforcement is appropriate. In *Bucci*, for example, the fact that the grandfather invited and observed his granddaughter's reliance, with no word of caution that reliance might be risky, is evidence that he intended to be legally bound. Had his promise been less formal, her reliance might have been crucial on this point.[42]

In the absence of reliance, a legal system might consider enforcement of such informal promises either inappropriate, because there may be too little evidence that the promisor intended to be legally bound, or not worth the costs of enforcement because there is little need for a remedy. Once there is reliance, however, an award of expectation damages is understandable for a number of reasons. First, many of the family-gift cases are actions against the promisor's estate.[43] In *Bucci*, for example, enforcement is appropriate not only to redress the granddaughter's $2,000 reliance loss, but also because the grandfather actually wanted her to have his $17,000, and he died before he could fulfill his promise.

Second, expectation damages are appropriate in *Bucci* because the transaction was probably, at least in part, an implicit bargain. The grandfather gave the granddaughter the note in exchange for her (perhaps implicit) agreement to share the property with him and his wife.[44] To the extent that the promise was part of a bargain,[45]

42. When the promise is less formal, reliance invited or observed by the donor may be crucial as evidence that the donor intended to be legally bound. *See, e.g.*, Miller v. Lawlor, 245 Iowa 1144, 66 N.W.2d 267 (1954) (plaintiff bought land in reliance on defendant's promise that he would not build on his own land in such a way as to obstruct plaintiff's view); Greiner v. Greiner, 131 Kan. 760, 293 P. 759 (1930) (in reliance on mother's promise of house and land, son gave up his own homestead, moved in with mother, and made improvements); Steele v. Steele, 75 Md. 477, 23 A. 959 (1892) (son purchased woolen mill in reliance on father's oral promise to give him $5000 of the purchase price); Horsfield v. Gedicks, 94 N.J. Eq. 82, 118 A. 275 (1922), *aff'd sub nom.* Roberts-Horsfield v. Gedicks, 96 N.J. Eq. 384, 124 A. 925 (1924) (aunt and uncle promised neice to convey land, and neice made improvements); *See also* Barnett & Becker, *supra* note 15, at 453-55.

43. *See, e.g.*, Burch v. Burch, 145 Colo. 125, 358 P.2d 1011 (1960); Choppin v. Labranche, 48 La. Ann. 1217, 20 So. 681 (1896); Steele v. Steele, 75 Md. 477, 23 A. 959 (1892); *In re* Jamison's Estate, 202 S.W.2d 879 (Mo. 1947); Ricketts v. Scothorn, 57 Neb. 51, 77 N.W. 365 (1898); Young v. Overbaugh, 145 N.Y. 158, 39 N.E. 712 (1895).

44. *Bucci*, 488 P.2d at 216. In *Bucci*, there may also have been an implicit understanding that the granddaughter would continue to care for the grandfather. *See also* Seavey v. Drake, 62 N.H. 393 (1882) (father may have promised son land next to his own so that son

the grandfather would have wanted to bind himself, thereby increasing the chances that the granddaughter would fulfill her part of the bargain in reliance on his promise. Once the granddaughter relied, the bargain was no longer wholly executory, and the case for enforcement stronger.

In other cases involving donative settings, expectation damages may be appropriate because reliance includes foregone opportunities which cannot be recaptured or quantified.[46] Indeed, full reliance, could it be quantified, would often be far greater than the value of what was promised. These points are illustrated by many of the cases in which the equitable doctrine of part performance is used to enforce (specifically) a promise to give land.[47] The donee moves on to the land, improves it, and lives his life differently because of the promise. At the time of the promise, alternatives may have been slightly more costly than the promised gift of land. However, after years of reliance, the value of the promised land may be much less than the promisee's reliance loss if the promise is not enforced. In addition, it may be impossible to calculate full reliance damages (including foregone opportunities); enforcing the promise may be the only way to protect reliance loss.[48] In some cases, both these reasons

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would be near him); Horsfield v. Gedicks, 94 N.J. Eq. 82, 118 A. 275 (1922)(aunt promised and provided house on aunt's land to her neice), *aff'd sub nom.* Roberts-Horsfield v. Gedicks, 96 N.J. Eq. 384, 124 A. 925 (1924); Wells v. Davis, 77 Tex. 636, 14 S.W. 231 (1890) ("donor" lived with "donee" in house he had given her and performed many services for him while he lived with her). For a discussion of the basis of liability in such cases, see Henderson, *Promises Grounded in the Past: The Idea of Unjust Enrichment and the Law of Contracts*, 57 VA. L. REV. 1115 (1971).

45. Although lawyers commonly classify promises as either bargained-for or donative, promises in donative settings may be part bargain and part gift.

46. *See* Eisenberg, *supra* note 11, at 26-28. Eisenberg argues that some informal promises in donative settings should be fully enforced for this reason.

47. Although my discussion is generally limited to cases in which promissory estoppel is used to afford relief, I include cases decided under the equitable doctrine of part performance because of the close relationship between this equitable doctrine and promissory estoppel. "Part performance" is a form of reliance, and the cases decided under the equitable doctrine were influential in the development of promissory estoppel. *See* E.A. FARNSWORTH, *supra* note 33, § 2.19, at 89-92. *See also* Miller v. Lawlor, 245 Iowa 1144, 66 N.W.2d 267, 272 (1954)(paren needed).

48. *See, e.g.*, Seavey v. Drake, 62 N.H. 393 (1882). For cases in which promissory estoppel or the equitable doctrine of part performance are used to enforce the promise, see Miller v. Lawlor, 245 Iowa 1144, 66 N.W.2d 267 (1954) (before buying home on a hill, buyer asks neighbor, a friend and the family doctor, whether he intends to stand by commitment not to obstruct view); Choppin v. Labranche, 48 La. Ann. 1217, 20 So. 681 (1896) (owner of tomb estopped from removing bodies after reliance on owner's legator's assurance that remains would rest there forever); Horsfield v. Gedicks, 94 N.J. Eq. 82, 118 A. 275 (1922) (niece moves on land promised her by aunt and uncle; with help of her husband and aunt, builds

argue for full enforcement.[49]

Finally, there is the advantage of simplicity in the routine award of expectation damages or specific performance when there has been observed or expected reliance on a gratuitous promise in a family situation. More finely tuned damage measures could be imagined for some situations, but they might not be worth the costs of case-by-case consideration of which damage rule to apply.[50] For all of these reasons, the willingness of courts to use promissory estoppel and related doctrines to fully enforce promises in family settings, once there has been reliance, is understandable.

Although promissory estoppel developed as a means of enforcing promises in donative settings, it is most often used today to enforce promises in commercial settings. I consider the award of damages in commercial cases next, beginning with those cases in which promissory estoppel is used because of the absence of a clear bargain.

B. *Not-Expressly-Bargained-For Promises in Commercial Settings*

The imposition of liability in many promissory estoppel cases can be explained by the fact that the promisor apparently intended to be legally bound by the promise, though enforcement would at

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house; after aunt's death, uncle retracts promise), *aff'd sub nom.* Roberts-Horsfield v. Gedicks, 96 N.J. Eq. 384, 124 A. 925 (1924).

49. *See, e.g.*, Seavey v. Drake, 62 N.H. 393 (1882) (father died without deeding land to son; son had lived on land promised him for twenty years and had built a house, a barn, a stable, and other improvements; enforcement appropriate because father died without retracting promise, there was possibly an implicit bargain, and reliance cannot be recaptured or quantified).

50. For example, consider the exceptions suggested by Eisenberg. As a general rule, Eisenberg considers reliance the appropriate measure of recovery for breach of informal donative promises in the family context; "expectation [damages] should be employed as a surrogate for measuring the costs of reliance only if those costs appear significant, difficult to quantify, and closely related to the full extent of the promise." *Id.* Additionally, he notes that it "might also be appropriate" to award expectation damages when the donee has become accustomed to the promised gift and would sustain a loss in losing it. *Id.* at 29-30. For formal promises in the family, Eisenberg concludes that the case for nonenforcement is (absent reliance) about as strong as the case for enforcement. *Id.* at 18. Eisenberg notes, however, that special treatment might be appropriate when the promisor has died without retracting a formal promise, but concludes that in most such cases enforcement would be inappropriate either because the promisor's failure to perform during life suggests that he had retracted it, or because the promise was intended to take effect only at death, and enforcement is therefore inappropriate because of rules governing wills. *Id.* at 18 n.57. It is not clear whether Eisenberg would allow expectation damages to be awarded, at least after reliance has occured, against the donor's estate when the formal promise could have been performed during life but was not, and the delay does not suggest any change of heart.

least be doubtful on the basis of traditional contract doctrines because of the absence of a clear bargain.[51] In these cases, promissory estoppel is routinely used as a basis for awarding full expectation damages provided that expectation damages would be awarded were a more conventional analysis used as the basis for recovery. Although these promises are not clearly bargained-for, expectation damages are nevertheless appropriate for the reasons that expectation damages are appropriate when consideration is clearly bargained-for: to protect the promisee's restitution and reliance interests, and because judicial preferences may favor full enforcement.[52]

1. The Restitution Interest.—As Fuller and Perdue note, the case for affording a remedy for breach of a promise is strongest when the promisee has conferred a bargained-for benefit on the promisor.[53] In these cases, the question is whether the promisor must pay for a benefit conferred by the promisee in reliance on the promisor's promise. An award of the promised price is appropriate to prevent unjust enrichment of the promisor and to protect the promisee's reliance.

Since promissory estoppel is usually regarded as a consideration substitute,[54] this justification for expectation damages seems inapplicable. In fact, however, most of the cases in which promissory estoppel is used in commercial settings as the sole basis for liability [55] are cases in which implicit (but real) bargains are enforced; in many of these, the promisee has conferred the bargained-for benefit on the promisor.[56]

In *United Electric Corp. v. All Service Electric, Inc.*,[57] for example, the court awarded expectation damages for breach of an implicit bargain when the promisor had received what he bargained

51. These cases are divided into five categories for purposes of that discussion: implicit bargains, firm offers, waiver-like contract modifications, assurances likely to be regarded as part of an overall bargain, and pension promised at or near retirement. *See* Barnett & Becker, *supra* note 15, at 455-69.

52. Other commentators have also argued that expectation damages are appropriate in commercial promissory estoppel cases to protect reliance. *See* Farber & Matheson, *supra* note 7, at 944; Comment, *supra* note 4, at 561, 568.

53. *Contract Damages: 1*, *supra* note 5, at 54-57.

54. *See, e.g.*, Farber & Matheson, *supra* note 7, at 904; Comment, *supra* note 4, at 560.

55. As previously noted this article does not discuss cases in which promissory estoppel is an alternative basis for relief.

56. When an implicit bargain is enforced though the promisee has not yet conferred a benefit on the promisor, the case for full enforcement is slightly weaker. All the other reasons for awarding expectation damages (other than as a form of restitution) apply. *See infra* notes 59-64 and accompanying text.

57. 256 N.W.2d 92 (Minn. 1977).

for.[58] A general contractor promised a materialman that checks to the subcontractor for electrical equipment would be jointly payable to the subcontractor and the materialman. The general contractor paid for electrical equipment with seven joint checks, but then issued four checks solely to the shaky subcontractor. [59] As a result, United Electric was not paid for some $8,000 worth of material.

The court used promissory estoppel to award expectation damages for breach of the implicit bargain.[60] An award of expectation damages protects reliance and serves as a remedy for unjust enrichment of the promisor. In reliance on the general's promise, the materialman transferred equipment worth $8,000 to the financially unstable subcontractor, and the materials were incorporated into a building being built by the prime contractor, thus fulfilling the general contractor's obligation to install such materials under the prime contract.[61]

This explanation of expectation damages holds only when the promisee's performance of an implicit bargain enriches the promisor. Why should expectation damages be awarded when a promise is not clearly bargained for and the promisor has not benefited by the promisee's performance?

2. The Reliance Interest.—Even when there is a clear bargain, the promisee's lost expectancy is the weakest of contract claims. Pure expectation damages represent only the promisee's disappointed hopes, whereas reliance damages represent real losses.[62] As Fuller and Perdue point out in discussing bargain promises, there are nevertheless stronger reasons for awarding expectation damages than pro-

58. *Id.* at 96.

59. *Id.* at 94.

60. *Id.* at 95-96. The court used promissory estoppel, rather than bargain analysis, because the bargain was not express. *Id.* at 95. On its face, the general's promise to issue joint checks was gratuitous, rather than made in exchange for United supplying electrical equipment to the financially unstable subcontractor.

61. For other examples of cases in which promissory estoppel is used to enforce partially executed implicit bargains, and in which there is little difference between reliance, restitution, and expectation damages, see Peterson Tractor Co. v. Orlando's Snack-Mobile Corp., 270 Cal. App. 2d 787, 76 Cal. Rptr. 221 (1969); Day v. Mortgage Ins. Corp., 91 Idaho 605, 428 P.2d 524 (1967); Fretz Constr. Co. v. Southern Nat'l Bank of Houston, 626 S.W.2d 478 (Tex. 1982). In some instances, reliance damages might not be very close to expectation damages, but expectation damages may nevertheless be a good estimate of restitution damages and the only available measure of relief. *See, e.g.*, Mazer v. Jackson Ins. Agency, 340 So. 2d 770 (Ala. 1976) (enforcing, with order of specific performance, implicit bargain between developers, who promised buffer zone between plaintiffs' homes and office park in exchange for plaintiff's ceasing to oppose annexation of office park to another town).

62. *See Contract Damages: I*, *supra* note 5, at 53-60.

tecting disappointed hopes.[63] Fuller and Perdue give two related reasons, and these reasons hold when there is a problem with the formal requirement of a bargain. First, expectation damages are often equal to, or a good substitute for, reliance loss. Second, expectation damages protect reliance by awarding damages irrespective of a showing of reliance. Such protection is necessary because reliance is often difficult to show and to quantify.[64]

Many of the cases in which promissory estoppel is used to enforce firm offers illustrate these points; often expectation damages are either a good proxy for difficult-to-prove reliance loss or the only way to protect reliance.[65] In the typical "firm offer" case, promissory estoppel is used to enforce a subcontractor's bid, after the general contractor has relied by using it in preparing his bid on the prime contract. The general contractor is typically awarded the difference between the relied-upon bid and the price charged by another subcontractor to do the job.[66]

Actual reliance loss would be precisely this amount only if, absent reliance on the withdrawn bid, the general contractor would have increased his bid on the prime contract to reflect the increased price of the subcontract work and would have received the prime contract at the higher bid. But the general contractor might not have submitted a bid for precisely that amount or might not have received the prime contract. If the general did not receive the prime contract, he might have been able to bid on, and perform, another at a profit similar to that he would have enjoyed for this project but for the

63. *Id.* at 60-64.

64. *Id.* at 60-62. Fuller and Perdue regarded these reasons as inapplicable to the proper measure of damages for non-bargain promises under promissory estoppel. *Id.* at 64-65. In the second part of their article, they argue for a flexible approach to damages in promissory estoppel cases. *Contract Damages: 2*, *supra*, note 5, at 405. They regard expectatation damages as appropriate in some promissory estoppel cases because expectation damages are equivalent to reliance damages or because "one would not be disposed to quarrel with this result in the charitable subscription cases, or in those cases where by granting specific performance of the promise all difficulties of evaluation can be avoided." *Id.* Fuller and Perdue wrote their classic article at a very early date and prior to the expansion of promissory estoppel into a broad range of commercial cases.

65. *See, e.g.*, People's Nat'l Bank v. Linebarger Constr. Co., 219 Ark. 11, 240 S.W.2d 12 (1951); Homestead Supplies, Inc. v. Executive Life Ins. Co., 81 Cal. App. 3d 982, 147 Cal. Rptr. 22 (1978); Peterson Tractor Co. v. Orlando's Snack-Mobile Corp., 270 Cal. App. 2d 787, 76 Cal. Rptr. 221 (1969); Farm Crop Energy, Inc. v. Old Nat'l Bank, 38 Wash. App. 50, 685 P.2d 1097 (1984).

66. *See, e.g.*, Allen M. Campbell Co. v. Virginia Metal Indus., Inc., 708 F.2d 930 (4th Cir. 1983); Janke Constr. Co. v. Vulcan Materials Co., 527 F.2d 772 (7th Cir. 1975); Loranger Constr. Corp. v. E.F. Hauserman Co., 376 Mass. 757, 384 N.E.2d 176 (1978).

subcontractor's failure to stand by his bid.

Given these uncertainties, it would be difficult or impossible to calculate the general's full reliance loss. But the difference between the withdrawn bid and the cost of substitute performance by another subcontractor may be a good substitute for full reliance loss. Perhaps the general contractor would have received this contract at a price close to his original bid plus the differential; if so, full reliance damages are close to expectation damages. Perhaps the general contractor would have lost this contract, but would have received and performed a similar prime contract for a profit close to the profit he would have enjoyed on this one had the subcontractor stuck to its bid. If so, awarding the general the differential is again a good estimate of full reliance loss.[67] Even if the differential is not a very good proxy of the general's reliance loss, expectation damages are the only effective way to protect the general contractor's reliance given the difficulty of determining what would have happened and assigning a monetary value to it. [68]

3. Judicial Preferences.—In some cases, reliance damages are probably minimal or nominal, yet expectation damages are routinely given. Perhaps even in these cases, expectation damages may be awarded to protect possible reliance, but other policy concerns appear to explain full enforcement. For example, in some of the cases in which courts use promissory estoppel to enforce waiver-like contract modifications, reliance damages may be very low or nominal. Yet the strong judicial hostility to forfeiture may argue for enforcement of the modification by its terms. In *Brewer v. Universal Credit Co.*,[69] the plaintiff purchased a car on credit, and the conditional sales contract was assigned to the defendant credit company.[70] When the plaintiff defaulted on two payments, the credit company demanded possession, but later agreed that the car would be stored for thirty days at the plaintiff's expense, and that the plaintiff would be

67. This analysis of the bidding cases was first presented in Comment, *supra* note 4, at 569-70.

68. For other cases illustrating these points, see the cases in which courts use promissory estoppel to enforce non-bargain promises likely to be regarded as part of an overall bargain transaction. *See, e.g.*, Tomerlin v. Canadian Indem. Co., 61 Cal. 2d 638, 394 P.2d 571, 39 Cal. Rptr. 731 (1964); Sanders v. United Distrib. Inc., 405 So. 2d 536 (La. Ct. App. 1981); Hetchler v. American Life Ins. Co., 266 Mich. 608, 254 N.W. 221 (1934); Abelson v. Genesco, 58 A.D.2d 774, 396 N.Y.S.2d 394 (1977); East Providence Credit Union v. Geremia, 103 R.I. 397, 239 A.2d 725 (1968); Green v. Helmcamp Ins. Agency, 499 S.W.2d 730 (Tex. Civ. App. 1973).

69. 191 Miss. 183, 192 So. 902 (1940).

70. *Id.* at 185, 192 So. at 902.

able to pay the overdue installments during that period to recover his car.[71] The plaintiff tendered the money due within the thirty days, but the credit company had sold the car. It seems likely that the plaintiff received full expectation damages on remand: compensation for the costs of recovering "his" car after the resale.[72]

The plaintiff's reliance may have been quite minimal; there was no evidence that he spent much time or effort finding funds to pay the overdue payments. Nor was there any evidence that he would have suffered any substantial loss had he repaid any additional loan when the credit company withdrew its promise. Common law courts are, however, hostile to forfeiture,[73] and nonenforcement of the credit company's promise would result in forfeiture. An award of full expectation damages is therefore understandable apart from the need to protect the plaintiff's probably minimal reliance.[74]

4. The Restitution Interest, the Reliance Interest, and Judicial Preferences.— Expectation damages may be appropriate for all of the reasons discussed above. In *Hessler Inc. v. Farrell*,[75] for example, the court applied the notion of promissory estoppel to a retired employee who had been promised $12,000 a year for five years as a pension.[76] The promise was made to induce Farrell to retire voluntarily. After his retirement, his employer attempted to withdraw the promise.[77] If one focuses on Farrell and his retirement, there is little need for a promissory estoppel remedy. It is unlikely that Farrell

71. *Id.* at 186, 192 So. at 902.

72. The Mississippi Supreme Court did not precisely indicate what the plaintiff could recover in the way of damages, but its remand suggests that the plaintiff was entitled to more than just the expenses of reliance between the time the promise was made and the time the promise was retracted. The plaintiff does not seem to have been asking for reliance losses, i.e., costs incurred in borrowing the overdue money and tendering it. Instead, as noted in the text, he was seeking the costs of actually recovering his car after he learned that the credit company's promise had been withdrawn.

73. *See e.g.*, Elizabeth Lodge No. 596, Loyal Order of Moose v. Ellis, 391 Pa. 19, 137 A.2d 286 (1958); Wallis v. Smith, 21 Ch. D. 243 (1882).

74. *See, e.g.*, Dairyland County Mut. Ins. Co. v. Estate of Basnight, 557 S.W.2d 597 (Tex. Civ. App. 1977) (enforcing insurer's promise to extend due date on premium, though there was no reason to think that insured would have paid the premium before her death had ther been no extension of time). In other cases in which promissory estoppel is used to enforce waiver-like contract modifications, reliance may have been substantial, and expectation damages may be appropriate as a proxy for reliance or to protect reliance. *See, e.g.*, Veasey v. Layton, 42 Del. Ch. 55, 206 A.2d 505 (1964); Perry Publications, Inc. v. Bankers Life & Casualty Co., 246 So. 2d 604 (Fla. Dist. Ct. App. 1971); Wachovia Bank & Trust Co. v. Rubish, 306 N.C. 417, 293 S.E.2d 749 (1982).

75. 226 A.2d 708 (Del. 1967).

76. *Id.* at 710.

77. *Id.* at 710-11.

relied very substantially or detrimentally by retiring. He was a terminable-at-will employee, and his employer wanted him to retire. Had Farrell refused "voluntary retirement," he could (and might) have been fired.

Enforcement with expectation damages is nevertheless understandable for the reasons identified above. First, there was a partially performed implicit bargain. Whether or not Farrell's retirement was very substantial or detrimental as reliance, it conferred an implicitly bargained-for benefit on the promisor.[78] As in other implicit bargain cases, having enjoyed the benefits of the bargain, the promisor should not be able to avoid paying the promised price.[79]

Second, although Farrell's retirement might not be very substantial as reliance, he may have relied in other ways which would be difficult to prove or to quantify. For example, but for the promised pension, he might have looked for another job while he was still employed. Once unemployed, substitute employment is more difficult to find. Perhaps he would have made different financial arrangments and plans for the future. Due to the difficulty of showing or quantifying such reliance, expectation damages are the only way to protect it.

Third, it is likely that a judicial preference for legally enforceable pension rights helps explain the award of full expectation damages though Farrell may have suffered little loss by retiring voluntarily.[80] Courts do not expressly mention such a preference, but such a preference seems likely given the many legal rules favoring legally enforceable pension rights.[81]

C. *Other Formal Bars to Enforcement*

Often, promissory estoppel is used to enforce a promise that is clearly part of a bargain, but which would not be enforceable under traditional rules because of some formal flaw, such as the

78. For a fuller discussion of the basis of liability in these cases, see Barnett & Becker, *supra* note 15, at 467-69.

79. *See supra* notes 53-61 and accompanying text.

80. *See also* Feinberg v. Pfeiffer Co., 322 S.W.2d 163 (Mo. Ct. App. 1959)(enforcing employer's promise to pay employee a monthly sum for life); Abelson v. Genesco, Inc., 58 A.D.2d 774, 396 N.Y.S.2d 394 (1977)(enforcing employer's promise to pay retirement benefits).

81. *See, e.g.*, I.R.C. § 501(a) (1986) (providing tax exempt status for certain legally enforceable pension funds); *In re* Inland Steel Co., 21 L.R.R.M. (BNA) 1310 (1948) (holding that pension and retirement plans are part of the subject matter of mandatory bargaining for union contracts).

absence of a non-illusory and definite promise, or compliance with the Statute of Frauds and the parol evidence rule.[82] Because similar reasons explain the full enforcement of all these promises, this article discusses in depth only one of these groups: promises barred by the Statute of Frauds. The case for limited enforcement is stronger, in several respects, when enforcement is barred by the Statute of Frauds, rather than by the parol evidence rule or by the requirements that an enforceable promise be definite and not illusory.[83]

The decision to afford a remedy for breach of a parol promise under the Statute of Frauds depends, inter alia, on a court's assessment of the costs and benefits of this formal limit on contract liability. Traditionally, both common law courts and courts of equity have afforded some remedies to protect reliance and to prevent unjust enrichment.[84] Restitution is generally available when one party has conferred goods or services on the other in accordance with a contract under the Statute.[85] In these cases, recovery has been limited to the market value of the goods or services rather than the price orally promised.[86] In most jurisdictions, the equitable doctrine of part performance has afforded specific enforcement to promises under the land provision of the Statute when the vendee has relied on the promise.[87] Most jurisdictions have adopted a similar exception to the

82. For a further discussion of the use of promissory estoppel as a basis for enforcement when other formal defects bar enforcement, see Barnett & Becker, *supra* note 15, at 470-85.

83. First, the Statute of Frauds is a legislative decision, rather than a product of common law judgments. Second, most Statutes of Fraud draw clear, sharp lines and are therefore more reliable as formal limits on liability (and hence more valuable as formalities) than are the parol evidence rule and the requirements that a promise be definite and not illusory. *See, e.g.*, CAL. CIV. PROC. CODE § 1971 (West Supp. 1987); FLA. STAT. ANN. § 725.01 (West Supp. 1987); ILL. ANN. STAT. ch. 59, ¶1 (Smith-Hurd 1972); IND. CODE ANN. § 32-2-1-1 (West 1979); IOWA CODE ANN. § 622.32 (West 1950); MASS. GEN. LAWS ANN. ch. 259, §§ 1-5 (West 1976); TEX. BUS. & COM. CODE ANN. § 26.01 (Vernon 1987).

84. For sales of goods under the U.C.C., the Statute of Frauds is itself limited by the need to provide a remedy for reliance and to prevent unjust enrichment. *See* U.C.C. § 2-201 (1978). Thus, for example, a seller who has manufactured goods for which there is no market can enforce the parol contract when the circumstances "reasonably indicate that the goods are for the buyer." U.C.C. § 2-201(3)(a)(1978). The contract is enforceable to the extent goods are "received and accepted" by the buyer. U.C.C. § 2-201(3)(c)(1978).

85. *See, e.g.*, Blank v. Rodgers, 82 Cal. App. 35, 255 P. 235 (1927); Dale v. Fillenworth, 282 Minn. 7, 162 N.W.2d 234 (1968); Rick v. Sumler, 179 Va. 571, 19 S.E.2d 889 (1942).

86. *See* E. A. FARNSWORTH, *supra* note 33, § 6.11, at 431-432. Often the promised price is used as evidence of market value. *See, e.g.*, Oxborough v. St. Martin, 169 Minn. 72, 210 N.W. 854 (1926); Bennett Leasing Co. v. Ellison, 15 Utah 2d 72, 387 P.2d 246 (1963); Cochran v. Bise, 197 Va. 483, 90 S.E.2d 178 (1955).

87. *See* Burns v. McCormick, 233 N.Y. 230, 135 N.E. 273 (1922). There is some varia-

one-year provision of the statute: when one party to a contract under the one-year provision has fully performed her part of the bargain, the bargain is enforced by its terms.[88]

There is a strong case for allowing at least a restitution remedy. If no remedy were available, the Statute would be an invitation for fraud; promisors could enjoy with impunity goods or services given in return for parol promises under the Statute. On the other hand, the Statute represents a legislative decision that certain promises should be legally unenforceable unless in writing. Allowing only restitution claims at the market rate rather than the contract rate seems a reasonable balance between the need to guard against the use of the Statute to perpetrate fraud and the appropriate judicial deference to the legislature.

A similar case can be made for the full performance exception to the one-year provision of the Statute. When one party has fully performed in the bargained-for way, a restitution remedy would usually be available.[89] The only issue remaining is how to value the goods or services conferred. When the party claiming the protection of the Statute has allowed the other party to perform fully, the use of the contract price simply eliminates the need to inquire into market price. In addition, the contract price will usually be a good substitute for the market price. Thus, the full performance exception to the one-year provision can be regarded as a restitution remedy tailored to a particular factual setting.

In contrast, promissory estoppel and the equitable doctrine of part performance afford a remedy when there has been reliance, though the promisee may have conferred no bargained-for benefit on the promisor. In these cases, one might expect damages to be limited to reliance loss. If full expectation damages (or specific performance) were available once there had been reliance, there would be little left of the statutory bar. The promisor cannot plan her affairs in reliance

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tion among jurisdictions as to what acts of reliance are sufficient for the equitable doctrine of part prformance, but in most jurisdictions, a promise to transfer an interest in land is specifically enforced if the vendee has, for example, moved onto the land and made substantial improvements to it. *See, e.g.*, Seavey v. Drake, 62 N.H. 393 (1882).

88. *See, e.g.*, Trimmer v. Short, 492 S.W.2d 179 (Mo. Ct. App. 1973); Coker v. Richter Corp., 261 S.C. 402, 200 S.E.2d 231 (1973). In some jurisdictions, performance must take place within a year in order to come within the exception to the Statute. *See* Emerson v. Universal Prods. Co., 35 Del. 277, 162 A. 779 (Del. Super. Ct. 1932).

89. In some cases a restitution remedy might not be available. If the breaching party has partially paid for the bargained-for benefit, restitution will afford a remedy only if the nonbreaching party can show that there is a difference between the partial payment and the market rate. *See supra* note 86 and accompanying text.

on the Statute, i.e., cannot act with confidence that she will only be subject to full contract liability for certain promises if they are in writing.[90] Instead, whether the promise is legally enforceable would be at the option of the promisee: by relying, he can remove the promise entirely from the operation of the Statute. Yet courts using promissory estoppel and the equitable doctrine of part performance to enforce parol promises under the Statute of Frauds routinely award full expectation damages or even specific performance.[91] There is some variation among jurisdictions with respect to judicial willingness to afford these remedies.[92] When a court is willing to use promissory estoppel or the equitable doctrine of part performance to afford a remedy, however, the relief afforded is consistent with that available in other contract actions.[93]

For courts interested in affording a remedy beyond restitution, all of the points made in the preceding section argue for full enforcement. When the contract has been partially performed, expectation damages are appropriate. Restitution is too narrow a remedy to prevent all unjust enrichment.[94] In addition, expectation damages are often appropriate to protect reliance,[95] or judicial preferences favor

90. Although even an award of reliance losses weakens the effectiveness of the Statute as a formal limit on liablity, if only reliance damages were available, the promisor could at least rely on not being held to such a promise by its terms unless she had signed a writing.

91. Monarco v. LoGraco, 35 Cal. 2d 621, 220 P.2d 737 (1950); McIntosh v. Murphy, 52 Haw. 29, 469 P.2d 177 (1970); Alpark Distrib., Inc. v. Poole, 95 Nev. 605, 600 P.2d 229 (1979).

92. *See* Barnett & Becker, *supra* note 15, at 470-75 (promissory estoppel); *supra* notes 87-88 (the equitable doctrine of part performance).

93. For cases in which promissory estoppel is used to award expectation damages, see *infra* note 95. For examples of cases using the equitable doctrine of part performance to enforce specifically promises under the Statute, see, Suter v. Suter, 97 Idaho 461, 546 P.2d 1169 (1976); Seavey v. Drake, 62 N.H. 393 (1882).

94. In an action for compensation for benefits conferred under a contract covered by the Statute of Frauds, restitution affords a remedy only if the goods or services are bargained-for or when the promisor was obviously enriched by reliance. *See* E.A. FARNSWORTH, *supra* note 33, § 6.11, at 430-33. Non-bargained for acts of reliance may benefit the promisor though restitution would afford no remedy. *Cf.* Lacy v. Wozencraft, 188 Okla. 119, 105 P.2d 781 (1940) (using "estoppel" to avoid the Statute of Frauds in case in which restitution is inadequate). In addition, restitution may be unavailable when the receiver of goods or services partially pays as promised. In such cases, restitution affords a remedy only if the promisee can establish that there is a difference between the partial payment and the market price. *Cf.* Vastoler v. American Can Co., 700 F.2d 916 (3d Cir. 1983); Remilong v. Crolla, 576 P.2d 461 (Wyo. 1978) (using "estoppel" to avoid Statute of Frauds when restitution inadequate because of partial payment).

95. *See, e.g.*, Lucas v. Whittaker Corp., 470 F.2d 326 (10th Cir. 1972) (awarding expectation damages when reliance losses were significant but not quantifiable); Monarco v. LoGreco, 35 Cal. 2d 621, 220 P.2d 737 (1950); Wilk v. Vencill, 30 Cal. 2d 621, 180 P.2d 351

full enforcement.[96] Similar reasons explain why expectation damages are available when promissory estoppel is used to enforce indefinite or illusory promises[97] or promises barred by the parol evidence rule.[98]

Vastoler v. American Can Co. [99] illustrates all these points. In order to induce Vastoler to accept a promotion to a supervisory position in 1963, his employer promised that he would receive full credit for past service for all fringe-benefit purposes, including pension rights. [100] Under the provisions of the pension plan, he was entitled only to credit for post-1958 service. He was given full credit for all other purposes (such as vacation time) until he retired in 1978, when the company notified him that he would receive credit for only post-1958 service for pension purposes. [101] The court never identified the formal flaw, but it is likely that the plaintiff sued using promissory estoppel, rather than breach of contract,[102] because of a percieved problem (or problems) with the Statute of Frauds, the parol evidence rule, or with the requirements that a promise be definite and non-illusory.[103]

Regardless of the formal flaw, the court's award of expectation

(1947) (holding specific performance best way to protect reliance since alternative equivalent transactions not available). For cases in which "estoppel" is used to avoid the Statute of Frauds and in which expectation damages are probably equal to, or a good proxy for, reliance loss, see Le Blond v. Wolfe, 83 Cal. App. 2d 282, 188 P.2d 278 (1948); Wolfe v. Wallingford Bank & Trust Co., 124 Conn. 507, 1 A.2d 146 (1938); Jamestown Terminal Elevator, Inc., v. Hieb, 246 N.W.2d 736 (N.D. 1976).

96. For examples of cases in which courts did not discuss formal flaws, but in which there may have been both a Statute of Frauds problem and a judicial preference for enforcement, see Vastoler v. American Can Co., 700 F.2d 916 (3d Cir. 1983); Van Hook v. Southern Cal. Waiters Alliance, Local 17, 158 Cal. App. 2d 556, 323 P.2d 212 (1958).

97. *See, e.g.*, Goldstick v. ICM Realty, 788 F.2d 456, 463 (7th Cir. 1986) (awarding minimum expectation damages "simply on grounds of simplicity" for breach of an indefinite contract). In some of the cases in which promissory estoppel is used to enforce illusory promises, only reliance damages can be calculated because of the illusory nature of the promise. *See infra* note 113 and accompanying text. In other cases, full enforcement may be possible though the promise is somewhat illusory. *See infra* notes 99-106 and accompanying text.

98. *See, e.g.*, Ehret Co. v. Eaton, Yale, & Towne, Inc., 523 F.2d 280 (7th Cir. 1975), *cert. denied*, 425 U.S. 943 (1976). There are, however, only a few cases in which promissory estoppel is used to enforce promises barred by the parol evidence rule. *See* Barnett & Becker, *supra* note 15, at 474-75; Metzger & Phillips, *supra* note 9, at 493-494.

99. 700 F.2d 916 (3d Cir. 1983).

100. *Id.* at 917.

101. *Id.* at 918.

102. The plaintiff did sue for breach of contract, but only for breach of the formal pension plan (whose language defeated his claim) rather than for breach of the 1963 agreement reached prior to his accepting the supervisory position. *Id.* at 918.

103. *See* Barnett & Becker, *supra* note 15, at 481-85.

damages is understandable for several reasons.[104] First, there is the problem of unjust enrichment. If Vastoler were given no relief, his employer would be able to enjoy his services without paying the promised price. Restitution would not remedy this unjust enrichment, since Vastoler would have to prove that he received less than the market wages because of the pension promise.[105] Such a showing would almost certainly be impossible to make. In addition, expectation damages are appropriate to protect reliance, and the only available way to protect reliance; reliance damages could not possibly be calculated. Finally, judicial preference for legally enforceable pension plans may explain full enforcement independent of the problems of unjust enrichment and reliance.[106] Although the initial promise might have been indefinite or illusory because the pension plan was subject to change, these problems either no longer existed in 1978, or could be made irrelevant by fashioning appropriate relief. There was a plan in effect; the only question was how to calculate years of service. If the plan was subject to change, declaratory relief could be given with respect to the future, and monetary relief limited to past-due amounts.

D. *Limits on Expectation Damages in Commercial Cases*

Although expectation damages are awarded in most promissory estoppel cases enforcing promises in commercial settings, there are a number of commercial cases where only reliance damages are

104. The court determined that the trial court erred in granting defendant's motion for summary judgment. *Vastoler*, 700 F.2d at 917.

105. Whether Vastoler could take advantage of the full performance exception to the one-year provision of the Statute is not clear. New Jersey appears to recognize the full performance exception to the one-year provision, but the decisions so noting involve contracts not under the one-year provision at all. *See, e.g.*, Dennis v. Thermoid Co., 19 N.J. Misc. 614, 22 A.2d 535 (Mercer County Ct. 1941), *aff'd* 128 N.J.L. 303, 25 A.2d 886 (1942) (holding that Statute applies only if neither side can perform within one year). In addition, New Jersey courts have been rather reluctant to find the Statute inapplicable in the employment context. *See, e.g.*, Deevy v. Porter, 11 N.J. 594, 95 A.2d 596 (1953) (holding that oral agreement of employment for more than a year is within the Statute even though employees alleged that under terms of agreement they were free to terminate relationship at any time). Thus, plaintiff's lawyer in Vastoler may have used promissory estoppel because of uncertainty about whether the New Jersey Statute of Frauds would bar a contract action. *Cf.* Advocat v. Nexus Industries, Inc., 497 F. Supp. 328, 333 (D. Del. 1980) (applying Maryland or New York law and refusing to enforce promised pension because of Statute of Frauds though plaintiff seems to have performed fully; "an oral contract of employment cannot be taken out of the Statute of Frauds by part performance").

106. *See supra* notes 69-72 and accompanying text.

given.[107] Even when a promise is part of a traditionally enforceable bargain, however, there are a number of rules limiting the availability of expectation damages.[108] These rules explain why only reliance damages are awarded (or requested by the plaintiff) in these cases. For example, speculative damages cannot be recovered as expectation damages[109] and expectation damages are not normally available for breach of a promise to loan money.[110]

Occasionally a court states that promissory estoppel damages are always limited to reliance losses, although in the case at bar, the availability of expectation damages is not an issue.[111] In other cases,

107. *See* Goodman v. Dicker, 169 F.2d 684 (D.C. Cir. 1948); Grouse v. Group Health Plan, Inc., 306 N.W.2d 114 (Minn. 1981); Wheeler v. White, 398 S.W.2d 93 (Tex. 1965); Hoffman v. Red Owl Stores, 26 Wis. 2d 683, 133 N.W.2d 267 (1965).

108. In addition to the general limits on expectation damages discussed in the text, the appropriate measure of damages may depend on the scope of a statutory obligation. *See* Swinerton & Walberg Co. v. City of Inglewood-Los Angeles County Civic Center Auth., 40 Cal. App. 3d 98, 114 Cal. Rptr. 834 (1974). In *Swinerton*, the court limited the plaintiff to reliance damages, though expectation damages would probably have been available under general damage rules for defendant's "breach" of a promise to accept the lowest responsible bidder. Liability depended, however, on the meaning of a statutory mandate that defendant accept the lowest responsible bidder. *Id.* at 104, 114 Cal. Rptr. at 838. In City of Inglewood-Los Angeles City Civic Center Auth. v. Superior Court, 7 Cal. 3d 861, 500 P.2d 601, 103 Cal. Rptr. 689 (1972), the Supreme Court of California had held that the statute required more than that the defendant-authority consider each bid and the bidder's responsibility in good faith, though that obligation is all one can reasonably infer as a matter of contract from a promise to take the lowest responsible bid.

109. *See, e.g.*, Oxley v. Ralston Purina, Co., 349 F.2d 328 (6th Cir. 1965) (holding that plaintiff can recover lost profits if reasonably certain after reliance on promise under Statute of Frauds); Kaye v. Melzer, 87 Cal. App. 2d 299, 197 P.2d 50 (1948) (using promissory estoppel to avoid the Statute of Frauds and awarding only reliance damages because, apparently, expectation damages would be speculative); Young v. Johnston, 475 So. 2d 1309 (Fla. Dist. Ct. App. 1985) (holding that promissory estoppel limited plaintiff to reliance damages for breach of promise to build home for a certain amount of money; difference between defendant's bid and what another contractor would charge speculative as a measure of plaintiff's damage because plaintiff had not engaged another contractor to build home).

110. *See, e.g.*, Bixler v. First National Bank, 49 Or. App. 195, 619 P.2d 895 (1980) (holding that in promissory estoppel, plaintiff could only recover reliance damages for the defendant's breach of a firm commitment to loan money because of traditional limits on damages in such situations). For breach of a promise to loan money, only reliance damages, costs of searching for a substitute loan, and the interest-rate differential are available. *See generally* E.A. FARNSWORTH, *supra* note 33, § 12.14-.18, at 878-99 (1982).

111. *See, e.g.*, Sun Oil Co. v. Madeley, 626 S.W.2d 726, 734 (Tex. 1982) (so stating though court ruled for defendant; no "estoppel"); Wheeler v. White, 398 S.W.2d 93, 97 (1965) (so stating though plaintiff only requested reliance losses; expectation damages would be speculative and inappropriate because the promise was to loan money); Okemah Constr. Inc. v. Barkley-Farmer, Inc., 583 S.W.2d 458 (Tex. Civ. App. 1979) (so stating though court holds for defendant; no promissory estoppel); E.F. Hutton & Co. Inc. v. Fox, 518 S.W.2d 849, 853 (Tex. Civ. App. 1974) (so stating though court holds that there is no basis for imposing any liability on defendant). *See also* Fretz Construction Co. v. Southern Nat'l Bank, 626

the same court will award expectation damages when expectation damages would normally be available.[112] In some cases, there is a close link between the use of promissory estoppel and the inability to calculate expectation damages under normal damage rules. When promissory estoppel is used to afford a remedy for breach of an indefinite or illusory promise, it is sometimes impossible to calculate expectation damages for the very reason that promissory estoppel is used to afford relief: the promise is illusory or indefinite.[113]

For example, several courts have used promissory estoppel to award reliance damages for breach of a promise of employment when the employer changes its mind prior to the scheduled starting date.[114] Once employment started, it would have been terminable at will.[115] There is no way to determine how long, but for the preemployment breach, employment would have lasted; expectation damages are therefore speculative, and the courts' award of reliance damages understandable under traditional damage rules. Out-of-pocket reliance damages can, of course, be calculated with relative ease.[116] This result may seem strange and inconsistent with contract

S.W.2d 478, 483 (Tex. 1981) (so stating though no difference between reliance loss and expectation damages).

112. *See, e.g.*, Dairyland County Mut. Ins. Co. v. Estate of Basnight, 557 S.W.2d 597 (Tex. Civ. App. 1977) (awarding full expectation damages by using waiver and promissory estoppel to enforce promise to extend time for paying insurance premium); Green v. Helmcamp Ins. Agency, 499 S.W.2d 730 (Tex. Civ. App. 1973) (using promissory estoppel to bind insurance company to coverage period as represented to the insured, and awarding full expectation damages); Southwest Water Services, Inc. v. Cope, 531 S.W.2d 873 (Tex. Civ. App. 1975) (enforcing promised water rates using promissory estoppel to avoid defendant's arguments that agreement unenforceable because too indefinite and because no mutuality of obligation); Retama Manor Nursing Centers, Inc. v. Cole, 582 S.W.2d 196 (Tex. Civ. App. 1979) (awarding expectation damages, including lost profits, with promissory estoppel an alternative basis of liability).

113. As already suggested in text in the discussion of Vastoler v. American Can, 700 F.2d 916 (3rd Cir. 1983), *see supra* notes 99-106 and accompanying text, this is not always true. In some situations involving the enforcement of illusory or indefinite promises, the promisee's expectancy may be the only available measure of relief. *See supra* notes 62-68 and accompanying text.

114. *See* Hunter v. Hayes, 533 P.2d 952, 953 (1975); Ravelo v. County of Hawaii, 66 Haw. 194, 658 P.2d 883, 887 (1983); Grouse v. Group Health Plan, Inc., 306 N.W.2d 114, 116 (Minn. 1981). For a similar case in another factual setting, see Vigoda v. Denver Urban Renewal Auth., 646 P.2d 900, 904-05 (Colo. 1982) (holding reliance damages appropriate when expectation damages would have been speculative because promise illusory; defendant promised to negotiate for 90 days and then broke off negotiations for reasons unrelated to negotiations).

115. The liability imposed because of the employer's pre-employment change of heart may nevertheless be consistent with the parties' understanding of the allocation of this risk. *See* Barnett & Becker, *supra* note 15, at 478-81.

116. In Hunter v. Hayes, 533 P.2d 952 (Colo. Ct. App. 1975) for example, the court

notions: awarding reliance damages may overcompensate the non-breaching party by giving her more than she would have enjoyed had there been no breach. For instance, the employee may have lost $3,000 in reliance on a promise of employment breached prior to the starting date. Had the employer not changed its mind prior to the starting date, the employee might have been fired within a month for incompetence or because of staff cut backs, and damages might have been much less than $3,000.

In analogous situations, however, common law courts routinely award reliance damages unless the breaching party can make the often impossible showing that the contract would have been unprofitable for the non-breaching party.[117] The breaching party is unlikely to be able to show that the contract would have been unprofitable for the same reason that the non-breaching party is limited to reliance damages: expectation damages are speculative.[118] There is nothing anomolous about awarding known reliance losses when expectation damages cannot be calculated.

E. *Conclusion*

In general, when promissory estoppel is used to enforce promises in donative or commercial settings, expectation damages are available as in other contract actions. There are several reasons for awarding expectation damages in the commercial cases: to prevent unjust enrichment, to protect reliance, and because of judicial preferences. When plaintiffs are limited to reliance damages in commercial cases, only reliance loss would be recoverable under ordinary contract rules.[119]

In donative cases, expectation damages are also generally available, even when reliance damages could easily be calculated.[120] There are a number of reasons for awarding expectation damages for breach of a promise apparently made with an intent to be legally bound in a donative setting, especially once there has been reliance: to protect reliance, to enforce a possible partially-executed bargain; to fulfill the promisor's intent, and to aviod complex rules about the

awarded $700 "based on Hunter's monthly wages at the telephone company [her prior employer], namely $350 per month, and on the period of her unemployment." *Id.* at 954.

117. *See, e.g.*, Dade County v. Palmer & Baker Eng'rs, 339 F.2d 208 (5th Cir. 1964); L. Albert & Son v. Armstrong Rubber Co., 178 F.2d 182 (2d Cir. 1949).

118. *See* E.A. FARNSWORTH, *supra* note 33, § 12.16, at 890.

119. *See supra* notes 107-10 and accompanying text.

120. *See supra* notes 28-49 and accompanying text.

appropriate measure of damages.

II. DAMAGES FOR MISREPRESENTATION

There are only a few promissory estoppel cases whose results (including the measure of damages) cannot be entirely understood as based on contract principles.[121] This section describes and explains the awards of monetary damages in these cases and considers whether the use of promissory estoppel rather than tort as the basis of liability has affected the measure of relief.[122]

The courts award expectation damages when expectation damages would be available under normal contract rules. Thus, when the misrepresentation was early in the negotiating process and expectation damages are therefore speculative, the courts award only reliance damages.[123] In other cases in which the negligent or reckless misrepresentation occurred later, expectation damages are awarded.[124] In the cases in which the misrepresentation was intentional, the measure of damages seems to include a punitive element.[125] In one of these cases, the court expressly indicates that it is awarding an amount equal to expectation damages as punitive damages.[126]

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121. In an earlier article, I discussed or noted six cases in which promissory estoppel might have been used to remedy a factual or promissory misrepresentation. *See* Barnett & Becker, *supra* note 15, at 485-95. These cases fall into into three factual patterns. In one pair of cases, there is a reckless or negligent misrepresentation so early in the negotiating process that it it is unlikely that either party thought a legally-binding commitment had been made. *Id.* at 487-89. For a discussion of these cases see *infra* notes 129-32 and accompanying text. In a second pair of cases, there is an intentional misrepresentation at a later point in the negotiating process, when the key terms of the transaction have been worked out: expectation damages can be calculated. *Id.* at 489-91. For a discussion of these cases see *infra* notes 133-48 and accompanying text. The third pair of cases is like the second (expectation damages can be calculated), but the misrepresentation may have been reckless or negligent rather than intentional. *Id.* at 491 n.221. For a discussion of these cases see *infra* notes 149-55 and accompanying text.

122. In tort, recission would also be available and is often the remedy preferred by plaintiffs. *See, e.g.*, Sharkey v. Burlingame Co., 131 Or. 185, 282 P. 546 (1929); McLean v. Southwestern Casualty Ins. Co., 61 Okla. 79, 159 P. 660 (1916).

123. *See infra* notes 127-30 and accompanying text.

124. *See* Greenstein v. Flately, 19 Mass. App. Ct. 351, 474 N.E.2d 1130 (1985); Chrysler Corp. v. Quimby, 51 Del. 264, 144 A.2d 123 (1958). In Goodman v. Dicker, 169 F.2d 684 (D.C. Cir. 1948), however, there was no difference between reliance and expectation damages, *see infra* note 151 and accompanying text. In Walters v. Marathon Oil Co., 642 F.2d 1098 (7th Cir. 1981), the court awarded expectation damages as a proxy for full reliance. *See infra* note 152 and accompanying text.

125. *See infra* notes 131-42 and accompanying text.

126. *See* Greenstein v. Flately, 19 Mass. App. Ct. 351, 474 N.E.2d 1130 (1985); Chrysler Corp. v. Quimby, 51 Del. 264, 144 A.2d 123 (1958)(punitive damages implicit in the

Whether these results are consistent with the results these courts would reach using tort damage rules is impossible to say. There is a great deal of uncertainty and confusion about the proper measure of damages in tort for misrepresentation in these kinds of cases.

The results in the cases in which the misrepresentation is early in the negotiating process are clearly consistent with the measure of damages in tort. In *Hoffman v. Red Owl Stores*,[127] for example, the court awarded the plaintiff's actual losses sustained in reliance on the defendant's agents' misrepresentations that $18,000 cash would be enough money for the plaintiff to become a Red Owl franchisee.[128] The defendants offered this assurance in order to induce Hoffman to take a number of actions in preparation for becoming a franchisee, such as selling the bakery he had been operating and running a small grocery to gain experience in the grocery business.[129] In a tort action for misrepresentation, a plaintiff can recover as special damages any actual losses, provided that she shows that the losses were the natural and proximate result of the misrepresentation.[130] Hoffman's reliance losses were the natural and proximate result of the misrepresentations. The defendant's agents made the representations to induce precisely these acts, and Hoffman would not have taken these actions but for the misrepresentation.

In the cases in which deliberate misrepresentation occurred later in the negotiating process, it is not clear whether expectation damages would have been available in tort. In *Greenstein v. Flatley*,[131] for example, the defendants led the plaintiffs to think that they would lease office space in a building owned by a defendant until shortly before the lease was to begin and the plaintiffs' current lease in another office building expired.[132] The court used promissory estoppel to award expectation damages and punitive damages[133] (of

recovery awarded); *infra* note 148.

127. 26 Wis. 2d 683, 133 N.W.2d 267 (1965).

128. *Id.* at 703, 133 N.W.2d at 277. *See also* Werner v. Xerox Corp., 732 F.2d 580 (7th Cir. 1984)(holding similar to *Hoffman*).

129. *Hoffman*, 26 Wis. 2d at 687, 133 N.W. 2d at 269.

130. *See, e.g.*, W. PROSSER & W. KEETON, THE LAW OF TORTS, § 110, at 766-67 (1984).

131. 19 Mass. App. Ct. 351, 474 N.E.2d 1130 (1985).

132. *Id.* at 352, 474 N.E.2d at 1132. *See also* Chrysler Corp. v. Quimby, 15 Del. 264, 144 A.2d 123 (1958)(defendants led plaintiff to believe franchise would be granted if plaintiff would buy out other stockholders and thereafter transfer 51% of stock to person named by defendant).

133. It might have been possible to award expectation damages on the basis of contract

an equal amount) because the owner's conduct "was an intentional course of action, taken to maintain his options despite plaintiffs' predictable reliance on the existence of a deal."[134]

Traditionally, two measures of general damages had been used in tort for misrepresentation in the context of bargain transactions or negotiations:[135] benefit-of-the-bargain and out-of-pocket damages. Usually, the tort issue arises when there is misrepresentation of the quality or nature of what is being traded.[136] In such cases, the benefit-of-the-bargain measure is equal to expectation damages, and is the difference between the value as represented and the actual value of the thing traded. The other general damage measure, out-of-pocket damages, is more like a reliance measure, and is defined as the difference between the contract price and the actual value of the thing traded.[137]

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principles, since the owner's agent had signed a letter offering to "amend" the lease (the plaintiffs had submitted a signed copy of the lease prepared by the defendants to the defendants). The plaintiffs accepted the amendment. As the appellate court noted in discussing, without reaching, the issue of apparent authority, this instrument "signed on behalf of The Flatley Company, written on a letterhead of The Flatley Company and bearing the home office address, would present some difficulty for the defendant. The test for apparent authority is how the person dealing with the agent reasonably interprets the agent's authority." *Greenstein*, 19 Mass. at 355, 474 N.E.2d at 1133. But contract principles cannot explain the court's award of punitive damages in addition to expectation damages.

134. 19 Mass. App. at 358; 474 N.E.2d at 1134. The defendants' misrepresentations were intentional, though the misrepresentations might not have been actionable in tort in Massachusetts. At the time the promissory misrepresentations were made, the defendants had not decided not to deliver occupancy to the plantiffs. Had no more attractive alternative presented itself, the plaintiffs would have eventually received a signed lease and occupancy. *See* McCusker v. Geiger, 195 Mass. 46, 80 N.E. 648 (1907) (holding promise actionable as fraud only when made after an "affirmative" decision not to perform; mere absence of intent to perform insufficient).

135. Most promissory estoppel commentators have assumed that only reliance damages would be available in tort. *See, e.g.*, Farber & Matheson, *supra* note 7, at 945; Metzger & Phillips, *supra* note 9, at 544-545. *But see Contract Damages: 2*, *supra* note 5, at 406-10 (noting that despite this widely-held assumption, most jurisdictions award contract-like remedy for fraud or misrepresentation in context of bargain transaction). Instead of monetary damages, the victim of misrepresentation can also seek recission, *see, e.g.*, Collins v. Lindsay, 25 S.W.2d 84 (Mo. 1930), and sometimes reformation, *see, e.g.*, Layh v. Jonas, 96 Idaho 688, 535 P.2d 661 (1975).

136. The majority rule is benefit-of-the-bargain; the minority rule out-of-pocket losses. *See* W. PROSSER & W. KEETON, *supra* note 130, § 110, at 767-68. Many courts have wavered between the two, rather than applying either consistently. *Id.* at 768. Often, there is no difference between the two measures. Whenever the contract price is equal to the fair market value of the property as represented, the two measures are identical: the contract price (or the value of the property as represented) less the actual value of the property. *Cf.* Pao Ch'en Lee v. Gregoriou, 50 Cal. 2d 502, 326 P.2d 135 (1958) (using purchase price as evidence of value of property as represented).

137. *See* W. PROSSER & W. KEETON, *supra* note 130, § 110, at 766-68.

Traditionally, jurisdictions have purported to apply one of these two measures of general damages in misrepresentation cases (in the absence, of course, of any claim of special damages).[138] The modern trend, however, is toward a flexible approach, awarding those damages appropriate on the facts of the particular case. Under the flexible approach, the plaintiff usually has her choice of seeking out-of-pocket damages or benefit-of-the-bargain damages, provided that the latter can be proven with sufficient certainty.[139] When these general measures do not apply — because there was no misrepresentation of the quality of something traded — the plaintiff can recover special damages by showing actual losses which are the natural and proximate result of the misrepresentation.[140]

Neither of these measures of general damages would determine the damages in *Greenstein*. The benefit-of-the-bargain formula measures the difference between the value that the property traded would have had if it had been as represented and its actual value. When there has been misrepresentation about whether the parties have a reliable agreement, the benefit-of-the-bargain formula is not equivalent to expectation damages; indeed, the formula cannot be applied. The out-of-pocket measure is also inapplicable since it too refers to the value of something traded. Traditionally, courts have limited plaintiffs in such situations to actual losses.[141]

Some recent decisions suggest that some modern courts might use expectation damages as a proxy for actual loss when, as in *Greenstein*, forgone opportunites are a significant component in the plaintiff's reliance loss.[142] In *Greenstein*, when the plaintiffs learned that they would not be getting space in the defendants' building, they had only a few weeks in which to find substitute space prior to the termination of their current lease. Because of the defendants'

138. *See supra* note 136.

139. The leading case is Selman v. Shirley, 161 Or. 582, 85 P.2d 384 (1938), *aff'd*, 161 Or. 582, 91 P.2d 312 (1938). *See also* Hinkle v. Rockville Motor Co., 262 Md. App. 502, 278 A.2d 42 (1941) (holding that under flexible approach, $800 proper measure of damages where defect about which seller lied could be fixed for that amount). *See generally* W. PROSSER & W. KEETON, *supra* note 130, § 110, at 768-69.

140. *See* W. PROSSER & W. KEETON, *supra* note 130, § 110, at 766-67.

141. *See, e.g.*, Morrison v. Glickman, 119 N.Y.S.2d 136 (N.Y Civ. Ct. 1936); Welch v. Lawson, 32 Miss. 170 (1856); W. PROSSER & W. KEETON, *supra* note 130, § 110, at 766-67 ("When the defendant's fraudulent conduct does not involve the transfer of property, the plaintiff necessarily proves his claim by proving special or consequential damages if he can do so.").

142. *See infra* notes 131-34 and accompanying text. *See also* Crummer v. Zalk, 248 Cal. App. 2d 794, 57 Cal. Rptr. 185 (1967).

misrepresentations, the plaintiffs were limited to the thin market for almost immediate occupancy. Expectation damages — the difference between the rent promised by the defendants and rent on substitute space found at the last minute — are a good proxy for full reliance loss. Courts adopting the flexible modern approach stress the need to apply the most appropriate damage measure in light of the factual situation and the inadequacy of other damage measures.[143] Courts in these jurisdictions might, therefore, be likely to award expectation damages in a situation like that in *Greenstein* as a proxy for full reliance loss.[144] Courts in out-of-pocket or benefit-of-the-bargain jurisdictions, however, might also be willing to use expectation damages in these situations to measure actual losses.[145] Even the out-of-pocket measure of general damages (which cannot be applied in this situation) compensates the plaintiff for forgone opportunities.[146]

It is, however, impossible to state with certainty what measure

143. *See, e.g.*, Weitzel v. Jukich, 73 Idaho 301, 308, 251 P.2d 542, 546 (1953) (Porter, J. concurring in part and dissenting in part)("The underlying principle is that the victim of fraud is entitled to compensation for every wrong which is the natural and proximate result of the fraud. The measure of damages which should be adopted under the facts of a case is the one which will effect such result.").

144. Cellucci v. Sun Oil Co., 2 Mass. App. 722, 320 N.E.2d 919 (1974), *aff'd*, 368 Mass. 811, 331 N.E. 2d 813 (1975) (in flexible jurisdiction, court affirms award of specific performance in tort); Rokowsky v. Gordon, 531 F. Supp. 435 (D. Mass 1982), *aff'd*, 705 F.2d 439, *cert. denied*, 462 U.S. 1120 (1983)(court would prefer actual losses, but uses expectation damages because of difficulty of determining losses caused by forgone opportunities).

145. *See, e.g.*, Walters v. Marathon Oil Co., 642 F.2d 1098 (7th Cir. 1981) (using expectation damages as a proxy for reliance loss in promissory estoppel case); Stephenson v. Capano Development Inc., 462 A.2d 1069 (Del. 1983)(awarding interest rate differential as special damages for fraudulent offer of low interest rate on mortgage; stressing that the plaintiff might not have bought property but for defendant's fraudulent offer). *But see* Gray v. Don Miller & Associates, Inc., 35 Cal. 3rd 498, 647 P.2d 253, 198 Cal. Rptr. 551 (1984) (limiting plaintiff to actual out-of-pocket loss caused by misrepresentation as to whether there was a deal with a third party in jurisdiction with statute prescribing out-of-pocket rule for misrepresentation in purchase, sale, or exchange of property); Newkirk v. United Fed. Sav. & Loan Ass'n, 165 Ga. App. 311, 299 S.E.2d 183 (1983) (allowing only actual reliance loss in out-of-pocket jurisdiction for fraud when neither general damage formula would apply); Kensington Publishing Corp. v. Kable News Co., 100 A.D.2d 802, 474 N.Y.S.2d 574 (1984) (denying plaintiff's claim based on lost opportunities in out-of-pocket jurisdiction); Traylor v. Gray, 547 S.W.2d 644, 656-58 (Tex. Civ. App. 1977) (awarding less than either expectation damages or reliance damages for fraud in case in which neither general damage formula would apply).

146. An out-of-pocket damage award is the difference between the price paid by the plaintiff for what was traded (e.g., $10,000) and the market value of what was traded (e.g., $8,000). This compensates the plaintiff for forgone opportunites since, but for defendant's misrepresentation, the plaintiff could have purchased the goods elsewhere for $8,000. Benefit-of-the-bargain damages do more than compensate the plaintiff for forgone alternative opportunities; they give him the promised benefit though no honest seller would have promised so much for so little.

of damages would be imposed in tort for intentionally misleading conduct about whether there will be a bargain. In *Greenstein* (and the other promissory estoppel case dealing with intententional misrepresentation[147]), it is possible — but by no means certain — that the relief afforded is consistent with the relief that would have been available in tort.[148]

In cases in which misrepresentation is made negligently or recklessly at a late point in the negotiating process, courts have awarded either expectation or reliance damages.[149] Again, as in the inten-

147. Chrysler Corp. v. Quimby, 51 Del. 264, 144 A.2d 123 (1958). In this case, the defendant's agent told Quimby that he would be awarded a terminable-on-ninety-days-notice franchise if he bought the stock of the recently-deceased franchisee's widow. *Id.* at 269-70, 144 A.2d at 128. The promise was a lie when made. The agent never intended to award Quimby the franchise but did want to satisfy Chrysler's "moral obligation" to the widow. *Id.* at 278, 144 A.2d at 134. The court awarded both the lost profits for the ninety days and the cost of the stock (net of the value realized by selling the assets of the dealership). Thus, the court awarded both expectation damages and reliance damages, a double recovery since the profit could not have been enjoyed without buying the stock. Given that the defendant's agent deliberately and intentionally misled the plaintiff, the double recovery might include a punitive element. It is impossible to know whether this case would have come out differently had tort rules been used because we do not know what amount the court considered compensatory. (Indeed, we do not even know whether the court realized that it was doing more than compensating the plaintiff.) Delaware is, however, a benefit-of-the-bargain jurisdiction, *see, e.g.*, Nye Odorless Incinerator Corp. v. Felton, 35 Del. 236, 162 A. 504 (1931). In *Chrysler*, unlike *Greenstein*, the benefit-of-the-bargain measure could be applied because Chrysler's agent's misrepresentation affected the value of the stock Quimby purchased from the widow. *See, e.g.*, Hartwell Corp. v. Bumb, 345 F.2d 453 (9th Cir.), *cert. denied*, 382 U.S. 891 (1965) (general damages in the form of benefit-of-the-bargain awarded for misrepresentation by trustee in bankruptcy to purchaser of a division of a bankrupt corporation).

148. *See, e.g.*, Rokowsky v. Gordon, 531 F. Supp. 435, 439 (D. Mass. 1982), *aff'd*, 705 F.2d 439, *cert. denied*, 462 U.S. 1120 (1983) (awarding expectation damages as proxy for full reliance loss); Cellucci v. Sun Oil Co., 2 Mass. App. 722, 320 N.E.2d 919 (1974), *aff'd*, 368 Mass. 811, 331 N.E.2d 813 (1975) (affirming award of specific performance in tort). *Greenstein* was decided in Massachusetts which is a "flexible" jurisdiction. *See* Rice v. Price, 340 Mass. 502, 164 N.E.2d 891 (1960).

149. *See* Walters v. Marathon Oil Co., 642 F.2d 1098 (7th Cir. 1981); Goodman v. Dicker, 169 F.2d 684 (D.C. Cir. 1948). In both cases, the award of expectation damages might have been imposed on the basis of contract and agency principles, though the courts based liability on "estoppel" and "promissory estoppel." *See* Barnett & Becker, *supra* note 15, at 487. On the other hand, liability might have been appropriate only in tort, not in contract. In *Walters*, contract liability would lie only if the agents with whom the plaintiff dealt had apparent authority to bind the defendant with oral assurances prior to approval of plaintiff's application by the Marathon home office. (The lower court decision can be read as imposing liability on the basis of such (or quite similar) findings). *See* Barnett & Becker, *supra* note 15, at 489 n.215. In contrast, in tort, a principal is liable for misrepresentations by an agent during negotiations if the agent is authorized to negotiate, the other party had no warning that the representations were unauthorized, and the representations concerned matters that the principal should expect to arise during negotiations. *See, e.g.*, RESTATEMENT (SECOND) OF AGENCY § 258 (1958). Thus, it is possible that though contract liability would be inappropriate because

tional misrepresentation cases discussed above, it is not clear whether different measures of relief would have been available in tort. For example, in two cases, agents of a franchisor told a franchise applicant to go ahead and spend money necessary to begin the franchise operation because only formalities remained before he would be officially given a franchise; final affirmative decisions had already been made within the franchisor's organization.[150] The agents were wrong, and the plaintiffs sued. In one of these cases, the court's award of reliance losses was consistent with tort damage rules, as compensation for actual losses, and with contract damage rules, for breach of an indefinite-term contract.[151] In the other case, the court awarded expectation damages for the minimum franchise period as a proxy for full reliance losses, including forgone opportunities.[152] Whether the court would have been as willing to use expectation damages as a proxy for actual losses in tort is not clear for the reason given in the preceding section: neither measure of general damages applies in this situation, and there are too few modern cases to know whether courts would award expectation damages as a

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the agents lacked apparent authority to bind the principal by an oral assurance, the principal might be liable in tort for misrepresentations made by the agents during negotiations. In Goodman v. Dicker, 169 F.2d 684 (D.C. Cir. 1948), the defendants could be held liable on the basis of contract and agency doctrines only if the defendants (the franchisor's local distributor) led the plaintiffs reasonably to believe that the defendants were authorized agents of the franchisor with power to enter into a contract on behalf of the franchisor, and the defendants did agree to give them this franchise in the name of the franchisor. The defendants would then be liable in contract for breach of the indefinite term contract because of their implied warranty of agency. *See* Restatement (Second) of Agency § 329 comment g, j, illustration 8 (1958); *See* Barnett & Becker, *supra* note 15, at 488. But the defendants would be liable in tort for negligent or reckless misrepresentation of fact (that the franchisor had made a decision), even though the plaintiffs did not think that the defendants were purporting to accept their application in the name of the franchisor.

150. Walters v. Marathon Oil Co., 642 F.2d 1098 (7th Cir. 1981); Goodman v. Dicker, 169 F.2d 684 (D.C. Cir. 1948).

151. In Goodman v. Dicker, 169 F.2d 684 (D.C. Cir. 1948) the franchise, if awarded, would have been for an indefinite term. The franchise application stated: "Emerson Radio [the franchisor] shall have the right to revoke the Franchise Certificate, if, at any time after the issuance thereof, the dealer fails to comply with the above requirements." Joint Appendix at 10, *Goodman*. Modern courts have construed indefinite-term franchises as terminable only after a reasonable time when the franchisee invests in beginning operations. These courts have construed "a reasonable time" as the time necessary to give the franchisee the opportunity to recoup her investment. *See, e.g.*, Whorral v. Drewry's Ltd. U.S.A., Inc., 214 F. Supp. 269, 271 (S.D. Io. 1963). There is, therefore, no difference between expectation damages and reliance damages, and the *Goodman* court's award of $1150 in reliance losses was proper in tort as compensation for actual losses. The court denied an additional recovery of expectation damages, but such a recovery would have been over-compensation in either contract or tort.

152. Walters v. Marathon Oil Company, 642 F.2d 1098 (7th Cir. 1981).

proxy for actual losses when there has been no transfer of property.[153]

In addition, in these cases, the misrepresentations appear to have been negligent rather than intentional.[154] Some courts have awarded benefit-of-the-bargain damages only in cases in which the misrepresentation is intentional, i.e., cases in which the defendant knows that there is a discrepency between what he knows and what he is telling the plaintiff.[155] On the other hand, courts often impose benefit-of-the-bargain damages without any discussion of this issue or finding of intentional misrepresentation.[156] But some courts might be unwilling to use expectation damages as a proxy for actual losses unless the misrepresentation was intentional. As in the previous set of cases, one cannot be sure whether the use of promissory estoppel might affect the measure of relief.

As indicated at the beginning of this section, there are only a handful of cases in which it seems likely that courts used promissory estoppel to impose liability for misrepresentation rather than on the basis of broad contract notions.[157] In these cases, courts have awarded expectation damages when expectation damages would be available under ordinary contract damage rules. In addition, courts have awarded punitive damages when the misrepresentation is deliberate and intentional.

When only reliance damages are available under normal contract rules, the use of promissory estoppel (rather than tort) has not affected the measure of relief.[158] When expectation damages are awarded in promissory estoppel misrepresentation cases, the use of promissory estoppel may affect the measure of relief. But there is much uncertainty about the measure of damages in tort for misrepresentation in the context of an exchange transaction when there is no transfer of property. When reliance includes passing up other opportunities, an award of expectation damages is consistent with the

153. *See supra* notes 141-46 and accompanying text.

154. There are no relevant factual findings, and based on the reported facts one could argue either way. Walters v. Marathon Oil Company, 642 F.2d 1098 (7th Cir. 1981); Goodman v. Dicker, 169 F.2d 684 (D.C. Cir. 1948).

155. *See, e.g.*, Danca v. Taunton Sav. Bank, 385 Mass. 1, 429 N.E.2d 1129 (1982); Anzalone v. Strand, 14 Mass. App. Ct. 45, 436 N.W.2d 960 (1982); RESTATEMENT (SECOND) OF TORTS §§ 526 comment d, 549, 552B (1976).

156. Hessler Inc. v. Farrell, 226 A.2d 708 (Del. 1967); Chrysler Corp. v. Quimby, 51 Del. 264, 144 A.2d 123 (1958); Farm Crop Energy, Inc. v. Old Nat'l Bank, 38 Wash. App. 50, 658 P.2d 1097 (1984).

157. *See supra* notes 121-26 and accompanying text.

158. *See supra* notes 127-30 and accompanying text.

general purpose of tort remedies: compensating the victim for her actual losses.

III. Conclusion

In this article, I have described and explained the measure of damages in promissory estoppel cases, building on a prior article in which I described and explained the basis of liability in promissory estoppel cases.[159] In most promissory estoppel cases, the measure of damages, as well as the question of liability, can be understood on the basis of traditional contract principles. Even in donative cases, courts routinely afford full enforcement.[160] In commercial contract-based cases, expectation damages are similarly available provided that expectation damages would be available under normal limits on expectation damages.[161]

In the very few remaining cases, courts seem to use promissory estoppel to afford a tort remedy for misrepresentation. In these cases, courts award expectation damages when expectation damages can be calculated.[162] When the misrepresentation occurs early during negotiations, there is only one possible remedy (reliance damages), under either tort or contract damage rules.[163] When the misrepresentation occurs at a later point in negotiations and expectation damages can be calculated, courts award expectation damages;[164] such awards are neither clearly consistent nor clearly inconsistent with tort damage rules. Consistent with tort damage rules, courts awarding damages for intentional and deliberate misrepresentation in promissory estoppel cases have included a punitive element.[165]

159. *See* Barnett & Becker, *supra* note 15.
160. *See supra* notes 29-50 and accompanying text.
161. *See supra* notes 51-118 and accompanying text.
162. *See supra* notes 121-23 and accompanying text.
163. *See supra* notes 127-30 and accompanying text.
164. *See supra* notes 131-34 and accompanying text.
165. *See supra* notes 131-42 and accompanying text.

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOR THE FIFTH JUDICIAL DISTRICT**
COUNTY OF RICHLAND	)	
Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam III, Alma C. Hill, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith,	)	**Civil Action File No.: 2009-CP-40-05680**
Plaintiffs,	)	
v.	)	
City of Columbia,	)	
Defendant.	)	
Larry Strickland, Denious L. Dimery and Bailey G. McClinton,	)	**Civil Action File No.: 2013-CP-40-05097**
Plaintiffs,	)	
vs.	)	
City of Columbia,	)	
Defendant.	)	

DEFENDANT'S POST TRIAL BRIEF

Defendant, City of Columbia, offers the following post trial brief:

STATEMENT OF THE CASE

Plaintiffs were formerly employed by the City of Columbia ("City"). At the time of their various retirements, City policy provided individual health coverage without charge for employees and retirees. A premium was charged for spouse and dependent coverage.

Due to increasing costs and the obligation to prefund benefits, in 2009 City Council announced that it was considering a change in policy that would require all participants in its group health plans to pay a premium. Committees were formed and public meetings were called

to address this change. As a result of this process, Council voted to charge a premium for all active and retired members under 65 who chose to continue participating in the City's group health insurance plan effective July 1, 2009. The cost to individual participants was set at $33.18/month, with the City contributing $800.00/month for each member. (Defendant's Ex. 1, (tab 15))

On August 10, 2009, a group of retirees under 65 years of age filed suit asserting that the premium charge breached contractual rights, violated the Unfair Trade Practices Act, and should be equitably barred on ground of promissory estoppel. At the conclusion of discovery, Judge Barber granted summary judgment on all claims.

On January 23, 2013, the Court of Appeals affirmed summary judgment on all claims except promissory estoppel. That claim alone was remanded to determine: (a) whether "promises" of future benefits were authorized; and (b) whether Plaintiffs could reasonably rely upon "promises" of future benefits. Judge Barber's summary judgment order dismissed Plaintiffs' estoppel claim on the basis of reliance only. Accordingly, the Court of Appeals had no basis to rule on whether Plaintiffs could establish damages and no reason to rule on the City's affirmative defenses, including legislative/sovereign immunity, separation of powers, and political question.

In January 2013, the City extended the premium requirement to its Medicare supplemental coverage for post-65 retirees. On August 27, 2013, Plaintiffs Strickland, Dimery and McClinton filed a class action suit on behalf of all post-65 retirees, alleging that the City was estopped from charging this premium. By order dated August 2, 2016 the late Tanya A. Gee denied class certification. On April 19, 2017, former Chief Justice Jean H. Toal denied Plaintiffs' motion to reconsider.

The two cases were consolidated for nonjury trial on August 18, 2018. The only claim remaining in each case was Plaintiffs' assertion that the City is estopped from imposing any charge for their continuing participation in group health coverage and must provide reimbursement for any insurance premiums paid. As addressed below, however, the evidence presented at trial demonstrates that any representations of health insurance without charge for life relied upon by Plaintiffs were ambiguous and unauthorized, that reliance was not reasonable, that Plaintiffs failed to prove reliance damages and that the City acted within is delegated legislative authority in imposing a premium cost for participation in its insurance program.

STATEMENT OF FACTS

Each of the Plaintiffs participate in the City's group health insurance program. Plaintiffs testified that during the course of their employment fellow employees, including city managers, supervisors and human resources staff, informed them that retirees receive group health coverage without cost. Plaintiffs also introduced newsletters available to employees and retirees. (Plaintiffs' Ex. 1-13)[1] Plaintiffs characterize the representations as "promises' and assert that the City should be compelled to reimburse all premiums paid, provide some undisclosed amount for future insurance costs, reimburse them $1000.00 each for costs incurred in this litigation and pay their attorneys.

During the course of their employment and thereafter, Plaintiffs received written notice through group health booklets regarding "escalating health care costs" and "the possibility of contribution increases." (Defendant's Ex. 1 (tabs 16-23); Plaintiffs' Ex. 14-20) Plaintiffs acknowledged that health care benefits are determined by City Council on an annual basis as part of the City-wide budget. Plaintiffs further conceded that no supervisor, department head or City

[1] None of the newsletters expressed any "promise" that retirement benefits will be permanent or remain free of charge. Instead, Plaintiffs admitted that the newsletters reported information that was accurate when published.

manager has the authority to spend funds which are not budgeted. Plaintiffs were also on notice by way of state law, ordinance and City handbooks issued during their employment that the City reserves the right "to revise, supplement or rescind any policies . . . in its sole and absolute discretion." In the same fashion, Plaintiffs were advised that the City reserves the right to "alter its rules, policies and procedures from time to time." (Defendant's Ex. 1 (tab 27))

As firefighters, Plaintiffs participate in the State's retirement system with full pension benefits available upon twenty-five (25) years of service. The pension does not include health insurance. Instead, Plaintiffs continue to voluntarily participate in the City's group health plan under the same conditions offered to active employees. Exhibits admitted without objection and Plaintiffs' testimony confirm that they signed applications for group health insurance during employment and as retirees confining their participation to the same terms and benefits as other participants. (Defendant's Ex. 2 (tab 1, p-q); (tab 2(a)(c)); (tab 3(e)(o)), (tab 4(e)(l)), (tab 5(b-d)(g-j)), (tab 6(d)(m)); (tab 7(a-b)), (tab 8(i-j)(n-o)), (tab 9(c)(e)(g)(p)), (tab 10(a)(c)(e)). Similarly, exhibits and Plaintiffs' testimony establish that they were informed in writing by the City's benefits administrator that "current policy" provided retirees health insurance without charge. (Plaintiffs' Ex. 27, 29, 30) Plaintiffs conceded that the term "current" means "now" or "at the present." Plaintiffs also knew that the benefits administrator could not personally guarantee benefits. Even in asserting reliance upon various representations regarding future benefits, Plaintiffs expressed disagreement and changed their testimony as to the nature of the promises relied upon.[2]

[2] Plaintiff Joseph A. Floyd, Sr. testified in his deposition that his insurance benefits were frozen at retirement and subject to no reduction regardless of plan changes. (Defendant's Ex. 3 (tab 13, pp. 31-33)) Plaintiff Alma C. Hill shared this belief. (Defendant's Ex. 3 (tab 15, pp. 28-29)) Plaintiff Barry N. Martin testified that he was entitled to more expensive individual coverage without charge. (Defendant's Ex. 3 (tab 16, pp. 26-28)) At trial, Mr. Floyd conceded that personally designed policy terms are not practical. Instead, all Plaintiffs now seek reimbursement for premiums paid (not clear as to policy level) and an uncalculated, unknowable amount for future insurance costs.

The Defendant offered the testimony of former City Manager, Steve Gantt, Human Resources Director, Pamela Benjamin and Budget and Program Management Director, Missy Caughman. These witnesses confirmed that City Council reserves to itself the authority to determine benefits provided to employees and retirees. Mr. Gantt held several administrative position before serving as City Manager. He testified without objection that neither he nor his fellow administrators had authority to bind Council.[3] This testimony is consistent with the City's ordinances and state law. (Defendant's Ex. 1, (tab 1); Stipulations of Fact Nos. 15, 16) Ms. Benjamin has served as a human resources professional in state and municipal governments for more than twenty years. She testified that in her prior positions and as Director of the City's Human Resources Office, human resources staff routinely administers employee and retiree benefits. Ms. Benjamin further testified that the authority to administer does not extend to policymaking or offering any "promise" that benefits will be provided beyond the time frame affected by the City's budget or Council vote. Ms. Caughman testified that she had been involved in budgeting for employee and retiree benefits since her first employment with the City in 1998. Ms. Caughman further testified that Council alone votes on employee and retiree benefits, including any charges that might be imposed. Records of City Council meetings admitted without objection confirm that the City's Council received information from staff and outside consultants before voting on imposing charges for employee and retiree health benefits, including the actions challenged by Plaintiffs. (Defendant's Ex. 1 (tab 2, pp. 1-3, 5, 8, 9, 11); (tab 3, p. 2); (tab 4, pp. 7-8); (tab 5, p. 5); (tab 6, p. 4); (tab 7, p. 4); (tab 8, pp. 1-2); (tab 9, pp. 3-6); (tab 10, pp. 6-7); (tab 11, p. 4); (tab 12, pp. 3-7); (tab 13); (tab 14); (tab 15))

[3] Plaintiffs may argue that Mr. Gantt admitted that it was reasonable to rely upon representations by supervisors and Human Resources staff regarding employment benefits. As he explained, however, this applies only to policies in place at the time and does not extend to guarantees of future benefits.

CONTROLLING LAW

As stated by the Court of Appeals in Bishop v. City of Columbia, 401 S.C. 651, 667, 738 S.E.2d 255, 263 (Ct. App. 2013), this case presents "a question of fact as to whether these explanations [regarding retiree benefits] were authorized and reasonably relied upon." For the following reasons, neither the facts presented at trial nor the controlling law of this State offer proof of an authorized, unambiguous promise or support a finding of reasonable reliance. In addition, Plaintiffs have not established reliance damages necessary to obtain relief under promissory estoppel.

After the Bishop decision was issued, our Supreme Court accepted an action in its original jurisdiction challenging a decision by the State's Budget and Control Board to alter premiums charged to members of the State's group health insurance plan. Members of the Board included the Governor, Comptroller General, State Treasurer and other high office holders. Finding that their action violated the separation of powers guaranteed by our constitution, the Supreme Court confirmed that "[i]ncluded within the legislative power is the **sole prerogative to make policy decisions**; to exercise discretion as to what the law will be." The Court went on to observe that "while non-legislative bodies may make policy determinations when delegated such power by the legislature, absent such a delegation, **policymaking is an intrusion upon the legislative power**." Hampton v. Haley, 403 S.C. 395, 403-404, 743 S.E.2d 258, 262 (2013)(emphasis added)

Applying the above principles to the funding group health insurance for public employees, the Court held: "appropriation of public funds is a legislative function and the . . . power to reduce appropriations according to [administrative] criteria would be an impermissible delegation of legislative powers." Id. at 265, 409. Accordingly, to determine whether any

representations regarding future group health insurance benefits were authorized, the Court must examine the form of government adopted by the City of Columbia, the manner in which legislative/policymaking functions are performed and distinctions between legislative and administrative responsibilities.

As stipulated by the Plaintiffs, the City of Columbia has adopted a council-manager form of government. (Stipulation of Fact Nos. 15-16; see also, City of Columbia Ordinance, Chap. 2, art. 1, Sec. 2-1)[4] The legislative powers of the City and the determination of all matters of policy are vested in the City Council, with each member, including the Mayor, having one vote. (City of Columbia Ordinance, Chap. 2, art. 1, Sec. 2-5) The City Manager is the chief executive officer and head of the administrative branch of the City's government. The City Manager must operate within financial limits imposed by the budget approved by City Council. (City of Columbia Ordinance, Chap. 2, art. 1, Sec. 2-32(a)(b)) The Director of Human Resources works under the City Manager and has administrative supervision over the Department of Human Resources, including employee benefits. (City of Columbia Ordinance, Chap. 2, art. 1, Sec. 2-122) Department heads, including the Fire Department, are subject to the City Manager and are responsible for administering their departments. (City of Columbia Ordinance, Chap. 2, art. 1, Sec. 2-151) Under the council-manager form of government, the municipal council has exclusive authority to adopt the municipal budget, provide for the general welfare of the municipality and to carry out any duties not prohibited by law or constitution. S.C. Code Ann. § 5-13-30. For this reason, neither a city manager nor any department head "have the authority to set city policy, nor can their acts be said to represent official policy in view of the legislative

[4] The City's ordinances were reorganized by Ord. No. 2016-042 on June 21, 2016. The substance of the ordinances addressed above are consistent with those in place during the period relevant to this litigation, including the duties of the City Manager (former Ord. § 2-114), responsibilities of department heads (former Ord. § 2-151) and administrative authority of the Director of Human Resources (former Ord. § 2-125) referenced in Bishop v. City of Columbia, 401 S.C. 651, 738 S.E.2d 255 (Ct. App. 2013) at fn. 6.

authority granted to the municipal council." Todd v. Smith, 305 S.C. 227, 231, 407 S.E. 2d 644, 646-647 (1991) (addressing the council-manager form of government)

In keeping with the preservation of legislative authority maintained by the City's Council, neither individual employees nor Council members may bind the City regarding future health insurance; See, Willoughby v. City Council of City of Florence, 51 S.C. 462, 29 S.E. 242 (1898) (verbal assurances insufficient to bind a municipality); State v. Burgess, 408 S.C. 421, 438, 759 S.E.2d 407, 416 (2014) (a governing body is prevented from delegating its "high functions" to any entity or officer and may not "surrender or restrict any portion of [the] power conferred upon it") A resolution duly adopted by a municipal council "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). A party challenging a local ordinance bears the burden of proving its invalidity, keeping in mind that in "[t]his state's constitution . . . the powers of local governments should be liberally construed." Id. *citing* S.C. Const. art. VIII, § 17; see also, Denene, Inc. v. City of Charleston, 532 S.C. 208, 574 S.E.2d 196 (2002) (rehearing denied).

Legislative power is inherently subject to exercise by way of enactment, revision and repeal. In recognition of this power, our Supreme Court has long and consistently held that a council "has no authority to make ... a contract [or other commitment] extending beyond the terms of its office; that the acts of former councils relating to governmental functions of said councils which involve a matter of discretion to be exercised by such councils are without force and effect upon succeeding councils." Newman v. McCullough, 212 S.C. 17, 25, 46 S.E.2d 252, 256 (1948) Thus, "[t]he power conferred upon municipal councils to exercise legislative or governmental functions is done so to be exercised as often as may be found needful or politic..."

Id.; see also, Cunningham v. Anderson County, 402 S.C. 434, 741 S.E.2d 545 (Ct. App. 2013)(discussing Newman), reversed in part on other grounds, 414 S.C. 298, 778 S.E.2d 884 (2015)

A two-step analysis is employed to determine the validity of a local governmental act. First, the court must determine "whether the [municipality] had the power to enact the ordinance." Because the City had the requisite power, the Court must "ascertain whether the [challenged action] is inconsistent with the Constitution or the general laws of this state." Id. If it is determined that the challenged action is not barred by the Constitution or other general law, the Court may not intervene in the valid exercise of the City's legislative authority. Id. at 471-472, 290-291. Moreover, an act within a governmental agency's authority may not be declared unconstitutional if by any reasonable construction it can be harmonized with the state and federal constitutions. City of Darlington v. Stanley, 239 S.C. 139, 122 S.E.2d 207 (1961)

Each Plaintiff concedes that City Council has the authority to set budgets, establish pay and provide employee benefits. The express law of this State confirms this authority. S.C. Code Ann. § 5-13-30(3) As stated above, the absence of a statutory or constitutional prohibition bars any infringement on the decision by City Council to impose premium costs for employee and retiree health benefits. 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" raises a "nonjusticiable political question"); Smith v. Tiffany, 419 S.C. 548, 559, 799 S.E.2d 479, 485 (2017) ("a court may not reject the legislature's policy determinations merely because the court may prefer what it believes is a more equitable result.")

While department heads and human resources personnel may explain and administer **current policies** regarding compensation and benefits, these individuals cannot prohibit future City Councils from making policy changes affecting compensation and benefits. Plaintiffs each testified that they were aware their supervisors and other City administrators could not promise or deliver pay or benefits beyond terms approved by City Council. Plaintiffs agreed that any representations by their fellow employees or published in newsletters regarding retiree benefits were consistent with City policy at the time. Plaintiffs further conceded that City policies changed during their employment and retirement, including changes in the group health insurance program. Accordingly, Plaintiffs could not reasonably rely upon **any** representations regarding future health insurance; See, Powers Constr. Co. v. Salem Carpets, Inc., 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984) (a claim of promissory estoppel requires proof of: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise).

Plaintiffs also failed to prove an "unambiguous promise" authorized by the City to provide free health insurance for life; See, A&P Enterprises, LLC v. SP Grocery of Lynchburg, LLC, 422 S.C. 579, 587, 812 S.E.2d 759, 763 (Ct. App. 2018) (promissory estoppel is a quasi-contract remedy requiring a promise unambiguous in its terms). To satisfy this burden, Plaintiffs were required to prove that an authorized promise was communicated in an unambiguous manner. According to the Oxford Dictionary of the English Language, "unambiguous" means: "not open to more than one interpretation, incontrovertible, incontestable, undeniable, irrefutable, beyond dispute, indubitable, not in doubt, beyond doubt, beyond a shadow of a doubt, unarguable, inarguable, undebatable, and unanswerable." See, oxforddictionaries.com/definition/unambiguous)

Plaintiffs were on notice individually, through ordinance and state law, that the City of Columbia has a council-manager form of government and that the City's Council reserves to itself all legislative authority. While Plaintiffs' observations of earlier retirees receiving insurance without charge, statements of current policy and even predictions as to the future by fire chiefs, personnel staff and others may have created an expectation of some form of health insurance without charge, this expectation does not rise to the level of an enforceable, unambiguous promise.[5] Indeed, a ruling that statements made by fellow employees, regardless of position, could prohibit future City councils from exercising their legislative prerogative would be inconsistent with controlling law and interfere in the exercise of municipal authority provided by state law and constitution.

In summary, Plaintiffs could not reasonably rely upon representations that exceeded the administrative functions of their supervisors, department heads and City managers. In addition, Plaintiffs were on notice that "promises" of future benefits were inconsistent with signed acknowledgments and warnings that escalating health costs could require contributions by participants in the group health plan. Plaintiffs' expectations notwithstanding, the Supreme Court's decision in Hampton v. Haley demonstrates that no verbal or written promise could be reasonably relied upon to bar City Council from exercising its legislative authority to appropriate funds and allocate premium costs for participation in the City's group health program.

Plaintiffs' evidentiary deficiencies are further illustrated by absence of "reliance damages". See, Karigg v. Blue, 283 S.C. 494, 498, 323 S.E.2d 787, 797 (Ct. App. 1984)

[5] For example, Plaintiff Joseph A. Floyd, Sr. testified that he relied upon information from former Human Resources Director, Ron Cunningham in making "promises" to recruits that if they reached retirement, the City would provide free health insurance. The record shows that Mr. Cunningham retired from employment with the City in June 2000. (Plaintiffs' Ex. 7) There is no evidence that Mr. Cunningham had the authority to bind City Council while serving as Human Resources Director. Additionally, the information attributed to Mr. Cunningham prior to June 2000 regarding the current retiree health insurance policy would have been accurate and no evidence has been presented that any recruit detrimentally relied upon Mr. Floyd's representations.

("reliance damages" are intended to replace proven losses) The order of remand specifically affirms dismissal of Plaintiffs' contract claim seeking enforcement of continuing health insurance without charge. The order further states that relief under promissory estoppel requires proof of "injury **in reliance** on the promise." 401 S.C. at 664, 738 S.E.2d at 261 (Emphasis added) Following remand, both Judge Gee and Justice Toal rejected Plaintiffs' attempts to avoid proving reliance damages by arguing that each was entitled to the same expectation relief. See, Order denying class certification (each Plaintiff must "demonstrate how he was prejudiced or how his position was made worse **in reliance** on a promise by the City" in order to prevail); see, Order denying reconsideration of class certification ("the controlling law of this state [requires] individualized examinations necessary to address the **detrimental reliance** (injury) element of Plaintiffs' estoppel claims. . . .") (Emphasis added)[6]

To establish the detrimental reliance element necessary to obtain relief on a promissory estoppel claim, a plaintiff must prove the first that he would have been better off if he had not relied upon a promise, and second, provide a measure of relief not dependent upon speculation. Plaintiffs failed on both counts. Although some Plaintiffs testified that they could have pursued or accepted other employment if informed that they may be charged for health insurance in the future, no Plaintiff identified an available employment opportunity that offered better pay, benefits or future guarantees. Other Plaintiffs testified that they may have postponed their retirement dates had they known that after July 1, 2009 retirees would be required to pay $33.18 per month for individual group health coverage. Even these Plaintiffs concede that they received substantial increases in pay during employment, obtained significant promotions, enjoyed personal gratification and receive valuable pension benefits as a result of their employment with the City. Plaintiffs did not prove that any lost opportunity would have exceeded or even equaled

[6] Both orders were attached to Defendant's pretrial brief.

the compensation, benefits, retirement pension and continuing access to group health insurance made available through their employment with the City. This failure to demonstrate detrimental reliance through evidence of better compensation and benefits than available from employment with the City bars estoppel relief. See generally, Craft v. South Carolina Commission for the Blind, 385 S.C. 560, 568, 685 S.E.2d 625, 629 (Ct. App. 2009); Barnes v. Johnson, 402 S.C. 458, 474-476, 742 S.E.2d 6, 14-15 (Ct. App. 2013) (reversing a promissory estoppel judgment despite the plaintiff's sympathetic situation based upon his failure to prove an unambiguous promise and "injury sustained in reliance upon such a promise.")

The burden of proving reliance damages addressed in Craft applies here as it applied in Barnes. In Craft the Court of Appeals found that the Commission for the Blind, through its agents, made unambiguous promises, Craft reasonably relied upon the promises and the Commission expected Craft to rely upon the promises. Craft's estoppel claim failed, however, because he could not demonstrate that a recognizable injury resulted from his reliance. Specifically, Craft could not show that he lost a better business opportunity.

Like Craft, Plaintiffs assert that they relied upon representations regarding a future event, here retirement. Like Craft, however, no Plaintiff offered evidence that he lost a better opportunity, such as higher pay and guaranteed benefits, in reliance upon promises received. As in Craft and Barnes, this failure is a bar to relief on promissory estoppel grounds.

Plaintiffs have previously argued that Craft is limited to its facts and should not apply here. As in Craft, however, Plaintiffs assert that they relied upon authorized representations and lost a prospective benefit or opportunity. If the value of an authorized representation were sufficient to support promissory estoppel relief, the courts in Craft would have been compelled to consider expectation relief based upon 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.

At trial, Plaintiffs' counsel presented a 1987 Hofstra Law Review article entitled "Promissory Estoppel" to support the assertion that Plaintiffs are entitled to expectation damages. Plaintiffs apparently argue that this article should influence the Court depart from established precedent and award the costs of maintaining health insurance without demonstrating any reliance loss.[7] As Craft confirms, however, promissory estoppel is not available to compel specific performance or to enforce even an authorized promise. Instead, as Judge Gee and Justice Toal ruled already in this case promissory estoppel relief requires a detrimental change of position (lost job opportunity for example) separate from the value of the promise itself. No Plaintiff identified a more favorable employment opportunity lost due to the expectation of post-employment benefits. Their argument to the contrary, mere expectation of future benefits does not establish a basis for relief regardless of the "reasonableness" of the expectation or the authority of the promissor. Therefore, as in Craft and Barnes, Plaintiffs' claims fail.

In addition to the shortcomings in Plaintiffs' promissory estoppel proof, the City cannot be judicially barred from making changes in its group health insurance program. See, Health Promotion Specialists, LLC v. S.C. Board of Dentistry, 403 S.C. 623, 635-637, 743 S.E.2d 808, 814-815 (2013) (public entities are immune from liability on the basis of decisions to fund or impose costs for liabilities); Tenney v. Brand Hove, 341 U.S. 367, 376-378 (1951) (exercise of discretion in selecting projects for public funding is not a matter of judicial review); Sandlands C&D, LLC v. County of Horry, 394 S.C. 451, 460, 716 S.E.2d 280, 284 (2011) (a duly adopted resolution is a legislative enactment and presumed to be constitutional); S.C. Const., art. X, § 14

[7] This article was published before the Craft and Barnes decisions, each requiring proof of reliance damages in commercial settings. The article is not cited in any opinion in this state and there are no South Carolina cases identified in the article as adopting the author's suggestions for awarding expectation relief.

(public subdivisions barred from incurring public indebtedness beyond revenue production) These legal barriers apply even had Plaintiffs satisfied all elements of their estoppel claim.

Finally, Plaintiffs have presented no evidence to support an award of attorney fees or costs. Apparently, Plaintiffs contend that attorney fees and costs may be awarded pursuant to S.C. Code Ann. § 15-77-300 et seq. This statutory construct is not available. First, neither case was "brought by the State," brought by "any political subdivision of the State" or involves "contesting state action." These are the only circumstances that support recovery of attorney fees under § 15-77-300(A). Second, there is no evidence that any "agency acted without substantial justification in pressing its claims against the party." § 15-77-300(A)(1). Instead, the summary judgment awarded by Judge Barber, limited remand from the Court of Appeals, and denial of class certification by Judge Gee and Justice Toal demonstrate that the City has been justified in contesting Plaintiffs' claims. Accordingly, any petition for an award of fees and costs under § 15-77-310 would be without merit and should not be entertained.

CONCLUSION

As Judge Barber, the Court of Appeals, Judge Gee and Justice Toal have previously ruled, it is incumbent upon Plaintiffs to prove each element of their promissory estoppel cause of action. In this instance, Plaintiffs have failed to provide the required evidence as to any of the necessary elements. Specifically, in view of their own admissions and the documentary evidence presented, Plaintiffs did not prove a promise unambiguous in its terms. Additionally, the notices provided by state law, ordinance and communications from the City regarding the opportunity to revise policy render any reliance upon a promise of permanent benefits without charge unreasonable. Likewise, Plaintiffs failed to prove that the City, through its governing body, made any promise or expected Plaintiffs to rely upon any promise as to permanent future

benefits. Finally, Plaintiffs failed to establish "injury" beyond the expenditure of premiums necessary to maintain group health coverage. This expenditure alone, compared to Plaintiffs' testimony regarding the many benefits of their employment, including promotional opportunities, increases in compensation, personal satisfaction and pension payments that the City assisted in funding, and Plaintiffs' inability to forecast future costs or damages, cannot support a monetary judgment in their favor.

Respectfully submitted,

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ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	IN THE FIFTH JUDICIAL CIRCUIT
Basilides F. Cruz; Joseph A. Floyd, Sr.; Arthur C. Gillam, III; Alma C. Hill; Barry N. Martin; Charles F. Morris, Sr.; and Joseph A. Smith, Plaintiff, vs. City of Columbia, Defendant.	Case No.: 2009-CP-40-5680
Larry Strickland, Denious Dimery, and Bailey McClinton, Plaintiffs, vs. City of Columbia, Defendant.	Case No.: 2013-CP-40-05097

PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING JUDGMENT TO DEFENDANT CITY OF COLUMBIA AS TO ALL PLAINTIFFS ON THEIR PROMISSORY ESTOPPEL CLAIMS

Plaintiffs move, pursuant to Rules 52(b) and 59(e), SCRCP, for alteration or amendment of the Order Granting Judgment to Defendant as to all Plaintiffs on their promissory estoppel claims. The basis for the motion is twofold: the Court erred as a matter of law by (1) substituting a measure of damages ("reliance damages") for an element of promissory estoppel ("injury in reliance"); and (2) rejecting expectation damages as an appropriate remedy for a promissory estoppel action.

ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

Counsel for Plaintiffs received electronic notice of the order on January 29, 2019. A copy of the order is attached as Exhibit 1.

TABLE OF CONTENTS

I. Background 2

II. An "injury in reliance" is not the same thing as "reliance damages" 3

III. Plaintiffs each demonstrated an injury in reliance 5

IV. Promissory estoppel does not require a plaintiff to demonstrate that he "would have been better off" if he had not relied on the promise 9

V. Expectation damages are an appropriate remedy for a promissory estoppel action and Plaintiffs' expectation damages are not speculative 11

VI. Conclusion 12

I. BACKGROUND

The basic facts of this case are not seriously in dispute. Plaintiffs began working for the City of Columbia as firefighters in the 1960s, 1970s, and 1980s. Each plaintiff articulated specific instances throughout their careers when Fire Chiefs, City Managers, and Human Resources officials represented to them that they would receive no-cost single coverage healthcare from the time of their retirement until the time of their death. And the City of Columbia did, in fact, provide Plaintiffs with no-cost single coverage healthcare from the dates of their retirement until July 2009 for individuals under 65, and until 2013 for those individuals over age 65. Plaintiff Denious "D.L." Dimery's experience illustrates this last point—Dimery retired in 1991 and received no-cost single coverage healthcare for over 20 years before the City of Columbia began requiring him to pay the premium for the same coverage.

Each Plaintiff brought individual promissory estoppel claims. Under South Carolina law, "[t]he elements of promissory estoppel are (1) an unambiguous promise by the promisor; (2)

ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

reasonable reliance on the promise by the promisee; (3) reliance by the promisee was expected by and foreseeable to the promisor; and (4) injury caused to the promisee by his reasonable reliance." N. Am. Rescue Prod., Inc. v. Richardson, 411 S.C. 371, 379–80, 769 S.E.2d 237, 241 (S.C. 2015).

In finding for the Defendant, the Court stated that "Plaintiffs failed to establish compensable injuries incurred in reliance upon representations regarding the availability of individual health insurance without charge throughout their retirements." Order at 5. This initially suggests that the Court found that Plaintiffs failed to establish the fourth element of promissory estoppel. But a closer analysis demonstrates that the Court erred by replacing the fourth element of promissory estoppel with requirements that have no basis in South Carolina law. Plaintiffs now move for the Court to reconsider its Order.

II. AN "INJURY IN RELIANCE" IS NOT THE SAME THING AS "RELIANCE DAMAGES"

The fourth element of promissory estoppel requires the person to whom the promise is made to have suffered "injury in reliance on the promise." Craft v. S.C. Comm'n for Blind, 385 S.C. 560, 565; 685 S.E.2d 625, 627 (Ct. App. 2009). An analysis of the case law establishes that "injury in reliance" requires only that the Plaintiffs demonstrate a causal relationship between the broken promise and the complained-of injury: "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*, the complained-of injury would not have otherwise resulted." Barnes v. Johnson, 402 S.C. 458, 742 S.E.2d 6, 14 (Ct. App. 2013) (emphasis added). This is underscored by the two cases the Court cites in its Order to support its holding: Craft and Barnes. Although the Court cites Craft and Barnes in its Order, a faithful application of their legal analysis and holdings would lead the court to a different conclusion.

ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

In Craft v. South Carolina Commission for the Blind, the plaintiff quit his job on December 29th based on a promise that another job would be available. The other job never materialized, and the plaintiff was unable to go to back to the old job because the job site was permanently closed on December 31st. Plaintiff failed to present any evidence regarding why the job site was closed, and the Court held that plaintiff failed to demonstrate that he had sustained the claimed injury of loss of current employment by quitting his job in reliance on the defendant's promise. Even if plaintiff had quit his job on reliance of the promised job, he would have been out of a job in two days because the job site was permanently closed. Barnes v. Johnson, 402 S.C. 458, 475, 742 S.E.2d 6, 14 (Ct. App. 2013) (noting that the merchant in Craft "could no longer work there for reasons beyond the Commission's control, and, thus, his unemployed status was not due to the Commission's inconsistent disposition.").

Similarly, in Barnes v. Johnson, the Court held that the plaintiff could not maintain a cause of action for promissory estoppel because he "failed to demonstrate . . . an injury sustained in reliance [on] a promise." 402 S.C. at 476, 742 S.E.2d at 15–16. In Barnes, the plaintiff asserted a promissory estoppel cause of action related to alleged agreements related to various improvements to a house. The house at issue ultimately burned down due to "an act of nature," and the Court of Appeals held that "the fire caused [the plaintiff's] injury," not the actions of the promisor. 402 S.C. at 475, 742 S.E.2d at 15–16. The plaintiff suffered an unfortunate set of circumstances, but the injury was not causally related to the broken promise; it was caused by the house burning down.

Here, the causal connection is that the injury complained of—that is, the Plaintiffs' unexpected need to pay for health care premiums in retirement—would not have occurred but for

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the City of Columbia breaking its promise of no-cost, single coverage healthcare for life upon retirement.

Of note, the term "reliance damages" does not appear anywhere in South Carolina case law regarding promissory estoppel. In fact, the only case to use the term "reliance damages" in the entire Westlaw collection of South Carolina cases is Carrigg v. Blue, 283 S.C. 494, 323 S.E.2d 787 (Ct. App. 1984), a case involving the fraudulent lease of a service station. This is because reliance damages are a measure of damages, not an element of promissory estoppel. 24 Williston on Contracts § 64:2 (4th ed. 2007) (describing (1) expectation damages, which seek to provide the plaintiff with the benefit of his bargain by putting him in the position he would have been in but for the broken promise; (2) reliance damages, which seek to reimburse the plaintiff for losses stemming from her reliance on the promise by placing him in the position he would have been in had the contract not been made; and (3) restitution damages, which seek to restore any benefit that the plaintiff has conferred on the other party).

By requiring the Plaintiffs to demonstrate "reliance damages," the Court has unilaterally changed the elements of the promissory estoppel cause of action.

III. PLAINTIFFS EACH DEMONSTRATED AN INJURY IN RELIANCE

During the trial, Plaintiffs all testified that they (1) made decisions in reliance of the promise of post-retirement, no-cost single coverage healthcare for life; and (2) had no reason to think that the promise would not be fulfilled. The Court has expressed "no doubt regarding the sincerity and honesty of their testimony," Order at 5. Defendant City of Columbia presented no compelling evidence to contradict Plaintiffs' testimony. Because (1) the promise of post-retirement, no-cost single coverage healthcare for life was not kept and (2) Plaintiffs all took actions in reliance on that promise, each Plaintiff sustained *injuries in reliance on the promise.*

ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

The class action was not certified because the circuit court held that all Plaintiffs needed to individually establish that they had suffered an injury in reliance on the promise of no-cost, single coverage healthcare for life. Testimony during the trial, however, established that Plaintiffs all suffered identical injuries. Each Plaintiff testified that the promise either induced him to work for or continue working for the City of Columbia for some period of time. Accordingly, each Plaintiff suffered the identical injury in reliance on the broken promise of no-cost, single coverage healthcare for life—**the effective reduction of compensation for work already performed**. This has caused all Plaintiffs to incur out-of-pocket costs for insurance premiums that they would not have otherwise incurred.

As the Court will recall, Plaintiffs brusquely bristled at the description of no-cost, single coverage health insurance for life as "free healthcare." Plaintiffs earned it through their service to the City of Columbia, and they factored it into their personal compensation calculus. Several plaintiffs also testified that the City of Columbia provided them with slips of paper that showed them their "true" compensation, which included calculations for benefits such as no-cost, single coverage healthcare for life and significantly increased the amount of their effective compensation beyond their salaries. When the City of Columbia reneged on its promise, it pulled a bait and switch with overall compensation, injuring all Plaintiffs. The broken promise wiped out "savings" the Plaintiffs had accrued over the years through their work, in the form of the cost of the monthly premiums for their insurance. Because each Plaintiff was on a fixed income, this effect was significant and substantial, despite the relatively low cost of monthly premiums. **This is an injury**.

An analogous situation would be if the City of Columbia hired Plaintiffs at a stated rate of $15/hour and deferred payment of $5/hour until retirement. In other words, Plaintiffs would pocket only $10/hour while they worked, but they were induced to work for the promise of $15/hour. If the

ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP400680

City of Columbia failed to deliver the promised earned $5/hour in retirement, the effective rate that Plaintiffs would earn is less than the $15/hour they were initially promised. Here, the reduced effective hourly rate is an injury in reliance that is common to all Plaintiffs.

In addition to the reduction in effective compensation, each plaintiff provided testimony relating to additional injuries suffered in reliance of the promise of no-cost, single coverage healthcare for life:

- Plaintiff Cam Gillam testified that he calculated his ability to retire—that is, the costs he expected to incur and whether he needed to continue to work to satisfy those obligations—based on his reliance of the promise of no-cost, single coverage healthcare for life.

- Plaintiff Larry Strickland stayed with the City of Columbia Fire Department because of the promise of no-cost single coverage healthcare for life instead of seriously pursuing a higher paying job with Southern Railway. This injury is compounded by the fact that the difference in compensation between the two jobs is increased by the elimination of no-cost, single coverage healthcare for life. He also factored no-cost, single coverage healthcare into his retirement planning.

- Plaintiff Bailey McClinton testified that the promise of no-cost, single coverage healthcare induced him to stay with the fire department instead of looking at the numerous well-paying private employers that came to the area during his tenure, including Mack Truck. He also factored no-cost, single coverage healthcare into his retirement planning.

- Plaintiff Charlie Morris testified that he developed bad knees during the course of his work as a firefighter, and he worked for some period of time with his bad knees to reach the years-in-service requirement that would make him eligible for no-cost, single coverage healthcare for life. Morris had surgery on his knees after he retired, but he testified that he would have had the surgery earlier, left the department earlier, and found other work if he had known that the promise of no-cost, single coverage health insurance for life was not going to be covered. Like Gillam, Morris also testified that he knew he was on a fixed income and made calculations based on his expected expenses, which did not include healthcare premiums.

- Plaintiff Alma Hill testified that after he was planning to leave the Fire Department after a rough patch in his life, he decided to stay, in part because of the promise of no-cost, single coverage healthcare for life. He also retired at the age of 47 and could have continued to work as a firefighter to save for the costs of health insurance premiums, but he timed his retirement based, in part on the promise.

ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

- Plaintiff Joe Floyd testified that he withdrew his name from consideration from the final round of the Summerville Fire Department's search for a new Chief in order to obtain the promised no-cost, single coverage healthcare for life. He also testified that he had factored having no-cost, single coverage healthcare for life into his retirement planning.

- Plaintiff Rusty Smith testified that he timed his decision to retire based on the promise of no-cost, single coverage healthcare for life. At the time of his retirement in 2006—after 33 years with the Fire Department—Smith would have continued to work as a firefighter and continued to save money for several additional years, had he known that he would need to factor the cost of his health insurance premiums into his retirement planning. But the City of Columbia's decision to renege on its promise three years after his retirement deprived him of that opportunity.

- Plaintiff Frank Cruz, the son of an Army veteran, specifically took the job with the fire department because of the promise of no-cost, single coverage health insurance premiums until retirement. He made the choice to stay with the Fire Department instead of the Marine Reserves because of this promise, and he was induced not to look at any other employment options at any point in time because of this promise. Because of

- Plaintiff Barry Martin came to work for the City of Columbia Fire Department and stayed with the Fire Department because of the benefits, including no-cost, single coverage health insurance for life. He did not look for other options because of the benefits, and factored the promise of no-cost, single coverage healthcare for life into his decision to continue working with the fire department after he suffered his first heart attack.

- Plaintiff DL Dimery retired at the age of 49 in 1991 because of dry eyes that prevented him from continuing to work as a firefighter. He testified that he could have retired earlier and sought other work if he had known that the promise of no-cost, single coverage healthcare for life was not going to be fulfilled. And because he retired at the age of 49 with no serious physical ailments besides dry eyes, he could have worked in other areas to save for the costs of health insurance premiums. Instead, he was led to believe, as the City of Columbia provided him no-cost, single coverage healthcare for 22 years after his retirement, that he would receive this for life. By waiting 22 years after Dimery's retirement to eliminate the no-cost, single coverage healthcare, the City of Columbia deprived him of opportunities to perform work that he could have performed in his 40s, 50s, and even his 60s to save for this expense.

Because each Plaintiff demonstrated at least one injury in reliance on the promise of post-retirement, no-cost single coverage healthcare for life, they have established the fourth element of promissory estoppel damages—injury in reliance.

ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

IV. PROMISSORY ESTOPPEL DOES NOT REQUIRE A PLAINTIFF TO DEMONSTRATE THAT HE "WOULD HAVE BEEN BETTER OFF" IF HE HAD NOT RELIED ON THE PROMISE

In its Order, the Court made the following statement of law: "To prove the detrimental reliance element necessary to obtain relief on promissory estoppel, a plaintiff must demonstrate that he would have been better off if he had not relied upon a promise . . . ." Order at 6. This is an inaccurate assertion, for at least two reasons.

First, there is no "detrimental reliance element" in promissory estoppel. A Westlaw search of the entire South Carolina catalog of cases does not produce a single instance where the terms "detrimental reliance" and "promissory estoppel" are used in the same case. As discussed above, Plaintiffs need only demonstrate an injury in reliance on the promise—that is, an injury that would not have occurred but for the City of Columbia's reneging on the promise of post-retirement, no-cost single coverage healthcare for life.

Second, there is no support for the statement that "a plaintiff must demonstrate that he would have been better off if he had not relied upon a promise." As in all of Defendant's briefing throughout the life of this case where similar assertions were made, there is no citation to supporting case law. This is because this "requirement" is made from whole cloth and inconsistent with the law on promissory estoppel in South Carolina and the principles that underpin promissory estoppel. The assertions that Plaintiffs "experienced substantial increases in pay during employment, obtained significant promotions, enjoyed personal gratification and continue to receive valuable pension benefits as a result of their employment with the City" (Order at 6) have no bearing on whether Plaintiffs can establish a cause of action for promissory estoppel.

As discussed above, a promissory estoppel plaintiff satisfies the fourth element of the cause of action by demonstrating that "the sustained injury . . . result[ed] from an inconsistent disposition by the promisor." Barnes v. Johnson, 402 S.C. 458, 470, 742 S.E.2d 6, 11 (Ct. App. 2013). There is

ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

no requirement that a plaintiff demonstrate that he or she would have gotten another job or would have "done better" elsewhere.

From a public policy perspective, requiring a plaintiff to show that he or she would have done better elsewhere runs counter to the equitable principles of fairness that underpin the cause of action. Adopting an "I would have done better" standard will allow future promise breakers to take advantage of the loyalty engendered by their promises; if a promisee believes the promise of future benefits and that promise induces the desired result (that is, staying put), the promisee will rarely, if ever, have the ability to say that he or she would have done better.

The fact that the doctrine of promissory estoppel applies in areas outside the arena of promises related to employment also cuts against adopting a new "would have done better" element, because it oftentimes makes no sense. See, e.g., Powers Const. Co. v. Salem Carpets, Inc., 283 S.C. 302, 306, 322 S.E.2d 30, 33 (Ct. App. 1984) ("Because promissory estoppel is a recognized doctrine in South Carolina, we have no doubt that the doctrine can support an action brought in this state by a contractor who has submitted a prime bid in reliance upon a subcontractor's bid." (internal citation omitted)); see also Furman University v. Waller, 124 S.C. 68, 117 S.E. 356 (1922) (applying the concept of promissory estoppel—although not by name—to a situation where a university relied on a pledged donation to build a dormitory); Higgins Const. Co. v. S. Bell Tel. & Tel. Co., 276 S.C. 663, 665–66, 281 S.E.2d 469, 470 (1981) (recognizing that Waller was a promissory estoppel case and holding that the doctrine is not restricted to cases involving charities).

To establish a cause of action for promissory estoppel, Plaintiffs do not need to prove that they "would have done better" elsewhere.

ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

V. EXPECTATION DAMAGES ARE AN APPROPRIATE REMEDY FOR A PROMISSORY ESTOPPEL ACTION, AND PLAINTIFFS' EXPECTATION DAMAGES ARE NOT SPECULATIVE

Promissory estoppel is an equitable remedy; it "is a flexible doctrine that aims to achieve equitable results." Barnes v. Johnson, 402 S.C. 458, 469, 742 S.E.2d 6, 11 (Ct. App. 2013). Accordingly, the Court has the authority to determine the proper measure of damages—expectation, reliance, or restitution—on a case-by-case basis to ensure a fair result.

By working for the City of Columbia for substantial periods of time at reduced pay (as compared to the private sector) but with the expectation of no-charge, single coverage healthcare until retirement, Plaintiffs conferred a bargained-for benefit upon the City of Columbia. The appropriate measure of damages situations such as this where Plaintiffs' restitution interests have been violated is expectation damages—that is, the value of the promise that was broken. This is consistent with the simplified Circuit Court jury charge on Promissory Estoppel, which is attached as Exhibit 2. ("If you find promissory estoppel, the promise must be enforced"). An award of expectation damages is also consistent with the weight of the authority on promissory estoppel damages; "courts routinely award expectation damages unless those damages are too speculative, indefinite, or otherwise unavailable under traditional contract rules." Mary E. Becker, Promissory Estoppel Damages, 16 Hofstra Law Review 131, 135 (1987).[1]

Plaintiffs all testified to a dollar amount that they had spent out of pocket to the date of the trial. There is no question that Plaintiffs should receive these amounts as damages for expenses already incurred. And because Plaintiffs have all paid their monthly premiums for the month of January, this amount should be incrementally increased accordingly. And although calculating future damages presents a more complicated task, it is no more speculative than the task of estimating future

[1] For a comprehensive discussion of damages available in promissory estoppel cases, see Mary E. Becker's informative article, Promissory Estoppel Damages, 16 Hofstra Law Review 131 (1987), which is attached to this post-trial brief as Exhibit 3.

ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

damages for medical needs, which occurs in courtrooms around the state on a regular basis. The Court's implied assertion that Plaintiff's damages are "dependent upon speculation," Order at 6, is simply incorrect.

VI. CONCLUSION

In its conclusion, the Court's Order focuses on Plaintiffs' failure to demonstrate that they would have done better elsewhere and that there was no testimony regarding the retirement healthcare costs they would have had if they did not work for the City of Columbia. As discussed above, these factors are inapplicable to the elements of promissory estoppel. But more saliently, they underscore just how effective the City's promises were at inducing Plaintiffs to remain employed by the City.

Individuals who remain employed will never be able to say, with any degree of certainty, that they would have done better elsewhere or what their retirement healthcare costs would have been in another setting. Even if, for instance, Larry Strickland knew precisely what the retirement health benefits would have been with Southern Railway, he cannot say with certainty that he would have remained with that company until retirement. But all of the Plaintiffs *can* say that they dutifully worked for the City of Columbia and did so until their retirement. If their loyalty were to somehow prevents the Court from fully exercising its equitable powers, the City of Columbia will be the beneficiary of an unfair bargain, and every governmental employee in South Carolina should express a healthy amount of skepticism regarding any promise of compensation that is not in the form of an immediate paycheck.

For the abovementioned reasons, Plaintiffs respectfully ask the Court to reconsider its Order granting judgment to Defendant and find in favor of the Plaintiffs on their promissory estoppel claims and award them make whole relief, including payment for their out-of-pocket expenses, future insurance expenses (or payment by Defendant of future insurance expenses) and attorney's fees pursuant to S.C. Code Ann. § 15-77-300.

ELECTRONICALLY FILED - 2019 Feb 06 9:55 AM - RICHLAND - COMMON PLEAS - CASE#2009CP4005680

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Charleston, South Carolina
Date: February 6, 2019

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL DISTRICT
Basilides F. Cruz, Joseph A. Floyd, Sr., Arthur C. Gillam III, Alma C. Hill, Barry N. Martin, Charles F. Morris, Sr., and Joseph A. Smith, Plaintiffs, v. City of Columbia, Defendant.	Civil Action File No.: 2009-CP-40-05680
Larry Strickland, Denious L. Dimery and Bailey G. McClinton, Plaintiffs, vs. City of Columbia, Defendant.	Civil Action File No.: 2013-CP-40-05097

MEMORANDUM IN RESPONSE TO PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER ISSUED JANUARY 29, 2019

By motion dated February 6, 2019, Plaintiffs seek to alter or amend the order denying their claims for relief on grounds of promissory estoppel. For the following reasons, Plaintiffs' motion should be denied.

STANDARD OF REVIEW

To alter or amend a judgment requires demonstration that the Court misapprehended controlling law or that a "previous argument" requires the Court's attention. In this instance, Plaintiffs have identified no controlling authority overlooked or misapprehended in the

challenged order. Instead, Plaintiffs' arguments were brought to the Court's attention in their pretrial memorandum, during trial and in their post-trial memorandum.

LEGAL ANALYSIS

In support of their motion, Plaintiffs argue that mere reliance upon representations made during their employment regarding continuing individual health insurance without charge is sufficient to award damages in this proceeding. As demonstrated in their previous filings and testimony, however, Plaintiffs have failed to present the Court with evidence of a detrimental change in position necessary to establish a basis for relief on their promissory estoppel cause of action.

Plaintiffs assert, without offering supporting testimony, that they accepted lower wages than otherwise available in exchange for a promise of lifelong health coverage without charge. As noted in the challenged order, however, no Plaintiff presented evidence of an employment opportunity lost. Moreover, no Plaintiff presented evidence allowing the Court to measure compensation and benefits received while employed by the City of Columbia and upon retirement against compensation and benefits available from any other potential employer.

Plaintiffs attempt to circumvent these deficiencies by arguing cost free health coverage constitutes earned compensation. (See, Plaintiffs' Memorandum at p. 6) To advance this argument, Plaintiffs would have the Court ignore pretrial rulings in the consolidated cases and by the Court of Appeals that they possess no wage claim and that they are obligated to prove detrimental reliance individually.

The established law of this State supports these rulings and the conclusion reached in this Court's order. Plaintiffs' contention to the contrary, the burden of proving a detrimental change of position is not confined to a single case. (See, Plaintiffs' Memorandum at p. 5, *citing* Carrigg

v. Blue, 283 S.C. 484, 323 S.E.2d 787 (Ct. App. 1984)) Instead, our courts have consistently refused to provide relief on estoppel grounds when the moving party fails to provide evidence of a measurable detrimental change in position. For example, in addition to the authorities offered by the City and contained in the challenged order, this burden is addressed in Frady v. Smith, 247 S.C. 353, 359-60, 147 S.E.2d 412, 415 (1966)(requiring proof that the plaintiff "change his position prejudicially") overruled on other grounds by Tolemac, Inc. v. United Trading, Inc., 326 S.C. 103, 484 S.E.2d 593 (1997); Wachovia Bank of South Carolina, N.A. v. Thomasko, 339 S.C. 592, 596, 529 S.E.2d 554, 556 (Ct. App. 2000)(denying detrimental reliance as a defense for failure to show a "change in position"); and, Queen's Grant II Horizontal Property Regime v. Greenwood Development Corporation, 368 S.C. 342, 358, 628 S.E.2d 902, 911 (Ct. App. 2006)(requiring proof of a "prejudicial change of position"). Although different turns of phrase may be employed, the consistent burden imposed when seeking estoppel relief includes the obligation to provide the court a basis to measure a detrimental change in position due to reliance upon a representation. No evidence identified by Plaintiffs before, during, or after trial meets this burden.

CONCLUSION

For the reasons stated above and contained in this Court's order of January 29, 2019, Plaintiffs have failed to present arguments or evidence sufficient to prove their promissory estoppel cause of action. Accordingly, their motion to alter or amend should be denied.

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