

June 22, 2011

Witness: Barry Lollar

<p>1 IN THE UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF ALABAMA 3 SOUTHERN DIVISION 4 5 BARBARA ANN WILSON, 6 7 Plaintiff, 8 9 VS. CIVIL ACTION 10 NO. 2:10-CV-02386-KOB 11 12 THE CITY OF BIRMINGHAM; 13 et al., 14 15 Defendants. 16 17 DEPOSITION OF BARRY LOLLAR 18 JUNE 22ND, 2011 19 20 STIPULATIONS 21 IT IS STIPULATED AND AGREED, 22 by and between the parties, through 23 their respective counsel, that the</p>	<p>1 deposition is offered in evidence, or 2 prior thereto. 3 IT IS FURTHER STIPULATED AND 4 AGREED that notice of filing of the 5 deposition by the Commissioner is 6 waived. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>
<p>1 deposition of BARRY LOLLAR may be 2 taken before Mellie Phillips, 3 Commissioner, State of Alabama at 4 Large, at the offices of Adam Morel, 5 517 Beacon Parkway West, Birmingham, 6 Alabama, on the 22nd day of June, 7 2011, commencing at or about 2:31 p.m. 8 IT IS FURTHER STIPULATED AND 9 AGREED that the reading and signature 10 to the deposition by the witness is 11 waived, said deposition to have the 12 same force and effect as if full 13 compliance had been had with all laws 14 and rules of court relating to taking 15 of depositions. 16 IT IS FURTHER STIPULATED AND 17 AGREED that it shall not be necessary 18 for any objections to be made by 19 counsel as to any questions, except as 20 to form or leading questions, and that 21 counsel for the parties may make 22 objections and assign grounds at the 23 time of the trial, or at the time said</p>	<p>1 I N D E X 2 3 EXAMINATION BY: PAGE NO. 4 Mr. Adam Morel ----- 7 - 24 5 6 PLAINTIFF'S EXHIBITS MARKED 7 37 INTEROFFICE COMMUNICATION 10 8 38 LETTER 11 9 39 EMPLOYEE HANDBOOK 20 10 40 ADDITIONAL POLICY 21 11 41 SAFETY RULES 21 12 42 NEW EMPLOYEE HANDBOOK 22 13 43 MS. WILSON'S PERSONNEL FILE 23 14 15 16 17 18 19 20 21 22 23</p>

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<p>1 BEFORE: Mellie Phillips 2 Commissioner 3 4 APPEARING ON BEHALF OF THE PLAINTIFF: 5 MR. ADAM MOREL, ESQ. 6 Law Offices of Mr. Morel 7 517 Beacon Parkway West 8 Birmingham, Alabama 35209 9 10 APPEARING ON BEHALF OF THE DEFENDANT: 11 MR. FREDRIC FULLERTON, II, ESQ. 12 Department of Law 13 710 North 20th Street 14 City Hall/Room 600 15 Birmingham, Alabama 35203 16 17 ALSO PRESENT: 18 BARBARA WILSON 19 20 21 22 23</p>	<p>5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p> <p>1 fine. 2 EXAMINATION BY MR. MOREL: 3 Q. State your name for the 4 record, please. 5 A. My name is Barry Jay Lollar. 6 Q. Mr. Lollar, who is your 7 employer? 8 A. I am employed by the City of 9 Birmingham, Alabama. 10 Q. All right. Is it your 11 understanding, that you are here to 12 testify on behalf of the City with 13 respect to the Deposition Notice that 14 was issued in this case? 15 A. That is correct. 16 Q. All right. What's your 17 title? 18 A. I am Deputy Director of the 19 Personnel City of Birmingham. 20 Q. And tell me what those 21 duties include. 22 A. Okay. Well since April, 23 when I was appointed to this role.</p>
<p>1 I, Mellie Phillips, 2 Commissioner, State of Alabama at 3 Large, acting as commissioner, certify 4 that on this date, in accordance with 5 Rule 30 of the Alabama Rules of Civil 6 Procedure and the foregoing 7 stipulations of counsel, there came 8 before me at the offices of Adam 9 Morel, 517 Beacon Parkway West, 10 Birmingham, Alabama, on the 22nd day 11 of June, 2011, BARRY LOLLAR, witness 12 in the above cause for oral 13 examination, whereupon the following 14 proceedings were had: 15 16 BARRY LOLLAR, 17 having been first duly sworn, was 18 examined and testified as follows: 19 THE COURT REPORTER: Usual 20 stipulations? 21 MR. MOREL: Yes. That's 22 fine. 23 MR. FULLERTON: Yes. That's</p>	<p>6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p> <p>1 Q. That you're still learning 2 partly? 3 A. Absolutely. Well I have 4 responsibility in particular for Human 5 Resources Information Systems for our 6 Benefits Administration. And for 7 other administrative efforts as well. 8 Q. You need to quit your job 9 and go into radio. All right. You're 10 able to testify about the relationship 11 between the City of Birmingham and Ms. 12 Wilson's employment at the Library? 13 A. I can testify regarding 14 relationship between the City of 15 Birmingham and the Library. 16 Q. Okay. Well I'll ask the 17 questions, and you tell me if you can 18 answer them or not. 19 A. Certainly. 20 Q. It is true that while Ms. 21 Wilson was performing duties at the 22 Library, she was paid by the City of 23 Birmingham?</p>

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1 A. That is correct.

2 Q. All right. And is it also

3 true that, the City of Birmingham was

4 the entity to which Ms. Wilson had to

5 make application for injury with pay

6 leave?

7 A. That is correct.

8 Q. And that the City is also

9 the entity which would determine

10 whether or not she would receive

11 injury with pay ultimately?

12 A. That is correct.

13 Q. Let me show you what I'm

14 going to mark -- I'm just going to do

15 a continuation.

16 MR. FULLERTON: That's fine.

17 Q. (BY MR. MOREL) We'll make it

18 Plaintiff's Exhibit 37. You should be

19 lucky that you weren't here for 1

20 through 36. And my question is: This

21 is a document that I'll show you in

22 just a moment that is an Interoffice

23 Communication from the Office of

10

1 Personnel from the City. And it lists

2 a number of people who were approved

3 for disability. Do you see that?

4 (Whereupon, Plaintiff's

5 Exhibit Number 37 was

6 marked for identification.)

7 A. I do.

8 Q. And for each person that was

9 approved or disapproved, it list the

10 department or the City where they

11 worked?

12 A. Yes.

13 Q. Do you see where for Ms.

14 Wilson, it list the Library under that

15 heading?

16 A. Yes, I see that.

17 Q. All right. Is it true that

18 the Library is a Department of the

19 City?

20 A. We treat the Library as a

21 Department of the City.

22 Q. Okay.

23 A. Indeed.

11

1 Q. That's all I need to ask you

2 about that. The Library Director has

3 testified that just about all of the

4 funding, other than a few grants, all

5 the funding that is used to operate

6 the Library, comes from the City, do

7 you have knowledge of that?

8 A. That is my understanding as

9 well.

10 Q. Okay. Let me show you what

11 I'll mark as Plaintiff's Exhibit 38.

12 I'm going to ask you just to identify

13 it, if you can. And my real question

14 would be for you to describe, if

15 you're able to, what the Jefferson

16 County Personnel Board's involvement

17 would be in a situation such as that

18 that's recounted in that letter. I

19 think it deals with injury with pay

20 application.

21 (Whereupon, Plaintiff's

22 Exhibit Number 38 was

23 marked for identification.)

12

1 A. This I really can't say with

2 any degree of certainty. I do know

3 that the Library employees are not

4 under the Jefferson County Personnel

5 Board.

6 Q. Right. Yeah.

7 A. So whether or not, you know,

8 they would offer any say as to

9 whether, you know, in the end a person

10 would be a library employee would, you

11 know, would fall under their sway. I

12 really don't know, I mean.

13 Q. And I have no agenda on the

14 question.

15 A. Okay.

16 Q. You know, we can agree

17 though that this is a letter dated May

18 17, 2011, from Gerald La blanc who

19 is -- who is Gerald Le Blanc?

20 A. Gerald Le Blanc is our

21 Occupational Health and Safety

22 Administrator.

23 Q. City employee?

13

1 A. That is correct.
 2 Q. All right. And this is a
 3 letter from him to Lauren Oliver who
 4 is the Head of the Jefferson County
 5 Personnel Board?
 6 A. That is correct.
 7 Q. And it concerns Ms. Wilson's
 8 injury with pay leave appeal; is that
 9 right?
 10 A. Um-hmm.
 11 Q. We can at least agree to
 12 that part?
 13 A. Absolutely.
 14 MR. MOREL: Let's go off the
 15 record real quick.
 16 (Whereupon, an off the
 17 record discussion
 18 occurred.)
 19 Q. (BY MR. MOREL) Question is:
 20 Is it your understanding that, that
 21 Ms. Wilson applied for injury with pay
 22 and was denied?
 23 A. Yes.

14

1 Q. And that she had the right
 2 to appeal that denial to Jefferson
 3 County Personnel Board?
 4 A. To the best of my
 5 understanding, she did.
 6 Q. All right. How is a
 7 decision made when somebody like Ms.
 8 Wilson applies for disability, how is
 9 the decision made about whether to
 10 grant it?
 11 A. Well, again, I'm speaking
 12 somewhat out of, you know, outside my
 13 scope of knowledge.
 14 Q. All right. Tell me what you
 15 know and what you think you know.
 16 A. Right. My understanding is
 17 that, typically one would have our --
 18 we have a -- what we call a Medical
 19 Services Unit, it's at UAB. And we
 20 would refer the employee and get some
 21 opinion from our medical doctor there,
 22 Dr. Lance.
 23 And the decision would be

15

1 made with whatever evidence that
 2 Dr. Lance was able to determine I
 3 guess in conjunction with the
 4 employee's own doctor. But again I'm
 5 speaking a little bit outside of my
 6 scope of knowledge.
 7 Q. Do you know whether -- and
 8 your qualifications and your response
 9 will be reflected obviously. So do
 10 you know whether as a threshold matter
 11 to get disability, you have to --
 12 there has to be a determination made
 13 that the disability arose out of
 14 employment in some way?
 15 A. Job related.
 16 Q. Okay.
 17 A. Yes. I do.
 18 Q. Right. In other words, if I
 19 work for -- whether I work for the
 20 Library or the City either one, if I
 21 come and say I want to apply for
 22 disability and my disability is a
 23 congenital birth defect that I've had

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1 all my life, you wouldn't get
 2 disability in that situation because
 3 it didn't arise out of the employment;
 4 is that right?
 5 A. It's unlikely that you'd get
 6 it.
 7 Q. Okay. I just want to make
 8 sure I understand how the City does
 9 that.
 10 A. Yeah.
 11 Q. And so your understanding
 12 would be, that the City has determined
 13 that whatever disability Ms. Wilson
 14 has as a threshold matter at least,
 15 arose out of her employment?
 16 MR. FULLERTON: We can go
 17 off the record later about that.
 18 THE WITNESS: Well, if she
 19 filed for injury with pay and it was
 20 denied, my thinking with that, the
 21 City would had determined that
 22 whatever her disability was, was not
 23 job related. I mean that would be the

17

1 reason for denial. I'm not sure I'm
 2 answering the question that you asked
 3 --
 4 Q. (BY MR. MOREL) Well it might
 5 be my confusion.
 6 A. -- me. You want to
 7 rephrase?
 8 Q. Well it might be my
 9 confusion.
 10 A. Okay.
 11 Q. What's the difference
 12 between injury with pay and getting
 13 disability through the City?
 14 A. Sure. Well --
 15 Q. It shows she was approved
 16 for -- well can you tell from this
 17 what she actually was approved for?
 18 A. Okay. Yeah. Let me just
 19 look. Okay. That's ordinary
 20 disability. Okay. And ordinary
 21 disability is, my understanding is,
 22 disability that's outside of the job.
 23 Okay.

18

1 Q. All right.
 2 A. Extraordinary disability,
 3 EOD, is when it's job-related.
 4 Q. Okay.
 5 A. Now, that is my
 6 understanding.
 7 Q. Okay.
 8 A. But, you know, I can, you
 9 know, follow-up with that, you know,
 10 if you need it?
 11 Q. That's fine. Do you know
 12 whether the City's doctor ever met
 13 with or examined Ms. Wilson?
 14 A. I do not know that whether
 15 or not he did.
 16 Q. And just for the record,
 17 "injury with pay" would be the term
 18 the party used by the City to cover
 19 Worker's Compensation or not?
 20 A. They're actually two
 21 different animals.
 22 Q. Okay.
 23 A. Injury with pay is what the

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1 City has been using for quite some
 2 time, you know, but before I was born
 3 at the City. And with injury with
 4 pay, the employee is able to actually
 5 be off work, if you will, with 100
 6 percent of their salary.
 7 Worker's Compensation, which
 8 we are working toward implementing.
 9 Hopefully, we'll be able to get
 10 everything in place and do that this
 11 fall. You know, that's State
 12 mandated. The compensation is like 66
 13 and two-thirds percent.
 14 Q. Okay.
 15 A. So you can see why the City
 16 is interested in coming into
 17 compliance so that we can move ahead.
 18 And we should do that. I mean, that's
 19 the right thing to do.
 20 Q. That's a bunch of questions
 21 for another day. I can't help, but my
 22 curious nature. I could ask a half
 23 hour of questions on that because I

20

1 want to know more about that. Not
 2 involved with this case.
 3 A. Not this afternoon.
 4 Q. Not today. I'll buy the
 5 coffee. That's all the questions I
 6 have. Thank you.
 7 MR. FULLERTON: I don't have
 8 any.
 9 Q. (BY MR. MOREL) All right.
 10 Let's go on the record for just a
 11 minute. I'm sorry. Let me show you
 12 what I'll mark as Plaintiff's Exhibit
 13 39. This would be the Employee
 14 Handbook -- Personnel Handbook for
 15 City of Birmingham employees that
 16 would have been applicable to Ms.
 17 Wilson; is that correct?
 18 (Whereupon, Plaintiff's
 19 Exhibit Number 39 was
 20 marked for identification.)
 21 A. I would assume so.
 22 Q. All right. Is that your
 23 understanding?

21

1 A. That is my understanding.
 2 Q. All right. And Plaintiff's
 3 Exhibit 40 would be also applicable to
 4 Ms. Wilson. But it would be just
 5 additional policy --
 6 (Whereupon, Plaintiff's
 7 Exhibit Number 40 was
 8 marked for identification.)
 9 A. That's correct.
 10 Q. -- from the City?
 11 A. Yes.
 12 Q. And Plaintiff's Exhibit 41
 13 are the City of Birmingham's Safety
 14 Rules that also would have applied to
 15 Ms. Wilson?
 16 (Whereupon, Plaintiff's
 17 Exhibit Number 41 was
 18 marked for identification.)
 19 A. That is my understanding.
 20 Correct.
 21 Q. And then Plaintiff's Exhibit
 22 42 is the New Employee Orientation
 23 Handbook presented by the City of

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1 Birmingham Office of Personnel that
 2 would have applied to Ms. Wilson?
 3 (Whereupon, Plaintiff's
 4 Exhibit Number 42 was
 5 marked for identification.)
 6 A. Let me delve into that, if I
 7 may?
 8 Q. Okay. You're not sure on
 9 that?
 10 A. I'm not sure on that. And
 11 the reason is, that since I've been at
 12 the City of Birmingham, the Library
 13 employees undergo their own new
 14 employee orientation. So whether or
 15 not they are given that, I'm not sure.
 16 Q. Okay. Plaintiff's Exhibit
 17 42, which is that New Employee
 18 Orientation Handbook. But we know,
 19 we're saying we don't know whether she
 20 got it or not. Whether Ms. Wilson
 21 would have got it. But it does list
 22 the officials of the City of
 23 Birmingham. And under Department

23

1 Heads, it list Irene Blalock for the
 2 Library; is that right?
 3 A. Yes. It does.
 4 Q. Okay. And then the last
 5 exhibit we'll mark will be Plaintiff's
 6 Exhibit 43. This is Ms. Wilson's
 7 personnel file; is that correct?
 8 (Whereupon, Plaintiff's
 9 Exhibit Number 43 was
 10 marked for identification.)
 11 A. That is file, the copy that
 12 we have internally. Now we have a --
 13 you know, we have a copy that we get.
 14 There's certain things that we do for
 15 the Library in particularly such as
 16 payroll and so forth. So those are
 17 payroll actions, when, you know, merit
 18 increases or general increases are
 19 given so on and so forth.
 20 Q. It's a personnel file that
 21 the City keeps on Ms. Wilson?
 22 A. That is correct.
 23 Q. That may not be -- she may

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1 have other personnel documents at the
 2 Library?
 3 A. That is correct.
 4 Q. All right. That's all the
 5 questions that I have.
 6 A. Okay.
 7 MR. FULLERTON: That's all.
 8 I don't have any.
 9 MR. MOREL: All right.
 10 Thanks for letting me get back on the
 11 record.
 12 THE WITNESS: Sure. You are
 13 welcome.
 14 FURTHER THE DEPONENT SAITH NOT.
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<p>1 CERTIFICATE 2 STATE OF ALABAMA 3 COUNTY OF JEFFERSON 4 I, MELLIE PHILLIPS, hereby 5 certify that the above and foregoing 6 deposition was taken down by me on 7 Computerized Stenotype, and the 8 questions and answers thereto were 9 transcribed by me, and that the 10 foregoing represents a true and 11 correct transcript of the deposition 12 given by said witness upon said 13 hearing. 14 I further certify that I am 15 neither of counsel nor of kin to the 16 parties in the action, nor am I in any 17 way interested in the result of said 18 cause. 19 20 21 _____ 22 /s/Mellie M. Phillips 23 MELLIE M. PHILLIPS</p>	<p>25</p>
<p>1 CCR #448, Expires 9/30/11 2 Commissioner for the 3 State of Alabama at Large 4 My Commission Expires: 9/6/11 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>	<p>26</p>