

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF NORTH CAROLINA

RYAN McFADYEN, et al.,  
Plaintiffs,

v.

DUKE UNIVERSITY, et al.,  
Defendants.

Civil Action No. 1:07-cv-953

**PLAINTIFFS' SUGGESTION OF SUBSEQUENTLY  
DECIDED CONTROLLING AUTHORITY**

PLAINTIFFS, pursuant to L.R. 7.3(i) and as an addendum to Plaintiffs' Opposition to the City of Durham's Motion for Partial Summary Judgment (Governmental Immunity) (Document # 96), suggest to the Court the following subsequently decided controlling authority decided unanimously by a three-judge panel of the North Carolina Court of Appeals on February 17, 2009:

[\*Fulford v. Jenkins, et al.\*, 2009 WL 364774 \(N.C.App. 2009\)](#)<sup>1</sup>

To facilitate the Court's review, Plaintiffs annex hereto the slip opinion (Ex. 1) and a copy of the municipal liability insurance policy at issue in *Fulford* from the Record on Appeal (Ex. 2).

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<sup>1</sup> Consistent with L.R. 7.3(i), Plaintiffs' suggestion of subsequently decided controlling authority is made without argument prior to the court's ruling on Defendant City of Durham's Motion for Partial Summary Judgment (Governmental Immunity) (Document #86).

Dated: February 24, 2009

Respectfully submitted,

**EKSTRAND & EKSTRAND LLP**

/s/ Robert C. Ekstrand

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Robert C. Ekstrand (NC Bar #26673)

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**CERTIFICATE OF SERVICE**

I hereby certify that, on Tuesday, February 24, 2009, I electronically filed the foregoing document, Plaintiffs' Suggestion of Subsequently Decided Controlling Authority, with the Clerk of the Court via the ECF system which will serve the same upon all counsel of record and Defendant Linwood Wilson, who appears in this matter *pro se*.

Respectfully submitted,

/s/ Robert C. Ekstrand

Robert C. Ekstrand (NC Bar #26673)

*Counsel for Plaintiffs Ryan McFadyen,  
Matthew Wilson, and Breck Archer*