

EXHIBIT

15

R.p.0307

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 02-CVS-2620

LINDA JONES,)
)
 Plaintiff,)
)
 vs.)
)
 THE CITY OF DURHAM and JOSEPH)
 M. KELLY (in his official)
 capacity as a police officer)
 for the City of Durham),)
)
 Defendants.)

COPY

-----)
JARVIS LASSITER,)
)
 Plaintiff,)
)
 vs.)
)
 C.L. COHN (in her official)
 capacity as a police officer)
 for the City of Durham), and)
 CITY OF DURHAM,)
)
 Defendants.)
)
-----)

FILE NO. 02-CVS-2801

DEPOSITION OF PATRICK W. BAKER, ESQ.

At the City Attorney's Office
101 City Hall Plaza
Durham, North Carolina

October 23, 2003
2:15 p.m.

B. JORDAN & CO.
CERTIFIED VERBATIM REPORTERS
P.O. BOX 3372 CHAPEL HILL, NORTH CAROLINA 27515 (919) 929-6592

1 MR. BAKER

20

2

3 been done in the past that were considered
4 governmental are now being moved over into the
5 proprietary nature, based on how municipalities are
6 operating things, doing things, the level of private
7 sector compatibility with some of the things, the
8 functions that municipalities are engaged in, things
9 like that.

10 It's not nearly as clear a doctrine as it
11 once was. And there's certainly a steady eroding away
12 of the doctrine to the--primarily the basic core
13 functions, core in this state being really like things
14 like police and fire.

15 Q All right. Well, okay, since January--or
16 actually, June of 1997, when you came aboard at the
17 City Attorney's Office, has the City maintained a
18 liability insurance policy in place?

19 A No.

20 Q Presently, there's an excess insurance
21 policy, I believe.

22 A That's right.

23 Q And that kicks in at 350,000 dollars
24 (\$350,000), depending on what attorney's fees and
25 expenses are billed to the self-insured's attention.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BAKER

21

A That's my understanding, yes.

Q All right. During that time period when you worked for the City and there's been no underlying insurance policy, is it fair to say that the City has had sovereign immunity available for all tort claims--state tort claims involving governmental actions?

A If your question is factually correct, yes.

Q Okay. All right. What's your understanding as to how a municipality may waive their immunity?

A We have the ability to waive immunity through the purchase of liability insurance or participation in a risk pool.

Q Okay. And are you aware of the new changes to the law that occurred this past summer?

A Yes.

Q And does that afford you an additional manner in which you can waive immunity?

A Yes.

Q Please tell me--

A Essentially, if we have a risk retention fund--I don't know exactly what the words were in the